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Compendium of Customs Valuation texts

of the

CUSTOMS CODE COMMITTEE

Customs Valuation Section

A Compendium of the legal provisions and accompanying texts relating to application in the Community of the GATT Customs Valuation Agreement were last published in consolidated form in 1997. Since then, a number of developments have intervened i.e. additional rulings and conclusions have been adopted and changes in certain implementing provisions have taken place.

This document represents an updated version of the Compendium of customs valuation texts as concerns instruments concluded by the Customs Code Committee - Customs Valuation Section - and a summary of relevant judgements of the Court of Justice of the European Communities. A section with references to instruments adopted by the Technical Committee for Customs Valuation of the World Customs Organisation has been added for completeness. In its version of 10.10.2005 two new commentaries, n° 9 and 10, have been added.

The present compendium has been prepared primarily for Member States administrations but should be available to all interested parties. It is available in all official languages of the Community at the following internet address:

http://ec.europa.eu/taxation_customs/customs/customs_duties/declared_goods/european/index_en.htm

The instruments (commentaries, conclusions and other measures contained in this compendium) are the result of considerations in the Committee of certain provisions or specific practical cases raised, according to Article 249 of the Customs Code. In the case of commentaries, guidance is given on how to apply a specific provision. Conclusions are the result of examination of particular practical cases. Commentaries and Conclusions have not been adopted as legal instruments. However, they reflect the view of the Customs Code Committee – Customs Valuation Section and support uniform interpretation and application of the relevant Community provisions. Economic operators are however advised to consult their national customs administration as regards concrete decisions in individual cases.

It should be stressed in particular that the authentic texts of EC regulations and directives are those published in the Official Journal of the European Communities. As regards judgements of the Court of Justice of the European Communities the authentic texts are those given in the reports of cases before the Court of Justice.

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SECTION A: COMMUNITY LEGAL TEXTS (REFERENCES ONLY)

1. Customs valuation

Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹ (CC), as last amended by Regulation EC No 2700/2000 of 16 November 2000²

Articles 28-36.

Commission Regulation (EEC) No 2454/93 of 2 July 1993³ (CCIP) laying down provisions for the implementation of Regulation (EEC) No 2913/92, as last amended by Regulation (EC) No 1335/2003 of 25 July 2003⁴

Articles 141-181 a.

Annexes 23 to 29.

2. Other provisions which refer to establishment or recording of the customs value

a) Customs formalities

Articles 14 and 15 (CC)	Obligation to present documents and information confidentiality
Article 64 (CC)	Declarant
Article 67 and 214 (CC)	Basis of the rules of assessment appropriate to the incurrence of a customs debt
Article 228 (CC)	No deferred payment when incomplete declarations are entered in the accounts and by the time of expiry of the period set particulars or documents necessary for the definitive valuation were not provided or supplied.
Article 218 (CCIP)	Documents to accompany a customs declaration
Articles 254-257 (CCIP)	In the case of incomplete declarations at least provisional indication of value required; extended periods for the production of the document in question; enter into account and lodging of a security.

¹ OJ No L 302, 19.10.1992, p. 1

² OJ No L 317, 11.12.2000, p. 17

³ OJ No L 253, 11.10.1993, p. 1

⁴ OJ No L 187, 26.7.2003, p. 16

b) Customs procedures with economic impact

Article 112 (CC)	Customs warehouse; incurring of a customs debt and determination of the basis of the taxation elements (plus Articles 269, 516a, and 529 of the CCIP)
Article 121 and 122 (CC)	Inward processing; incurring of a customs debt and determination of the basis of the taxation elements (plus Articles 518, 521(2) d and g, 523, 547 and 548 of the CCIP)
Article 135 (CC)	Processing under customs control; incurring of a customs debt and determination of the basis of the taxation elements (plus Articles 521(2) and 551 of the CCIP)
Article 144 (CC)	Temporary admission; incurring of a customs debt and determination of the basis of the taxation elements (plus Articles and 499 j of the CCIP)
Articles 151 and 153 (CC)	Outward processing; definition of the value of the temporary export goods and the compensating goods (plus Articles 590 and 591 of the CCIP)

c) Other types of customs approved treatment or use

Article 168a and 178 (CC)	Free zone or free warehouse; the cost of warehousing or of preserving goods shall not be included in the customs value.
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3. Other applications

a) Imports-value for VAT purposes

Article 85 of Council Directive 2006/112/EC of 28.11.2006

b) External Trade Statistics

Common Position n° 13/2009 of 16 February 2009 (OJ C75E of 31.3.2009 repealing Council Regulation (EC) N° 1172/95 with effect from 1.1.2010.

c) Legislation in the fields of common policies for agriculture and fisheries

Various: see in particular Entry Price System (Commission regulation (EC) No 1580/2007 of 21 December 2007)

TEXTS OF THE CUSTOMS CODE COMMITTEE

(Customs Valuation Section)

SECTION B: COMMENTARIES

Commentary No 1 of the Customs Code Committee (Customs Valuation Section) on the application of Article 32(1)(b) of the Customs Code on the valuation of goods for customs purposes

Introduction

1. The practical application of the above provisions should be uniform throughout the Community. This commentary by the Customs Valuation Committee has been written therefore to provide guidance in interpreting these provisions.

Legal basis

2. Article 32(1)(b) of the Code is applicable in cases where :
 - the customs value of the imported goods is determined under Article 29 of that regulation even where the contract is only for working or processing of goods, and
 - the buyer of the imported goods has supplied certain goods or services (referred to below as "assists") either free of charge or at reduced cost, for use in connection with the production and sale for export of those imported goods
3. That provision is to be applied in the light of the Interpretative note to Article 32(1)(b)(ii) appearing in Annex 23 to Customs Code Implementing provisions. Although the Note in question refers explicitly to Article 32(1)(b)(ii) only, it is reasonable that it should also be applied, by analogy, to the other provisions of Article 32(1)(b).

Country from which the assists are supplied

4. The country from which assists are supplied is not relevant in determining whether particular goods or services fall within the scope of Article 32(1)(b). For example, the goods in question may, before they are supplied to the producer, be physically present in the country where the imported goods are produced; alternatively they may have been transported to the producer from another third country or from the Community itself. However, in keeping with the provisions of Article 32(1)(b)(iv), the value of engineering, development, artwork, design work, and plans and sketches supplied for the production of goods may not be added under Article 32(1)(b) if the work referred to has been carried out in the Community.

Transport and associated costs

5. By reason of paragraph 2 of the Note to Article 32(1)(b)(ii), the value of an assist is either the cost of its acquisition or the cost of its production, as appropriate. There is no specific provision related to the treatment of costs of delivery of assists to the producer of the imported goods. The following are regarded as costs of delivery of assists :

- cost of transport and insurance;
- cost of loading, unloading and handling.

6. Consequently, in determining a value under Article 32(1)(b), costs of delivery of assists to the producer of the imported goods are not to be added to the cost of acquisition or cost of production of those assists. However they would be part of that value to the extent that, in the case of acquisition, they are included in the price.

Example 1 : Company A in the Community orders the manufacture of shirts by Company B in third country X. A supplies to B free of charge the cloth and the buttons from which the shirts are to be manufactured. A buys the cloth from company C in third country Y, with delivery terms "CIF port of unloading" in country X. A makes the buttons in its own factory in third country Z. Both the cloth and the buttons constitute assists under Article 32(1)(b). The value of the cloth for the purposes of that provision is the price CIF port of unloading. The value of the buttons is the cost of their production only; it does not include any delivery charges.

Amount to be included in the customs value

7. In keeping with Article 32(1)(b), the amount of the value of an assist to be included in the customs value of imported goods is affected by two factors :

- the need for apportionment,
- the extent to which such value has not been included in the price for the imported goods.

8. Guidance on apportionment is given in paragraphs 1, 3 and 4 of the Note to Article 32(1)(b)(ii).

9. The contract for the supply of the imported goods and the relevant invoice may indicate the extent to which the value of any assist is not included in the price for the imported goods. The amount of the value not so included must be declared to the Customs, normally on form DV 1, and must form part of the customs value. In order to determine that amount, it is necessary to know also the total value of the assist and, in keeping with paragraph 3 of the above-mentioned note, to know how that value is being apportioned.

Example 2 : Company A in the Community imports shirts made to order from A's materials by company B in third country X. The contract indicates that materials are supplied by A to B at 40% of cost to A. The invoice from B to A indicates an amount for "the manufacture and supply of shirts". It may be assumed that 40% of cost of the materials is part of the amount invoiced by B to A. The value of the materials for the purposes of Article 32(1)(b) is their total cost. The amount of that value not included in the price for the imported goods is 60% of the total cost of the assist. Consequently the amount of the value of the assist still to be included in the customs value of the shirts is the latter amount.

Example 3 : Company A above orders the manufacture of jackets from company B above. B itself procures the constituent materials for the jackets, but A buys the patterns for the jackets from a design company in third country Z, and supplies them free of charge to B. The invoice from B to A indicates an amount for "the manufacture and supply of jackets". The value of the design has not to any extent been included in the price for the imported goods. Consequently the amount of the value of the assist for the purposes of Article 32(1)(b) to be included in the customs value of the jackets is the whole price for the patterns.

Note:

See also case no C 116/89 of the Court of Justice of the European Communities.

Commentary No 2 of the Customs Code Committee
(Customs Valuation Section)
on the application of Article 145 paragraph 2 of the Customs
Code implementing provisions

Introduction

1. Article 145 CCIP sets out the treatment available where goods are damaged or defective at time of importation.

Article 29

3. As a result of the amendment to Article 145, the customs valuation rules expressly allow the defective nature of the goods to be taken into account, by accepting an adjustment of the price paid or payable for the goods, provided the adjustment is made entirely within the terms of the sales contract and is made exclusively for the purpose of taking into account the defective nature of the goods. For this purpose, the sales contract must contain a provision which allows for the possibility of an adjustment to the price.
4. The defective goods must be covered by concrete and precise warranty provisions, which are also referenced in the provision relating to the possibility of adjustment of the price. Details of the warranty provisions can also be set out in a separate document provided this is linked to the sales contract and both documents form part of the relevant commercial transaction between buyer and seller.
5. The price adjustment must lead to a regular financial settlement between buyer and seller, in a manner which establishes that the initial price of the goods has been adjusted in accordance with the relevant contract. This would exclude forms of indirect or postponed compensation e.g., payments to 3rd parties, or exchange goods which cannot be regarded as acceptable forms of price adjustment.

Nature of defective goods

6. The Customs Code already contains provisions on defective goods. No particular definition of what constitutes defective goods is provided for in Article 145 CCIP. The defective state (and as appropriate the state of being non defective) of goods is determined by defined standards or criteria, and with reference to the relevant sales and warranty agreement. The importer has the obligation to demonstrate to the customs authorities that the imported goods were defective at the material time for valuation for customs purposes.
7. Article 145 paragraph 2 requires that goods must be covered by a warranty which provides guarantees as to the nature of the imported goods. Goods sold without a warranty do not come within the scope of the provision. Goods sold subject to assurance as to their marketability, or goods sold subject to variations in the

relevant indicators (for example: quality, uniform size, freshness) are not covered. It is expected for the above reasons that agricultural goods do not generally fall within the scope of this provision.

Price adjustment

8. Without prejudice to the situation covered by the amendment in relation to defective goods, Article 145 paragraph 2 CCIP does not otherwise indicate that a legal basis exists for the acceptance of price review mechanisms.
9. Article 145 also contains a legal requirement for the price adjustment to be made within a period of 12 months following the date of acceptance of the declaration for entry for free circulation of the goods. This means that: 1) the conditions necessary for an adjustment of the price, 2) the consequential obligations under the warranty and 3) the price adjustment should all be agreed by that date.

Other procedures

10. It is not intended that the provisions of Article 145 paragraph 2 CCIP can be applied in the context of the procedure indicated in Article 152 of the Customs Code.

CASE STUDY A: TRANSACTION VALUE IN A WARRANTY SITUATION

Facts

1. Manufacturer M in a third country sells motor vehicles to an independent distributor D in the Community. Firm D resells the vehicles through a network of local dealers to the ultimate customers.
2. There is a sales and distribution agreement between M and D. This sales agreement includes provisions relating to warranties. Each imported motor vehicle is allocated its own identification number. M gives a mileage warranty on all new vehicles. The warranty is effective from the date of registration of the vehicle.
3. Under this sale and warranty arrangement M accepts that where within a mileage of up to 100.000 km, defects as a result of materials or manufacturing faults are present⁵, M is in breach of contract and will compensate D for making good the defects by means of an adjustment of the price initially paid.
4. The warranty claims procedure is as follows:
 - the customer discovers a fault and returns the vehicle to the dealer for repair.
 - the dealer rectifies the fault, returns the vehicles to the customer and prepares a warranty claim based on the cost incurred.
 - the dealer sends the claim to D for processing.
 - D checks that the claim is valid and, where the fault relates for example to a manufacturing defect, D advises M that an adjustment is required.
 - M checks that the claim is valid and, where M is satisfied that the fault relates to the manufacturing defect, compensates D for the cost of rectifying the fault by means of an adjustment of the price initially paid.
5. D, as the importer of the defective vehicle, makes a claim to Customs for a refund of duty for an adjustment of the price that was made within a period of 12 months following the date of acceptance of the declaration for entry to free circulation of the goods. Customs checks that there is a clear audit trail and verifies the relevant warranty claims documents. In particular Customs examines evidence that shows that the fault rectified stems from the manufacturing defect. It is also confirmed that the amount paid by M relates to the cost of rectifying the fault found in the imported vehicle for which a refund of duty has been claimed.

⁵ Defects to be established on the basis of manufacturer's specifications and technical norms set out in the relevant warranty documentation.

Question

6. Can the Customs authorities establish that the adjustment of the price can be taken into account for the determination of the customs value under Article 29 of the Customs Code and Article 145.2 of the CCIP?

Conclusion

7. The parties to the sale which serves as a basis for customs valuation have based the total price paid for the goods on the condition of the goods as guaranteed. In the contractual arrangements determining the sale of goods are provisions which specify that the goods are of a specific quality (in accordance with agreed technical norms). This is a condition of the sale.
8. The seller and buyer of the goods have established that the imported vehicle was, at entry for free circulation, defective as a result of a fault at the manufacturing stage. The following have been demonstrated to the satisfaction of the Customs authorities:
 - (i) the requisite contractual requirements,
 - (ii) the existence and acceptance of the manufacturing defect,
 - (iii) the correction of the manufacturing defect,
 - (iv) a price adjustment within a period of 12 months following the date of acceptance of the declaration for entry to free circulation of the goods.
9. The manufacturer has:
 - a) accepted and confirmed the existence of the manufacturing defect,
 - b) taken the necessary corrective measures and
 - c) adjusted the price paid, in accordance with the contract.
10. Thus Customs could establish that the adjustment of the price can be taken into account for the determination of the customs value under Article 29 of the Customs Code and Article 145.2 of the CCIP.

CASE STUDY B : TRANSACTION VALUE IN A WARRANTY SITUATION (RECALLS)

Facts

1. Manufacturer M in a third country sells motor vehicles to an Importer D in the Community.
2. There is a sales and distribution agreement between M and D. This agreement includes provisions relating to warranties. Each imported motor vehicle is allocated its own identification number. M gives a mileage warranty on all new vehicles. The warranty is effective from the date of registration of the vehicle.
3. Under this sale and warranty arrangement M accepts that where within a mileage of up to 100.000 km, defects as a result of materials, manufacture or design faults are present⁶, M is in breach of contract and will compensate D for making good the defects by means of an adjustment of the price initially paid.
4. The warranty claims procedure is as follows:
 - When a fault is discovered, D has the fault rectified and prepares a warranty claim based on the cost incurred.
 - where the fault relates for example to a manufacturing defect, D advises M that an adjustment is required.
 - M checks that the claim is valid and, where M is satisfied that the fault relates to the manufacturing defect, compensates D for the cost of rectifying the fault by means of an adjustment of the price initially paid.
5. Manufacturer M discovers that under certain operating conditions, components in the suspension system of certain vehicles may not perform in a reliable manner and this could pose risks relating to the road worthiness of the vehicle. Consequently, M asks owners of all of the vehicles to return them (recall) to the point of purchase for examination and possible adjustment as a precautionary measure.

This situation is attributed to aspects of the conception and design of the vehicles.

⁶ Defects to be established on the basis of manufacturer's specifications and technical norms set out in the relevant warranty documentation.

Question

6. Can the Customs authorities establish that the adjustment of the price can be taken into account for the determination of the customs value under Article 29 of the Customs Code and Article 145.2 of the CCIP?

Conclusion

7. The parties to the sale which serves as a basis for customs valuation have based the total price paid for the goods on the condition of the goods as guaranteed. In the contractual arrangements determining the sale of goods are provisions which specify that the goods are of a specific quality (in accordance with agreed technical norms). This is a condition of the sale.
8. The customs authorities took note that:
 - (i) the need to review the vehicles (and possibly to adjust or replace certain components) was dependent on certain operating conditions to which the vehicles might be subject,
 - (ii) the manufacturer authorises the carrying out of corrective measures as a precautionary step,
 - (iii) the situation is attributed to aspects of the conception and design of the vehicles.
9. Thus Customs decided that the examination and possible adjustment as a precautionary measure did not establish a basis for application of Article 145.2 CCIP as only actually defective vehicles could have benefited from that provision.

Commentary No 3 of the Customs Code Committee
(customs valuation section)
on the incidence of royalties and licence fees
in customs value

Introduction

1. The practical application of the principles set out in Community legislation, which govern the inclusion of amounts paid as royalties and licence fees in the customs value of imported goods, should be uniform in the whole Community. This Commentary by the Customs Valuation Committee has been written therefore to provide some general guidance on this subject.
2. The Community legal provisions relating to the incidence of royalties and licence fees in customs value are :
 - Article 32(1)(c), Article 32(2) and Article 32(5) of the Customs Code;
 - Customs Code Implementing Provisions :
 - Articles 157 to 162;
 - Annex 23 - Interpretative Notes to Article 32(1)(c) and (2).
3. The scope of the term "royalties and licence fees" under Article 32(1)(c) of the Customs Code is defined in the Interpretative Notes to Article 32(1)(c) of the Customs Code and Article 157(1) of the Implementing Provisions.

A more general definition can be found in Article 12(2) of the OECD Model Double Taxation Convention on Income and on Capital (1977), as follows :

"payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information

* concerning industrial, commercial, or scientific experience."

4. Usually royalty or licence fee payments are in the form of repeated instalments (e.g. monthly, quarterly, annually). Sometimes the payment may take the form of a single lump sum, or even an initial lump sum (commonly referred to as a "fee for disclosure") followed by repeated instalments thereafter. The instalments are usually calculated as a percentage of the proceeds of sale of the licensed products.

* Commonly referred to as "know-how"

5. A definition of "know-how" is reproduced in paragraph 12 of the OECD Commentary on Article 12 of the aforementioned Convention, as follows:

"all the undivulged technical information, whether capable of being patented or not, that is necessary for the industrial reproduction of a product or process, directly and under the same conditions; inasmuch as it is derived from experience, know-how represents what a manufacturer cannot know from mere examination of the product and mere knowledge of the progress of technique."

Rights and know-how

6. Trading arrangements which involve the payment of royalties and licence fees are almost invariably the subject of formal written "licence agreements" which usually specify in detail the licensed product, the nature of the rights assigned and know-how provided, the responsibilities of the licensor and the licensee and the methods of calculation and payment of the royalties or licence fees.
7. In most cases examination of the licence agreement will provide adequate indication of the relevance of the royalty or licence fee to the customs value of goods imported. However, it may also be necessary to take into account the terms of the contract of sale and the relationship which may exist between this and the licence agreement.
8. The need to examine the incidence of royalties and licence fees in customs value is clear when the imported goods are themselves the subject of the licence agreement (i.e. they are the licensed product). The need also exists however where the imported goods are ingredients or components of the licensed product or where the imported goods (e.g. specialised production machinery or industrial plant) themselves produce or manufacture licensed products.
9. "Know-how" provided under a licence agreement will often involve the supply of designs, recipes, formulae and basic instructions as to the use of the licensed product. Where such know-how applies to the imported goods, any royalty or licence fee payment therefore will need to be considered for inclusion in the customs value. Some licence agreements however (for example in the area of "franchising") involve the supply of services such as the training of the licensee's staff in the manufacture of the licensed product or in the use of machinery/plant. Technical assistance in the areas of management, administration, marketing, accounting, etc. may also be involved. In such cases the royalty or licence fee payment for those services would not be eligible for inclusion in the customs value.
10. In many cases examination of licence agreements and contracts of sale will reveal that a part only of the royalty payment will be seen to be potentially dutiable. Where under a licence agreement the benefits conferred are a mixture of potentially dutiable and non-dutiable elements but the licensee does not in fact avail himself of the non-dutiable elements, it may nevertheless be appropriate to regard the whole of the royalty or licence fee as eligible for inclusion in the customs value.

Royalties and licence fees related to the goods to be valued

11. In determining whether a royalty relates to the goods to be valued, the key issue is not how the royalty is calculated but why it is paid i.e. what in fact the licensee receives in return for the payment (in this connection see Article 161 of the Implementing provisions). Thus in the case of an imported component or ingredient of the licensed product, or in the case of imported production machinery or plant, a royalty payment based on the realisation on sale of the licensed product may relate wholly, partially or not at all to the imported goods.

Royalties and licence fees paid as a condition of sale of the goods to be valued

12. The question to be answered in this context is whether the seller would be prepared to sell the goods without the payment of a royalty or licence fee. The condition may be explicit or implicit. In the majority of cases it will be specified in the licence agreement whether the sale of the imported goods is conditional upon payment of a royalty or licence fee. It is not however essential that it should be so stipulated.
13. When goods are purchased from one person and a royalty or licence fee is paid to another person, the payment may nevertheless be regarded as a condition of sale of the goods under certain conditions (see Article 160 of the Implementing Provisions). The seller, or a person related to him, may be regarded as requiring the buyer to make that payment when, for example, in a multinational group goods are bought from one member of the group and the royalty is required to be paid to another member of the same group. Likewise, the same would apply when the seller is a licensee of the recipient of the royalty and the latter controls the conditions of the sale.

Calculation of the amount to be added to the price actually paid or payable as representing the royalty or licence fee (Article 32(2) of the Code and the Interpretative Note thereto)

14. In general royalties and licence fees are calculated after importation of the goods to be valued. In such cases final valuation may be delayed with reference to Article 257(3) of the Implementing Provisions. A general adjustment may be determined based on results over a representative period and updated regularly. This is a matter for agreement between importers and customs authorities.
15. When a part only of a royalty payment is held to be includible in the customs value, consultation between the importer and the customs authorities is particularly desirable.
16. The basis for apportionment of the total payment into dutiable and non-dutiable elements can sometimes be found in the licence agreement itself, when for example a 7% total royalty may be specified as representing 3% for patent rights, 2% for marketing know-how and 2% for trademark usage. More often than not however the basis for apportionment cannot be so found. The respective values of rights and know-how can at times be established by evaluating the extent to which know-how is transferred or availed of and deducting that sum from the total royalty paid or payable.

17. Also at the joint request of importer and customs the licensor himself may often be prepared to indicate an appropriate apportionment based on his own calculations.
18. Further, inspection of correspondence between licensor and licensee, inter office reports of negotiations which preceded the drawing up of the licence agreement or discussion with one of the negotiators of the licence agreement will frequently provide the bases for apportionment when at first sight apportionment would not seem possible.

Exceptions

19. In accordance with Article 32(5) of the Code, royalties and licence fees are not to be added to the price actually paid or payable when they represent
 - (a) charges for the right to reproduce the imported goods in the Community; or
 - (b) payments made by the buyer for the right to distribute or resell the imported goods if such payments are not a condition of the sale for export to the Community of the goods.

Applicability of Article 32(1)(d) of the Code

20. The provisions of Article 32(1)(a) to (e) of the Code, which concern additions to the price actually paid or payable for the imported goods, each have their own scope. Thus payments which fall within the definition of royalties and licence fees are to be examined solely in the light of Article 32(1)(c) of the Code. When the requirements of that provision are not met, such payments are not to be considered under Article 32(1)(d).

Note:

See also advisory opinions 4.1 to 4.13 of the WCO and case studies 8.1 and 8.2 of the WCO concerning the application of Article 8(1) of the agreement; also case no C 116/89 of the Court of Justice of the European Communities.

Commentary No 4 of the Customs Code Committee
(Customs Valuation Section)
on the application of the Implementing provisions
on the rates of exchange to be used
in the determination of customs value⁷

1. The rules regarding the rates of exchange to be used in determining the customs value of imported goods are set out in Articles 168 to 172 of the Customs Code Implementing Provisions (CCIP). They follow the basic principles provided in Article 35 of the Code, that is, the rates of exchange to be used:
 - reflect effectively the current value of currencies in commercial transactions;
 - are published by the competent authorities of the Member States; and
 - apply during a fixed period.
2. The significant features of the provisions are that rates of exchange used in determining the customs value are fixed monthly and if no significant fluctuation on the exchange markets affects them (see Article 171(1)), they remain unchanged for a month, and that a special provision exists with regard to establishing exchange rates to be used with periodic declarations.
3. Insofar as the rates of exchange are fixed as much as fourteen days before they enter into use and normally apply unchanged for one month, the rules facilitate the operation of simplified entry procedures.

The provisions of Articles 168 to 172 CCIP are commented on below.

⁷ See also conclusion No 1 on rates of exchange fixed in advance

Article 168 CCIP

Article 168 defines certain expressions.

Paragraph (a)

The expression "rate recorded" normally refers to the foreign exchange reference rates as recorded by the European Central Bank for a number of currencies against the Euro or for other currencies to the selling rate recorded on the most representative exchange market or markets. The alternative appearing in the second indent, of a rate other than a selling rate, may be designated by the Member State concerned as the rate to be used.

If several rates of exchange are recorded at different times, in a single day, the rate to be used for customs valuation purposes is the last such recorded rate which is published in the manner provided for in Article 168(b).

Paragraph (b)

It is necessary for the purpose of Articles 168 and 172 to make information on the "rate recorded" available to persons who need to know it. Member States choose the means which best suit their circumstances for doing this. The means chosen could, for example, be a government gazette or other official communication, the financial press, or, in the absence of more suitable means, official notices posted at Customs Houses. This information may also be made available by "teletext systems" or computerized information systems (i.e. on the internet¹) or any other suitable electronic means, or by a combination of any of the foregoing means.

Paragraph (c)

The expression "currency" covers not only national and international currencies but also accounting units which can be used in drawing up commercial invoices, such as the Special Drawing Right.

Article 169 CCIP

Paragraphs 1 and 2

The rates of exchange recorded on the exchange markets on the second-last Wednesday become the rates to be used during the following calendar month. These rates must be published on the day they are recorded or on the following day (if they are not, the provisions of Article 169(3) apply - see below). It is to be noted that other rates might be substituted for them, as the rates to be used from the following Wednesday or any following Wednesday; this would arise if the provisions in Article 171(1) or (2) become active (see below).

¹ <http://www.ecb.int>

Paragraph 3

This provision deals with the situation where a rate of exchange is not recorded on the second-last Wednesday (either for all or particular currencies), or where rates of exchange which are the subject of a quotation on the second-last Wednesday are not published on that or the following day.

The absence of a quotation may arise for such reasons as the closing of the exchange markets on a public holiday or the suspension of dealings pending an official currency realignment. A suspension could occur, for example, if the government of a third country intends to realign its currency and requests suspension of dealings in that currency world-wide over a fixed period of days.

The absence of publication could arise for such reasons as the usual publication day is a public holiday, or when an interruption occurs in a public service (e.g. electric power supply), or when a public action affects the publication process or the distribution of the publications.

Example of application of Article 169(3)

Resort to use of the last rate published during the preceding fourteen days would apply where the markets are closed on a Wednesday and consequently no rates are recorded for that day. For example, if the 24 December is a Wednesday and the markets are closed from Saturday 20 December until Thursday 1st January inclusive, then the rates recorded Friday 19th December are to be used from January 1st in accordance with Article 169.

Article 170 CCIP

This provision deals with situations where particular currencies are rarely or never recorded in a Member State by reason of their being rarely in demand on the exchange markets; or where currencies which are normally recorded have not, for exceptional reasons, had a recorded rate published during the preceding 14 days.

In the foregoing cases a Member State determines the rates to be used, according to what it judges to be the most suitable means available. For example, the customs administration could take advice from the Central Bank of the Member State or from a publication of another Member State.

Article 171 CCIP

The aim of this provision is to ensure that rates used for determining the customs value remain within a reasonable range (5% above or below) of the rates currently recorded on the exchange markets. Accordingly, the Article provides that the rate recorded on the last Wednesday of the month preceding the month of application is checked and also checked as well as a weekly basis during the month in question. For this purpose it is necessary to calculate the 5% upper and lower parameters in respect of the the rates established or in use, as the case may be (see below). If the parameters are not exceeded the monthly rates are applied without interruption, in accordance with Article 169.

Paragraph 1

A check on the rate recorded on the last Wednesday of the preceding month will normally take place on the Thursday when that last Wednesday rate is published. The rates for the last Wednesday and the rate for the 2nd last-Wednesday (due to come into effect on the 1st day of the next month) are compared. If the rate for the last Wednesday differs by 5% or more, above or below, this new rate applies from the following Wednesday in place of the already foreseen rate. It remains in force until the end of the month unless itself replaced as a result of a weekly check on the Wednesday rates recorded (see paragraph 2 below).

Paragraph 2

The rate recorded on any Wednesday (normally published on Thursday) is compared with the rate in use (i.e. normally the rate recorded on the 2nd last Wednesday of the previous month) for that current month. If the rate recorded on any Wednesday differs (above or below) by 5 % or more from the rate in use, this new rate replaces the rate in use with effect from the following Wednesday. It remains in use until the end of the month of application unless the safeguard clause is once more activated during this period.

Paragraph 3

Such would be the situation where the exchange markets are shut on a Wednesday, and as a consequence rates of exchange are not recorded on this day. For example, if 1st January is a Wednesday, and the exchange markets are shut on that day, the rates recorded on Tuesday 31 December would be the rates used for comparison purposes in order to determine whether the safeguard clause should be triggered with effect from Wednesday 8th January.

Article 172 CCIP

This provision is intended to allow declarants to use a single conversion rate for the entire period for which they have been authorised to present declarations in the context of simplified procedures for the release of goods for free circulation.

Commentary No 5 of the Customs Code Committee
(Customs Valuation Section)
on the meaning of the term " shown separately" for the
purposes of the provisions on the valuation of goods
for customs purposes

Introduction

1. The Customs Code and its Implementing Provisions specify certain elements to be included in or excluded from the customs value of imported goods. With a view to the equal treatment of importers in this regard, the practical application of those provisions should be uniform throughout the Community. The intention of this commentary is to provide guidance regarding the meaning of the term " shown separately".
2. A condition for allowing the exclusion of certain elements from the customs value of imported goods is that they should be "shown separately" from the price actually paid or payable for the goods.
3. The elements referred to are in Art. 33 of the Code:
 - import duties and other charges payable by reason of the importation or sale of the goods
 - charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation
 - costs of transport after arrival of the goods at the place of introduction into the customs territory of the Community
 - charges for the right to reproduce imported goods
 - buying commissions
 - interest charges

In the context of Customs warehousing, similar provisions apply (Art. 112 CC).

General guidance regarding the treatment of these elements is at paragraphs 4 to 7 below. Some of the elements are also the subject of specific comment at paragraphs 8 to 17.

General

4. For the purpose of satisfying the condition that an element is "shown separately", it is necessary not only to make a claim in the appropriate boxes of the DV 1 declaration but also, where appropriate, to establish the nature of the element and its amount in monetary terms.
5. Any type of commercial documentation, including documents of long-term validity relating to more than one import transaction, (e.g. contract, invoice for the goods, or invoice for transport) relating to the goods being valued can in principle serve to establish this "nature" and "amount". In the absence of such commercial documentation, this purpose could also be served in the case of transport costs, if the declarant submits a statement referring to a schedule of freight rates normally applied for the mode of transport in question and showing how the "amount" was arrived at. If so required by the Customs, the declarant may also have to submit the schedule referred to.

However, the customs have the right to check that the "nature" and "amount" declared are not fictitious. This check would be particularly relevant in cases where the deductions claimed are based solely on statements drawn up by the buyer, the seller or the declarant.

6. To facilitate valuation, declarants should make prior arrangement to have the documentary evidence referred to at paragraph 5 above available at the time of acceptance of the customs entry. However where the necessary documents are not available at that time, the Customs may allow a period, determined in particular in accordance with Article 256 of the Implementing Provisions, for the declarant to obtain the documents in question and communicate them to the Customs. To obtain this facility, the declarant will normally be required by the Customs to furnish a written undertaking to respect the time-limit allowed.
7. Normally the conditions referred to at paragraphs 4 to 6 above must be met before an exemption can be allowed in the determination of the customs value.

Customs duties and other taxes

8. Guidance on the meaning of the term "shown separately" in regard to import duties and other charges payable by reason of the importation or sale of the goods has been given in an Advisory Opinion by the WCO Technical Committee on Customs Valuation. This Advisory Opinion n° 3.1 states that duties and taxes of a country of importation do not form part of the customs value, insofar as, by their nature, they are distinguishable from the price actually paid or payable. They are, in fact, a matter of public record.

9. In this context "shown separately" has effectively the same meaning as "distinguishable". The facts on which the Advisory Opinion is based state that duties/taxes were not shown separately on the invoice; but, obviously, it must be presumed in the context of the Advisory Opinion that some clear indication exists on the invoice or on some other accompanying document that the price actually paid or payable includes these charges.
10. In keeping with paragraph 4 above, the amount to be excluded from the customs value should be specified in the DV 1 declaration.

Interest charges

13. Regarding the exclusion of interest charges from customs value, Article 33(1)(c) of the Code lays down conditions in addition to that of being "shown separately". It is to be expected that the document containing the written financing arrangement referred to in that provision would serve to establish the amount mentioned on the DV 1 declaration in accordance with paragraph 5 above.

Cost of transport after arrival at place of introduction in the customs territory of the Community

14. *(deleted)*
15. The treatment of transport costs within the Community in the case of goods invoiced at a uniform free-domicile price which corresponds to the price at the place of introduction into the customs territory of the Community is the subject of special provisions in Article 164(b) of the Implementing Provisions.
16. Where in other cases goods are imported at a price which includes delivery at a destination within the customs territory of the Community, the invoice or other commercial documents may not separately specify the cost of transport inside the Community. It is likely that in such cases a declarant will show on the customs entry a customs value which does not include the cost of transport within the Community and will indicate this cost in the DV 1 declaration. This, of course, would not in itself be sufficient for these costs to be considered as "shown separately". The amount to be excluded must also be established in the manner mentioned at paragraph 5 above.
17. A number of methods would be acceptable for the purpose of showing how the amount to be excluded is arrived at.

For example :

- (a) If goods are carried by different means of transport under a single transport document to a point beyond the place of introduction into the customs territory of the Community, and if only the total cost of this transport is established, the portion of it attributable to the cost of transport incurred after introduction into the Community, calculated by splitting the cost in proportion to distances

covered outside and inside the customs territory of the Community, may be accepted for the purposes of Article 164(a) of the Implementing Provisions.

- (b) If the total cost of transport is not known (e.g. in the case of a "free domicile" price), or if for some other reason apportionment is not considered appropriate, it is acceptable for the purpose of Article 164(a) to deduct from the price actually paid or payable an amount which corresponds to the actual cost incurred for transport after introduction into the customs territory of the Community or, failing that, the usual cost for such transport. In the latter case it is reasonable to expect that the deductions allowed in respect of internal transport should not be greater than the costs corresponding to a schedule of freight rates normally applied for the same mode of transport in the country of the carrier concerned; and the amount of these deductions may not exceed an amount corresponding to the minimum schedule of Community freight rates.

Commentary No 6 of the Customs Code Committee
(Customs Valuation Section)
on documents and information which customs may require
as evidence for the determination of a customs value

Introduction

1. A customs value declaration constitutes a statement in which the declarant provides the necessary information for the determination of the customs value of imported goods.
2. Like other declarations or statements presented to the Customs the information contained in a customs value declaration may need to be established with supporting evidence. A customs value declaration is commonly accompanied by certain documents (e.g. invoices) in support of the particulars declared. However, where the necessary information, in documentary or other form, to support particulars in a customs value declaration is insufficient, the customs have the right to require the declarant to present further particulars or information.
3. The declaration of particulars related to customs value is drawn up on the DV 1 form that is laid down in Annex 28 and 29 to the Implementing Provisions. However, a DV 1 form is not always needed for declaring particulars for customs valuation purposes. Under specific circumstances, the customs may waive the requirement of a declaration in the DV 1 form (see Articles 178(3) and 179(1) of the Implementing Provisions or may authorise variations in the form of presentation of data required (see Article 180 of the same Regulation). Therefore, the references to the boxes of the DV 1 that appear in the present document are merely indicative and do not imply that a DV 1 form must be required.

Legal basis

4. A general right of the Customs to require documents or information in support of a customs value declaration is laid down in Article 14 of the Customs Code. Article 178 et seq. of the Implementing Provisions also contains a specific statement of the obligations assumed by the person making a customs value declaration.

Documents or information which the Customs may require in the course of the determination of the Customs Value

5. Article 14 of the Code established inter alia that with a view to determining customs value all necessary information and documents shall be supplied to the Customs. This provision does not specify what documents or information have to support the different particulars declared.
6. Elsewhere in the Implementing Provisions reference is made to particular documents, which may serve to establish a valuation particular which has been declared, e.g. :
 - the copy of the invoice, in Articles 181 and 218(1)(a),
 - the transport document and the packing list or equivalent document, in Article 218(2).

However, the documents referred to above may be insufficient to satisfy the Customs as to the truth or accuracy of every particular of a customs value declaration.

7. The following examples (which are not exhaustive) indicate some of the documents which the Customs may require, depending on the circumstances of the transaction and/or in case of doubt in respect of some or all of the particulars declared.
 - (a) A commercial invoice for the goods, if any (box 4 of the DV 1)

According to Article 181 of the Implementing Provisions the declarant shall furnish the customs with a copy of the invoice on the basis of which the value of the imported goods is declared. It is evident that an invoice can only be furnished where the goods being valued have been sold.

However there are also cases where the goods have been sold without any invoice. In these cases the importer has to supply the documents that could be regarded as equivalent to the invoice. An invoice may not only be used/required for establishing the price referred to in Article 29 of the Code, but also for establishing other particulars, such as the following :

- the price of goods when resold in the Community, for the purposes of applying the deductive method laid down in Article 30(2)(c) of the Code;
- the cost of assists (Box 14 of the DV 1)

- (b) A contract of sale (box 5 of the DV 1) can be used/required in support of various aspects of the invoice, such as :
- any possible restriction, condition or consideration (box 8 of the DV 1)
 - any possible arrangement between the seller and the buyer affecting the customs value of the goods (box 9(b) and 16 of the DV 1)
 - the charges mentioned in box 20 of the DV 1 (activities undertaken after importation)
 - the currency in which a price is settled (Article 35 of the Code).
 - contracts and other documents concerning production rights for the imported goods (Article 33(d) of the Code)
- (c) A royalty contract for establishing whether or not a royalty payment (box 9(a) of the DV 1) should be included in the customs value and, if so, to what extent (box 15 of the DV 1).
- (d) An agency contract for establishing an addition for commissions or brokerage (box 13(a) and (b) of the DV 1) or for the exclusion of a buying commission.
- (e) Transport and insurance documents for the purpose of determining, inter alia :
- the terms of delivery (box 3 of the DV 1)
 - the costs of delivery to the place of introduction (box 17) and
 - the costs of transport after arrival at place of introduction (box 19).
- (f) Accounting records, notably those of the importer or buyer, for reasons such as ascertaining the actual transfer of funds to the exporter or seller, or for obtaining information on commissions, profit or general expenses in applying the deductive and computed value methods.
- (g) Schedules of freight rates for ascertaining in certain cases the transport costs as referred to in the following provisions :
- Article 32 (1)(e) of the Code
 - Articles 152(1)(a)(ii) and 164 of the Implementing Provisions

(h) Other documents, e.g.

- concerning the ownership of the companies involved in the transaction, for establishing a possible relationship between the seller and the buyer, (Article 143 of the Implementing Provisions)
- the invoice and contract of sale or transfer of quota charges
- the invoice for payments made for certificates of authenticity
- contracts for advertising, marketing and other activities undertaken after importation
- financial documents, e.g. for establishing the amount of interest charges
- contracts, licensing agreements or other documents concerning copyrights.

Form of presentation of documents

8. Documents represent pieces of evidence, whose form of presentation can vary. Their main function is to reflect the commercial life of the goods while recording details of the transactions to which they refer. Accordingly, Customs should be prepared to accept any document irrespective of its form of presentation, insofar as :
 - (a) the authenticity of the document is not questioned, and
 - (b) the information contained in the document is suitable for supporting the particulars declared or the information required.
9. An example of a document that presents differences in its form is one in which the buyer indicates the goods he has received and their price. Buyer and seller agree contractually in advance that such documents are acceptable for this purpose. The information contained in this document is the same as the information normally contained in an invoice. The fact that it is the buyer and not the seller who issues the document would not imply that it has to be rejected on the grounds of Article 181 of the Implementing Provisions. The Customs may accept this document for establishing the customs value of the imported goods on a case by case basis, and taking into account :
 - (a) the facilities for verifying the information contained therein,
 - (b) the trustworthiness of the buyer, and
 - (c) the details available in the contract of sale.

10. The presentation of a document may also vary according to the means used for its transmission e.g. copies transmitted by telefax or EDI. Again, in these cases, the customs may accept any such documents or other forms of evidence subject to the conditions stated in paragraph 8 (See also Article 224(2) of the Implementing Provisions).

In principle, for customs purposes, an invoice :

- (a) does not have to be signed nor be the original copy
- (b) may be designated as "for customs use only" or "proforma invoices" (or similar). These documents could be acceptable in some circumstances for goods (e.g. gifts, samples) that are not the subject of a sale. However, for goods that have been sold such invoices would be regarded as provisional and should be replaced subsequently by a definitive invoice.
- (c) should be translated if customs so require.

Persons responsible for presenting documents and furnishing information

11. Article 14 of the Code provides that "... any person or undertaking directly or indirectly concerned with the import transactions ... shall supply the customs authorities with all necessary information and documents and required assistance and by any time limit presented ...".

In addition to the provisions of articles 178 to 181(a) of the CCIP, article 64 of the Code provides that the declarant is "any person able to produce or cause to be produced to the customs authorities ... all documents the production of which is stipulated...".

The person making a customs value declaration has specific obligations as indicated in Article 178 of the Implementing Provisions, they must:

- be resident in the Community,
- be in possession of the relevant facts.

Regarding possession of relevant facts the declarant is responsible :

- (a) for furnishing or causing to be furnished information for the application of the secondary methods of valuation (Article 178(3) CCIP),
 - (b) for supplying any additional information or documents (Article 178(4) CCIP), and
 - (c) for furnishing one or two copies of the invoice (Article 181 CCIP).
- 12.. That does not prevent the Customs requiring a document from a person other than the declarant, e.g. where a deduction for a buying commission is claimed and the

Customs consider that the invoice issued by the manufacturer of the imported goods is necessary for determining its amount. In this case, the Customs may request parties other than the declarant (e.g. the manufacturer or buying agent) to provide the documentation required.

Confidential character of documents and information supplied to the customs

13. All information which is by nature confidential or provided as a confidential basis shall not be disclosed by the authorities except in accordance with the provisions in force (Article 15 of the Code).

Responsibility on the accuracy of the information and documents supplied

14. The lodging of a customs value declaration is equivalent to the engagement of responsibility by the declarant, in particular in respect of the authenticity of the documents produced (Article 178(4) of the Implementing Provisions).

The right of the Customs to keep the documentation presented

15. The documents supplied by the declarant must be kept by the customs authorities according to the provisions in force. When the invoice is made out to a person established in a third Member State, the declarant must furnish the Customs with two copies of the invoice, and one of them should be returned to the declarant in accordance with the formalities provided for in Article 181(2) of the Implementing Provisions.

Acceptance of information supplied to the customs authorities

16. Customs are entitled to request further information in accordance with Art. 181a paragraph 2. The above mentioned documents could be presented and examined in the context of such a procedure. However, customs administrations would not be limited to examination of the documents listed in this commentary.

Commentary No 7 of the Customs Code Committee
(Customs Valuation Section)
on the application of Article 147 of Commission Regulation
(EEC) No 2454/93 of 2 July 1993.

1. Introduction

The application of the above provisions should be uniform throughout the Community. This commentary by the Customs Code Committee (Customs Valuation Section) is to provide guidance on the interpretation of these provisions.

2. Scope of the provision

Article 147 of Commission Regulation (EEC) No 2454/93 is applicable in cases where :

- the customs value of the goods is to be determined under Article 29 of Council Regulation 2913/92.
- the goods have been the subject of one or more than one sale before their introduction into the customs territory of the Community, or to a sale taking place within the customs territory of the Community but before entry for free circulation of the goods.

Article 147 deals only with the scope and application of the provision relating to "the price actually paid or payable for the goods when sold for export to the customs territory of the Community " which appears in Article 29(1) of the Customs Code. The other provisions of Article 29 in particular those relating to sales between related parties, as well as the provisions of Article 32, are not affected.

3. Interpretation

3.1 One sale situations

The first sentence of Article 147 states that "for the purposes of Article 29 of the Code, the fact that the goods which are the subject of a sale are declared for free circulation shall be regarded as adequate indication that they were sold for export to the customs territory of the Community". It deals with situations where goods are sold only once. This provision therefore accepts that as a general rule the fact of introduction into the customs territory is sufficient proof that the goods were sold for export to the EC.

3.2 Successive Sales

3.2.1 **The last sale:** in the 2nd sentence of Article 147, the approach indicated in paragraph 3.1 above is also extended to cases where goods are sold more than once prior to their importation; in such cases, a similar provision provides for use of the last sale which takes place prior to introduction of the goods. In other words, the indication that goods were sold for export to the Community will apply (without further evidence being required) to the last sale, this being the sale considered as leading to the introduction of the goods into the Community. It should be noted that the last sale in the context of this provision is the last sale occurring in the commercial chain prior to introduction of the goods into the customs territory of the Community.

3.2.2 **An earlier sale:** where an earlier sale (i.e. other than the last sale as described under 3.2.1 above) has taken place involving the goods in question, the declarant can ask the customs authorities to accept that earlier sale as the basis for the customs value, but only if he can demonstrate that, in respect of the sale in question, there are specific and relevant circumstances which led to export of the goods to the customs territory of the Community.

As a further measure of facilitation, the 'last sale' can also refer to sales which are concluded whilst the goods are already in the EC (e.g. warehoused).

4. Criteria relevant to the evidence to be produced by the declarant

Facts establishing that goods were sold for export to the customs territory of the EC can be demonstrated in a number of ways and a series of standard import cases have been prepared to illustrate this. These cases are set out in Annex I.

In applying the third sentence of Article 147, facts which may demonstrate that the goods have been sold for export to the customs territory of the Community can include the following elements of proof :

- the goods are manufactured according to EC specifications, or are identified (according to the marks etc. they bear) as having no other use or destination,
- the goods in question were manufactured or produced specifically for a buyer in the EC,
- specific goods are ordered from an intermediary who sources the goods from a manufacturer and the goods are shipped directly to the EC from that manufacturer.

5. Responsibilities of the declarant

5.1 General

Declaration of the elements necessary for the determination of the customs value are the responsibility of the person indicated in Article 178(2) of the customs code Implementing Provisions, who must be in possession of all of the facts, such as those itemised in the declaration of particulars relating to the customs value (the DVI form), relevant to the determination of the customs value.

5.2 Successive sales

The declarant must indicate, with respect to the provisions of Article 147, the basis on which he intends to establish the customs value of the goods, the evidentiary requirements being the following:

- where the declaration is based on the 2nd sentence of Article 147 (i.e. the last sale in the commercial chain), it is appropriate to establish, as necessary, the status of this sale by means of evidence relating to the circumstances of the transaction in question (e.g. date of sales contract as indicated in Box 5 of the DVI, location of the buyer, point in the commercial chain).
- where a declaration is based on the 3rd sentence of Article 147 (i.e. a relevant earlier sale), the evidence produced to customs has to demonstrate that the sale meets the requirement indicated at paragraph 4 above.

If a declarant is unable to provide the required evidence in respect of an earlier sale on the basis of which a customs value declaration has been made, then recourse is to be had to the last sale (as referred to in paragraph 3.2.1 above), in order that customs valuation can be determined in accordance with the transaction value method.

Annex I

Explanatory note

This Annex contains a set of examples dealing with cases where goods are sold two or more times before introduction into the customs territory of the Community.

The facts are set out in column 1 and an assessment of the appropriate customs valuation treatment with respect to Article 147 of the Implementing Provisions is set out in column 2.

For the purposes of brevity, the alternative sentences in Article 147, which might apply in each case, are referred to in column 2 as follows:

Test 1 : 2nd sentence of revised Article 147--

the last sale leading to introduction of the goods into the customs territory of the Community.

Test 2 : 3rd sentence of revised Article 147--

any other sale on the basis of which it can be demonstrated to the satisfaction of the customs authorities that the goods were sold for export to the customs territory of the Community.

<u>Example 1</u>	<u>Comments</u>
<p>Situation - Canimco of Paris orders 1000 shirts from Vimco of Brussels at a price of 7.20 ECU each, delivered to Paris. Vimco has 8000 shirts in stock in a warehouse in Taiwan which were originally purchased from a manufacturer there for 4.50 ECU each. Vimco arranges for the goods to be shipped from the warehouse to Canimco which imports the goods.</p>	<p>The sale with price of 4.50 ECU does not satisfy the "last sale in a commercial chain" test, nor can it be demonstrated that the corresponding sale took place for export to the EC.</p>
<u>Example 2</u>	<u>Comments</u>
<p>Situation - Indexco buys hand-carved wooden coffee tables in India and stores them in a Bombay warehouse awaiting orders. After a visit to France, Indexco's sales manager believes that there is a market in the Community for his company's products and ships ten samples of eight types of table on speculation to Bordeaux via sea freight. The eight types of table cost Indexco an average of 2000 rupees each. While the ship is crossing the Atlantic Ocean, Indexco sells all eighty coffee tables to Montabco of Paris for 6,400 ECU, F.O.B. Bombay. Before the goods arrive in Bordeaux, they are resold by Montabco to a customer in Brussels for 7,200 ECU.</p>	<p>On the basis of article 147, the declarant cannot use the price of 2000 rupees per unit.</p> <p>This is not "the last sale in a commercial chain" (Test 1) and it cannot be shown that the sale in question was for the export of goods to the Community.</p> <p>Furthermore, the sale with price of 6,400 ECU also does not satisfy Test 1, but it is possible to demonstrate that the goods while in transit were sold at this price to the Community.</p>

<u>Example 3</u>	<u>Comments</u>
<p><u>Example 3a</u></p> <p>Situation - Canexco, a company with head office in Malta, buys petroleum products from Indexco, a company in a third country, and stores them in facilities located in Malta. The goods conform to the standards which apply in the markets of both the EC and Malta.</p> <p>After three weeks, Canexco sells the products in question to Fimco, a Belgian company, and consigns the goods from Malta to Belgium.</p> <p><u>Example 3b</u></p> <p>Situation - Canexco, a firm established in a third country, buys in a third country petroleum products which meet the norms of the EC market. These purchases are made subsequent to receipt of specific orders by Canexco from the Belgian firm, Fimco.</p> <p>Due to limitations in its stockage facilities in Belgium, Fimco requests that Canexco holds the goods in its facilities for a three week period before shipment to Belgium. The goods are subsequently shipped to Belgium.</p>	<p>The goods are not purchased by Canexco in the context of a sale for export to the EC.</p> <p>Although the goods meet the norms which apply in the EC, they cannot be regarded as sold for export to the EC. They are sold by Indexco with a destination in Malta.</p> <p>Consequently, neither Test 1 or Test 2 is met by the first sale.</p> <p>The purchase by Canexco is not the last sale in a commercial chain (Test 1).</p> <p>However, the goods (which meet the required EC standards) have been bought in the context of prior arrangements for resale and shipment to the EC.</p> <p>The intervention, before shipment by Canexco, of a period involving the actual storage in a 3rd country on behalf of Fimco does not invalidate the requirements of Test 2 (sale for export to the Community).</p>

<u>Example 4</u>	<u>Comments</u>
<p>Situation - Cosmetics Inc. is a US company engaged in the marketing of various types of perfumes, cosmetics, creams, etc., which it sources from various manufacturers throughout the world (Price A). The European operations are directed from Cosmetics head office in Syracuse, New York and consist of rented offices in Brussels, out of which sales persons visit the purchasing offices of EC drug stores, negotiate prices, take orders and send them for processing (shipping products, invoicing and collection of accounts) to Syracuse. Products are sold to EC customers on a delivered, duty paid basis (Price B). Although the sales persons have the authority to negotiate prices and sales contracts they do not have a general authority to contract on behalf of Cosmetics Inc.</p>	<p>On the basis of Article 147, the declarant cannot use price A as it does not arise from "the last sale in a commercial chain" (Test 1).</p> <p>With respect to Test 2, Price A would be acceptable only where additional elements exist (e.g. direct shipment by the producer and the goods bear marks or specifications indicating they are destined for the EC market).</p>

<u>Example 5</u>	<u>Comments</u>
<p>Situation - The President of Canimpco of Paris, during a visit to Thailand, is offered a "close-out" deal on 10,000 metres of assorted silk fabrics at a job lot price of 20,000 ECU, F.O.B. Bangkok. He purchases the whole 10 000 metres and arranges for the fabric to be sent to France by ship on April 4th. While attending a convention on April 8th, he meets the President of Bloucan, a silk blouse manufacturer from Brussels, who agrees to buy the 10,000 metres of silk now en route to the EC for 39,000 ECU, delivered to Brussels.</p>	<p>The lower price sale is not "the last sale in a commercial chain" (Test 1), but it does arise from a sale for export to the Community (Test 2).</p>
<u>Example 6</u>	<u>Comments</u>
<p>Situation - Canimpco of Paris enters into an agreement to buy 100 food mixers from Usco, a Missouri entrepreneur at a price of 22.50 ECU each. Usco negotiates with Makerco of Detroit to manufacture the food mixers for a price of 20.75 ECU each, Makerco being responsible for shipping the goods to Canimpco in Paris.</p>	<p>On the basis of Article 147 the lower price sale could not be claimed by the importer. It is not the "last sale in a commercial chain" (Test 1).</p> <p>However, it remains to be demonstrated that the sale to which the lower price corresponds was already a sale for export to the EC, taking account of the requirement of direct supply by the manufacturer (Test 2). This proof is complete if the products when sold by the manufacturer bear specifications or marks showing their destination for the EC market.</p>

<u>Example 7</u>	<u>Comments</u>
<p>Situation - Mulnatco is a multinational hotel chain with hotels in several countries, including France. Each French hotel is incorporated as a separate limited liability company. At the beginning of every year, each hotel submits purchase orders to the New York head office for its supply needs for the following twelve months. The head office then submits purchase orders to various suppliers in the U.S.A. with instructions to send the goods either to each hotel directly or to the New York head office for subsequent shipment to each chain hotel. The suppliers invoice the head office in New York which then bills each hotel in the chain.</p>	<p>The same conclusions as for example 6, if the goods are sent to each hotel directly from the supplier. If the goods are sent to the head office before being shipped to France, then the sale for export test (Test 2) can be positive only if other elements of proof are demonstrated : the goods correspond to Community specifications or bear marks which indicate their destination for the EC market.</p>

<u>Example 8</u>	<u>Comments</u>
<p>Situation - Cosmetics Inc. produces perfumes, cosmetics etc. which it sells to distributors in the EC and the USA. In order to maintain differential pricing on the two markets, Cosmetics Inc. requires its distributors not to resell the goods outside of their respective territories.</p> <p>In a particular case, a Belgian firm buys products from the American distributor and ships the goods to the Netherlands.</p>	<p>The first sale does not satisfy Test 2 (sale for export to the EC).</p>

Commentary No 8 of the Customs Code Committee
(Customs Valuation Section)
Treatment of discounts under Article 29 of the Customs Code

1. A discount is taken to be a reduction in the list price for goods or services allowed to particular customers, under particular circumstances and at particular times. It is expressed either as an absolute amount or as a percentage of the list price.

At the material time⁸, a discount can affect the amount of the price paid or payable in accordance with the relevant provisions applicable (Article 29 CC and Article 144 CCIP).

2. For customs valuation purposes the discount must relate to the imported goods and there must be a valid contractual entitlement at the material time.

3. Three cases could be distinguished for valuation purposes:

- a) a discount is available to the buyer and the payment reflecting this discount has been made at the material time (applied discount as reflected in the invoice price).
- b) a discount is available to the buyer but the payment reflecting the discount has not yet been made by him at the material time.
- c) a 'discount' has not been offered or is not available at the material time (i.e., a retroactive offer by the seller).

4.1. If the discount has already been indicated in the price paid or payable at the material time, this price is the determining factor. A discount already applying at the material time by virtue of the reason or level specified in the sales contract will be recognised if this discount is specified in the documentation provided to the customs authorities at the time of importation of the goods. It is not essential that the discount is already calculated - although this is normally the case - in the invoice for the goods. If there is a contractual claim at the material time, it can be recognised, even if the actual amount is not evidenced in the price paid until a later date.

4.2. Where the price has not been paid for the imported goods at the material time, it is only possible to determine the discount and the final price from the information available. Under these circumstances application of Article 29 of the Customs Code is conditional on a price reduction being granted and on the amount of this discount being determined at the material time.

5. It is not necessary to determine whether a given discount is standard commercial practice or is also granted to other buyers.⁹

⁸ the date of acceptance of the customs declaration by the customs authorities (Art. 67 and 201 (2) CC)

6. The price payable for settlement at the material time shall, as a general rule, be taken as a basis for customs value (Art. 144 par. 1 CCIP). Following commercial terminology, it is not necessary to consider retrospective adjustments, as the term ‘discounts’ is not applied in this context; a reduction which is granted only after (e.g. at the end of the year) the date of valuation i.e. when no claim exists from the outset, will not be taken into account.

Quantity discount

7. A form of discount is the quantity discount, where a reduced price is offered on the basis of the quantity bought by the buyer. Sometimes the offer relates to the total quantity bought over a certain period (e.g., one year). Although the valuation rules do not set out a basis for acceptance of the price paid or payable in such cases¹⁰, it seems reasonable to consider ways to allow for acceptance of such discounts in appropriate cases.

8. For quantity discounts the entire quantity on which the discount is based does not have to have been imported into the customs territory of the Community nor remain there. Quantity discounts could be accepted even for imports of part consignments provided they are sold for export into the importing country. It is not relevant in which importing country the goods are finally delivered. The quantity discount is given on the basis of the total sale's price. Therefore the importer receives the discount as well for the part of the consignment which is imported into the customs territory of the Community.

Discounts for early payment

9. For early payment discounts the following applies:

- a) The discount is accepted at the level declared if the payment reflecting this discount has been made at the material time.
- b) If the payment has not been made at the material time, an invoiced early payment discount which is valid at that moment can be accepted at the level declared provided it is a discount generally accepted within the trade sector concerned.

If several possibilities of early payments are granted according to the terms of payment (e.g., 5% for immediate payment, 3% for payment within 14 days, 2% for payment within one month), the maximum discount may be accepted at the material time.

- c) A discount for early payment which is higher than is generally accepted within the trade sector concerned should only be accepted if the buyer can demonstrate, where required, that the goods are actually sold at the price declared as the price actually paid or payable and the discount is still available at the material time.

⁹ Nevertheless, the rules governing the acceptance of the price paid between related buyers and sellers also apply to discounts. In this context, amongst the factors to consider are (a) the availability of a discount and (b) the price actually paid or payable (net price, i.e. amount net of the discount).

¹⁰ A change to existing provisions may be considered for cases not currently admissible.

Commentary No 9 of the Customs Code Committee
(Customs Valuation Section)
apportionment of air transport costs (according to Annex 25
of Reg. (EEC) n° 2454/93)

Can air transport apportionment be applied to the whole or only part of a journey when the goods are transported on two consecutive flights on different airlines during the journey from the country of dispatch to the EC country where the goods are released into free circulation?

EXAMPLE

The buyer purchases the goods from a supplier in Colombia, where the goods originate, and are transferred by airfreight to a MS. However the journey is split into two, the first leg being Bogotá to Miami, then in Miami the goods are transferred to a different airline for the remainder of the journey to the EC. Separate airway bills (and freight charges) are issued for each leg.

OPTION 1

The full amount for the 1st leg of the journey (Bogotá to Miami) should be included in the customs value and a percentage apportionment is made for the 2nd leg of the journey (Miami to EC), using the percentage which applies for an operation beginning at that airport of departure, as per Annex 25 CCIP (Zone B).

OPTION 2

The air transport apportionment is applied to the whole airfreight cost (Bogotá to Miami plus Miami to EC) using the Bogotá rate in Annex 25 CCIP (also Zone B).

CONCLUSION

In the case outlined above the apportionment principle should apply only to the air transport costs from Miami to the EC, on the basis that the transport of the goods was really interrupted in Miami: the airline was different and separate airway bills were issued. The transport from Bogotá to Miami is not necessarily related to the transport from Miami to the EC, as required by the rule of the "same means of transport" (Art. 164(a)) CCIP.

The apportionment in Annex 25 simplifies the calculation of transport costs with a view to avoid having to calculate the intra-EC transport costs which have to be left out of the total air freight.

If the mode of transport had changed in Miami from sea to air, the full sea freight would have been included in the customs value.

In other cases the conclusion might be different. A case by case study is necessary. If the transport is only interrupted for logistical reasons and only one airway bill exists, the appropriate percentage applicable to the total transport costs for the distance from the initial airport (zone) of departure to the airport of destination (zone) in the Community will be included in the customs value.

In such a case it would have to be proven to the satisfaction of the customs authorities that the interruption is due to logistical reasons and that the journey has to be considered

as a single transport operation (one airway bill). Only then can the whole transport operation be apportioned according to Annex 25.

Commentary No 10 of the Customs Code Committee (Customs Valuation Section) valuation of free goods accompanying paying goods

Case No 1: (explanatory note 3.1 of the Technical Committee on customs valuation): a certain quantity of goods in slight surplus as to the quantity ordered is shipped together with the identical paying goods with the purpose of covering risks of losses or damage.

Case No 2: a salesman grants to a customer a commercial discount in the form of a certain quantity of free goods in surplus to the quantity of identical paying goods ordered by the customer. This case should be treated according to the rules on price reductions and discounts For example: a company imports 100 televisions invoiced at 2000 monetary units part and receives, in the same shipment, 10 televisions that the salesperson offers free of charge to thank it for its fidelity.

Conclusion to case No 1 and 2:

In the two situations, the price of the paying goods that has been paid or is to be paid is supposed to cover the total quantity imported and therefore the free goods accompanying the paying goods should not be evaluated separately.

The two following situations are different.

Case No 3: a certain quantity of goods in surplus as to the quantity ordered is shipped together with the paying goods. These free goods are used as a "tester" in the importer's marketing areas.

These goods are identical as to the paying goods, except for a label that mentions its use as a tester. For example: a company imports 4000 bottles of perfume accompanied by 1000 identical bottles (same physical characteristics, quality and reputation) that are delivered free of charge, bearing the same name but labelled as "tester - cannot be sold".

Question: should the testers delivered free of charge be evaluated separately? How?

Case No 4: a certain quantity of free samples is shipped together with the paying goods. These samples are similar to the paying goods, either in the same packaging, or in a smaller packaging. For example: a company imports 2000 bottles of perfume of 100 ml accompanied by 500 bottles of 1.5 ml delivered free of charge and intended to be distributed as samples.

Question: should the samples be evaluated separately? How?

Conclusion to case No 3 and 4:

If the contracting arrangements include the free samples, its value forms part of the customs value which is the price paid or to be paid according to Art. 29 of the Code. An indication that the samples are included free of charge in the supply should be indicated in the sales contract, on the invoice or in any other document.

Customs should not ignore the proportion between the sold goods and the samples (one delivery could include 15% samples and they could be proportionally more expensive than the sold goods).

Commentary N° 11 of the Customs Code Committee (customs valuation section) on the application of Article 32 (1) (c) CC in relation to royalties and licence fees paid to a third party according to Article 160 of Reg. (EEC) n° 2454/93

1. Relevant legal criteria and general principles

Article 32 (1) (c) of the Customs Code¹¹ (CC) and Article 157 of its implementing provisions¹² (IP)

In accordance with Article 32 (1) (c) CC, the royalties and licence fees are to be added to the price actually paid or payable if they relate “to the goods being valued” and are paid as “a condition of sale of the goods”, provided that such royalties and fees are not already included in the price actually paid or payable.

Articles 143 (1) (e), 160 and Annex 23 IP (Interpretative Notes to Article 143 (1) (e))

Are the payments a condition of sale?: Even if the actual sales contract between the buyer and the seller does not explicitly require the buyer to make the royalty payments, the payment could be an implicit condition of sale, if the buyer was not able to buy the goods from the seller and the seller would not be prepared to sell the goods to the buyer without the buyer paying the royalty fee to the licence holder.

According to Article 160 IP “*When the buyer pays royalties or licence fees to a third party, the conditions provided for in Article 157 (2) IP shall not be considered as met unless the seller or a person related to him requires the buyer to make that payment*”.

In the context of Article 160 IP, when royalties are paid to a party which exercises direct or indirect control over the manufacturer (resulting in a conclusion that they are related under Article 143 IP), then such payments are regarded as a condition of sale. According to Annex 23 IP - Interpretative Notes to Article 143 (1) (e) “*one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.*”

The following elements should be analysed to determine if there is control:

- the licensor selects the manufacturer and specifies it for the buyer;
- there is a direct contract of manufacture between the licensor and the seller.
- the licensor exercises actual control either directly or indirectly over the manufacture (as regards centres of production and /or methods of production);
- the licensor exercises actual direct or indirect control over the logistics and the dispatch of the goods to the buyer;
- the licensor nominates / restricts who the producer can sell their goods to;

¹¹ Reg. (EEC) n° 2913/92

¹² Reg. (EEC) n° 2454/93

- the licensor sets conditions relating to the price at which the manufacturer/seller should sell their goods or the price at which the importer/buyer should resell the goods;
- the licensor has the right to examine the manufacturer's or the buyer's accounting records;
- the licensor designates the methods of production to be used/provides designs etc.
- the licensor designates/restricts the sourcing of materials/components;
- the licensor restricts the quantities that the manufacturer may produce;
- the licensor does not allow the buyer to buy directly from the manufacturer, but, through the trademark owner(licensor) who could as well act as the importer's buying agent;
- the manufacturer is not allowed to produce competitive products (non licensed) without the consent of the licensor.
- the goods produced are specific to the licensor (i.e., in their conceptualisation/design and with regard to the trade mark);
- the characteristics of the goods and the technology employed are laid down by the licensor.

A combination of such indicators, which go beyond purely quality control checks by the licensor, demonstrates that a relationship in the sense of Article 143 (1) (e) IP exists and hence the payment of the royalty would be a condition of sale in accordance with Article 160 IP.

It should be noted that, in individual cases, other kinds of indicators may also exist. It should also be noted that certain indicators carry more weight and show more strongly than others that the licensor exercises restraint or direction over the manufacturer/seller, which therefore could in themselves constitute a condition of sale.

2. Facts of case n° 1

The imported goods incorporate logos and images protected by copyright in respect of which royalties and licence fees are paid.

a) The parties involved are:

- Firm X, established in the US, who is the owner of the trademarks and copyrights (representations of comic strip characters).
- Firm Y, a French subsidiary of firm X, who is licensed to use the trademarks and copyrights in France.
- Firm Z, also established in France, who is not related to firms X and Y and is sub-licensed by firm Y to use the protected images in question in the context of representation on a range of products (pens, notebooks, etc...). Z is the buyer of the goods.
- The manufacturers (and sellers) of the imported goods who are not related to X, Y or Z in the sense of Article 143 (1) a) to d) and f) to h) of Reg. (EEC) N° 2454/93.

b) Royalty payments: Under the terms of the sub-licensing agreement, which is set out in a contract, royalty payments are made by firm Z to firm Y.

c) Manufacturing approval and production of the goods: the manufacturers are selected by the French firm holding the sub-licence (firm Z). The manufacturers are quality approved by firm Y. A contract of quality approval is established between firm Y and the manufacturers, who sell the goods to firm Z.

In particular, the licensor (firm Y) is entitled to carry out the following activities:

- * quality control of preliminary and final production models,
- * quality control of three-dimensional artistic designs fixed to or incorporated in the finished product,
- * approval of packaging and presentation,
- * approval of samples of finished goods,
- * approval of all changes to the finished product,

The contract also provides for return to Y of models and other materials used to produce the finished goods which are in the possession of the producer or licensee (firm Z) at the end of the contract.

Additional information:

- The range of goods (pens, diaries, ...) is not unique to the licensor (firm Y) and is specified by the buyer established in the EC (firm Z);
- the manufacturer is chosen by the buyer (firm Z);

- the manufacturer does not use a technology which is owned by the licensor (firm Y);
 - the licensor (firm Y) does not intervene in the production operation;
 - the licensor (firm Y) only inspects the finished product (quantity, quality).
- d) *Importation*: the 3rd country manufacturers sell the goods to firm Z who imports the goods into the EC.
- e) *Flow of payments*: in addition to payment for manufacture of the imported goods which firm Z makes to the manufacturer, firm Z also makes a royalty payment to firm Y.

2.1. **Opinion of the Committee**

Do the payments relate to the goods being valued?

The royalties clearly relate to the goods being valued if the goods incorporate representations of the images or characters which are covered by licence and in respect of which royalties are paid.

Are the payments a condition of sale?

In the case outlined in section 2, the activities, which the licensor is entitled to carry out, are considered only quality control checks. They do not confirm that the licensor controls the manufacturers; therefore those parties are not related under Article 143 (1) (e) IP.

Conclusion

Therefore it has to be concluded, that the royalty and licence fees paid to firm Y by firm Z should not be included in the customs value because the conditions established in Article 32 (1) (c) CC and Articles 157 and 160 IP have not been met.

3. Facts of case n° 2

1. The imported goods incorporate the protected trademark “XY” in respect of which royalties and licence fees are paid. The manufacturing of the imported goods requires the use of specific technology.

The parties involved are:

- A. Firm A, established in the US, who is the owner of the trademark and the technology used in the manufacturing of the imported goods.
 - B. Firm B, an EC subsidiary of firm A, who is licensed to use the trademark XY in a certain country of the EC. B is the buyer of the imported goods.
 - C. Firm C, established in Taiwan, who is the manufacturer (and seller) of the imported goods. C is not related to A or B, in the sense of Article 143 (1) a) to d) and f) to h) of Reg. (EEC) N° 2454/93.
2. C sells the goods to firm B who imports the goods into the EC.
 3. In addition to the payment to firm C for the imported goods, firm B makes a royalty payment to firm A.
 4. In accordance with the licence agreement and other contracts between the parties:
 - a) Firm A designates the suppliers of the raw materials used in the production of the imported goods.
 - b) The product should only be manufactured for firm B or other firms designated by firm A.
 - c) Without the express prior written consent of firm A, the manufacturer (or any affiliate or subsidiary) is not allowed to manufacture competitive products in any business relationship with any competitor of firm A.
 - d) The prices charged by the manufacturer will not be less favorable than prices charged for equivalent products to any other person for whom the manufacturer produces comparable products.
 - e) The manufacturer is only allowed to produce the exact quantity stipulated in the specific purchase order placed by firm B or the firms designated by firm A. Production in excess of the amount ordered is expressly prohibited and shall be considered counterfeit.
 - f) The manufacturer is not allowed to manufacture or supply any products or goods using any confidential information or bearing any of the trademarks for any person other than firm B or other firms designated by firm A.
 - g) Firm A has the right to examine the manufacturer's accounting records.

3.1. Opinion of the Committee

Do the payments relate to the goods being valued?

The royalties are related to the goods being valued because specific technology is used and the goods incorporate the protected trademark “XY” in respect of which royalties are paid.

Are the payments a condition of sale?

The combination of the indicators (a-g) described in section 3, point 4, show that the licensor exercises at least indirect control over the manufacturer.

These indicators go beyond quality control checks. It should be noted that certain indicators carry more weight and show more strongly than others that the licensor exercises restraint or direction over the manufacturer/seller.

Conclusion

Therefore it has to be concluded that the conditions established in Article 32 (1) (c) CC and Articles 157 and 160 IP have been met.

However, since trademarks are involved, it is necessary to verify as well if the conditions of Article 159 IP have been met to conclude that the royalties need to be included in the customs value.

Commentary N° 12 of the Customs Code Committee (customs valuation section) Treatment of transport costs (sea and air freight)

Treatment of additional air freight costs incurred because of late shipment

Background

To meet a contractual deadline another mode of transport is used, other than the one declared for customs valuation purposes, with the supplier bearing the additional cost of transportation. That cost is the difference between the normal sea freight and air transport cost. Only the lower sea freight cost is declared at the time of importation under the provisions of Article 32.1(e) of the Code.

The valuation treatment of real transport costs should not be different, depending on whether CIF or FOB arrangements are in place.

Description of the facts

Company A, a large importer and retailer of apparel, orders dresses from Company B, a Far Eastern manufacturer and supplier of garments, on CIF or FOB sea freight terms. The contract of sale stipulates that Company B will bear any additional transport costs for goods that are shipped late by a different mode of transport (normally by air) to meet agreed delivery deadlines.

If the goods are shipped late by air, on entry into the Member State the agent declares either the CIF value of the goods with no additional transport costs or the FOB price plus an amount representing the normal schedule rate for sea transportation. The actual higher airfreight costs incurred by Company B are currently always excluded from the customs value in the MS exposing the case.

Conclusion

Art. 32 (1) (e) of the Code applies. All transport costs until the point of introduction into the EC have to be included in the customs value. It is not relevant who pays these costs.

As regards the cases in question this means that the declared customs value based on the CIF price or the FOB price must correctly reflect the actual transport costs.

Annex 25 CCIP (apportionment of airfreight costs) can be applied if the airfreight costs are separately shown.

In case the goods are originally invoiced CIF or FOB, buyer and seller have to agree before presenting the goods to customs that the invoiced price shall remain the same in case the delivery deadline can not be met and the goods have to be transported by air instead of sea. In this case the same price is confirmed under the new delivery term CIP. This CIP price is the basis for the determination of the customs value.

The following examples shall illustrate this case:

CIF

Originally A buys an article at a price of 40,000 € with the terms of delivery "CIF port of arrival". The intended transport method is sea transport (The freight charges are 1,000 €

for this mode of transport, which the seller B has included in the CIF price. The price of the goods thus amounts to 39,000 €. Because B cannot keep the agreed deadline for delivery, the goods will be shipped via air. The delivery terms change automatically into "CIP arrival airport". The same price of 40,000 € is paid by the buyer, even if the air freight bill shows that B paid 2,000 € for air freight. Under the new delivery terms the full transport costs are again included. As a consequence to the applicable air freight charges of 2,000 € the price for the goods is 38,000 €³.

As regards the intra-community costs, the total portion of these freight costs included in the invoiced CIP price (for deliveries from China 30% of 2,000 € = 600 €, see annex 25 IP) can be deducted according to Art. 33 (a) CC. The customs value of the imported goods represents thus 39,400 €

FOB

The goods are originally invoiced 40,000 € with the terms of delivery "FOB port China".

Intended delivery type is sea transport (The freight charges would be 1,000 € for this mode of transport, which would be paid by A). Because seller B cannot maintain the agreed delivery time, the goods will be shipped via air freight with the delivery terms "CIP arrival airport" instead of by sea. The delivery terms are thus modified from FOB to CIP. The air freight bill shows the air freight costs of 2,000 €. But A must still only pay the total agreed purchase price of 40,000 €. Under the new delivery terms the full transport costs are again included. As a consequence to the applicable air freight charges of 2,000 € the price for the goods is 38,000 €¹.

As regards the intra-community costs, the total portion of these freight costs included in the invoiced CIP price (for deliveries from China 30% of 2,000 € = 600 €, see annex 25 IP) can be deducted according to Art. 33 (a) CC. The customs value of the imported goods represents thus 39,400 €

¹³ This calculation is done for illustration purposes only, the invoice may only show the total amount of 40,000€

SECTION C: CONCLUSIONS

Conclusion No 1 (revised) Rates of exchange fixed in advance¹⁴:

Facts

When entering a consignment of goods for free circulation in the Community the declarant presents an invoice for the goods in which the price is expressed in a foreign currency. The price has been paid before the entry is presented and it does not include transport costs.

The declarant also presents an invoice for the transport of the goods to the place of introduction into the customs territory of the Community. The price of this is also expressed in a foreign currency. The transport company and the buyer have agreed in advance, by a contract, a fixed rate of exchange for settling the price on the invoice in the currency of the Member State where the valuation is made.

Questions

In regard to the price for the goods, can the rate of exchange established in accordance with the provisions of Article 35 of the Code and Articles 168 - 172 of the Implementing Provisions, in use at the time of the prepayment be used for customs valuation purposes ?

In regard to the costs of transport, can the fixed rate of exchange be used for customs valuation purposes ?

Opinion of the Committee

Where a price is expressed in a foreign currency, the rate of exchange to be used to determine the customs value in terms of the currency of a Member State is the rate, established in accordance with the provisions in force, in use in the Member State at the material time for valuing the goods (Article 67 of the Customs Code). The time of payment is not relevant in this context.

Where a fixed rate of exchange for the currency of the Member State where the valuation is made has been agreed in advance by a contract between the parties concerned, for settling a price expressed in a foreign currency, that price is considered to be invoiced in the currency of the Member State. The amount to be taken into consideration for the purpose of determining the customs value is arrived at by converting the foreign currency at the fixed rate agreed, provided that the settlement is actually based on that rate.

¹⁴ See also the commentary No 4 on rates of exchange

Conclusion No 2 : Buyer to be taken into consideration

Facts

Firm X in a third country, specialised in marketing chemical fertilisers, sells its products for export to the customs territory of the Community through agents belonging to the same group as X. These agents work on a commission basis paid by X.

In accordance with orders received through the agents, X buys whole cargoes from independent producers who send them direct to the Community.

The declaration for customs valuation purposes is based on the prices invoiced to X by the manufacturers.

Opinion of the Committee

The conditions of Article 147 (1) and (2) seem to be met. As, according to Article 147(3) of the Implementing Provisions, the buyer need satisfy no special condition other than that of being a party to the contract of sale, the prices invoiced to X can be taken into consideration for customs valuation purposes.

Any checking as to whether the invoice price corresponds to the price actually paid or payable is a customs control matter. In this respect, the declarant must supply all necessary information and documents to the customs authorities in accordance with the provisions in force.

Conclusion No 3 : Engineering, development, artwork and design work undertaken in the Community

Facts

Cars manufactured in a third country by firm X in a multinational group are sold to firm Y in the Community, of the same group. The engineering, development and design work has been undertaken in the Community by Y who has also provided all plans necessary for the production of the cars. The costs of this operation have been charged to X, who includes them in the invoice price of the cars when sold. This price is not influenced by the relationship between the two firms.

Y considers the prices invoiced by X can be accepted as the basis for valuation, subject to deduction, by virtue of Article 32(1)(b)(iv) of the Code, in respect of the research and development costs for work undertaken in the Community, when these costs are included in the price actually paid or payable but can be separately distinguished.

Opinion of the Committee

Article 32 of the Code deals only with additions to the price actually paid or payable for the imported goods. Items which should not be included in the customs value are described in Article 33 of the Code. In the case illustrated above, the customs value is to be determined by reference to the transaction value under Article 29 of the Code, and under the current international and Community provisions no deduction is provided for.

Conclusion No 4 : Charges for work undertaken after importation

Facts

Firm X in a third country sells slide films to firm Y in the Community. When the goods are entered for free circulation, Y submits to the Customs two invoices, of which one indicates the price of the films and the other indicates the costs for developing and framing them. The two invoiced amounts are paid to X, but the development and framing work is only performed after the films have been exposed by the final purchaser. This work is performed by firm Z on the basis of a special agreement with X.

At the time of entry to free circulation it is not known in which country the development and framing work will take place, as that depends on which of Z's developing departments the final purchaser chooses to send the film to.

Opinion of the Committee

According to Article 33(1)(b) of the Code, the customs value shall not include charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation, provided that such charges are distinguished from the price actually paid or payable for the imported goods.

The developing and framing costs described above are to be considered as charges covered by the above-mentioned Article. Consequently, the customs value is to be determined on the basis of the price actually paid or payable for the unexposed films, without including the developing and framing costs.

Conclusion No 5 : Imports by branches

Facts

Goods manufactured by firm X in a third country are imported into the Community through its branch, X-Europe, which does not have a legal personality distinct from that of the parent company.

X-Europe's activities consist in obtaining orders from unrelated buyers, clearing the imported goods through Customs, invoicing the goods to the customers and managing a small stock resulting from any surplus.

For accounting purposes, X invoices the goods to its branch on the basis of the transfer price which represents the production cost. The goods are sold to the European customers either before or after entry to free circulation. The prices invoiced by X-Europe to its customers are different from those invoiced to it by X because they include the commercial mark-up, the customs duties and other costs incurred, such as transport costs and associated costs.

Opinion of the Committee

As a sale necessarily implies a transaction between two distinct persons, the delivery to X-Europe only constitutes a transfer of goods between two sections of the same legal entity.

Consequently, where the goods are sold to unrelated buyers before entry to free circulation the customs value must be based on the prices actually paid or payable by those buyers, in accordance with Article 29 of the Code, to the exclusion of customs duties, intra-Community transport costs and associated costs.

However, as the goods imported by X-Europe for stock are not the subject of a sale, Article 29 is not applicable and the customs value is to be determined under the other methods of valuation in due order, in accordance with Article 30 of the Code.

Conclusion No 6 : Splitting of transport costs for goods carried by rail

Facts

An importer buys goods in a third country and sends them by rail to the customs territory of the Community. At the time of entry for free circulation, the importer presents the consignment note along with the invoice for the goods. In accordance with the international conventions on railway transport, the transport costs in this consignment note are split into two amounts, of which the first covers the transport from the place of departure to the "tariff connecting point" and the second covers the transport from that point to the place of destination.

In this particular case, the "tariff connecting point" corresponds to the place where the land-frontier of the Community's customs territory is crossed and it does not coincide with the place where the first customs office is situated. In the declaration of particulars relating to customs value, the importer declares the transport costs to the "tariff connecting point".

Opinion of the Committee

With a view to simplification and in accordance with commercial practice, the splitting of transport costs shown in the consignment note can be accepted for the purposes of determining customs value. Thus the transport costs in respect of the carriage between the "tariff connecting point" and the place where the first customs office is situated may be disregarded.

Conclusion No 7 : Air transport costs relating to non-commercial importations

Facts

A private person buys a musical instrument in a third country and has it sent by air to the Community. On the grounds that the importation is for non-commercial purposes, and by analogy with Article 165(2) of the Implementing Provisions on postal charges to be taken into consideration when determining the customs value, he requests that the transport costs should not be added to the price actually paid for the imported goods.

Opinion of the Committee

For the purpose of determining customs value, the Community provisions on transport costs make no general distinction between operations of a commercial nature and those of a non-commercial nature.

In the case in point, as the consignment is not sent by post, Article 32(1)(e) of the Code is to be applied and the air transport costs determined in accordance with the rules and percentages laid down in Annex 25 to the Implementing Provisions to be included in the customs value.

Conclusion No 8 : Air freight collection charges

Facts

Firm Y in the Community buys goods from firm X established in a third country. The goods are sold FOB and carried to the Community by air as a "charges collect" consignment.

In support of the sales invoice, Y presents to the Customs the air waybill which shows the air freight charges expressed in the currency of the exporting country. The airline responsible for the collection of the transport costs converts that amount into the currency of the importing Member State and imposes a fee equal to 5% of the air freight charges for the collection of the charges from the consignee.

Opinion of the Committee

The 5% fee for services provided by the airline is not covered by the elements referred to in Article 32(1)(e) of the Code. Consequently, by application of Article 32(3), the fee is not to be added to the price actually paid or payable for the imported goods.

Conclusion No 9 : Apportionment of transport costs

Facts

A shipment of perishable goods is delivered on consignment by X established in a third country to firm Y in the Community. The goods are auctioned for 15,000 U.A. to an unrelated buyer. The total transport costs by lorry amount to 11,000 U.A. These costs are considered as usual for the purpose of Article 152(1)(a)(ii) of the Implementing Provisions.

The distance covered within the Community constitutes only 5% of the total distance, but a note presented by the declarant attributes 80% of the total transport costs to that distance.

The customs value cannot, in the case in point, be determined under the provisions of Articles 29, as there is no relevant sale between X and Y at the material time for valuation. Information necessary for application of Articles 30(2)(a) or (b) of the Code of the Code is not available.

Opinion of the Committee

In order to determine the customs value in accordance with Article 30(2)(c) of the Code, the price of 15,000 U.A. for the goods must be reduced inter alia by the usual costs of transport and insurance incurred within the Community, that is, in this particular case, 5% of the 11,000 U.A. paid for the total transport. The indication on the freight note of a fictitious and unrealistic apportionment is not to be taken into consideration.

Conclusion No 10 : Sets of meat of different commercial descriptions

Facts

Importer Y buys in a third country a shipment of frozen meat of different commercial descriptions called "frozen round sets". The sales invoice indicates that the frozen round sets have been sold at a price of 3,250 U.A. per ton, and comprise topsides without cover, silversides and eyes of round and knuckles in specific proportions.

Y enters only the topsides without cover into free circulation. The other commercial descriptions of meat are re-shipped from the Community, without customs clearance. The declared value for the topsides is based on the price in the invoice, i.e. 3,250 U.A. per ton.

The exact basis on which the price of 3,250 U.A. per ton has been calculated cannot be established but must be derived from a weighted average of the commercial values of the three components of the frozen round sets when sold separately as the Customs service has noticed that when the three components are the subject of separate sales for export there are considerable differences between the price for each component.

Opinion of the Committee

Article 145 of the Implementing Provisions provides that when goods declared for free circulation are part of a larger quantity of the same goods purchased in one transaction the price paid or payable for that part is to be established by apportionment of the total price paid or payable. However in this particular case the individual components of the frozen round sets are not identical. They cannot therefore, when declared for free circulation separately, be regarded as the same goods for which the price of 3,250 U.A. per ton was invoiced. For the goods to be valued, i.e. "topsidés without cover" there is no sales price and the customs value must be determined under the other methods of valuation in due order, in accordance with Article 30(1) of the Code.

Conclusion No 11 (revised) : Purchase of export quotas - textile products

Facts

Textile products are sold by firm X established in a third country to firm Y in the Community. These products are manufactured in this third country, which has signed a bilateral textile agreement with the Community. The effect of the Agreement is to impose annual quotas by way of export licences on the supply of textile products to Community buyers; quota holders may, however, transfer their entitlement to a quota, in whole or in part, to other persons and receive payment from them for the right transferred.

X has exhausted his own quota and in order to export the goods either X or Y purchases the necessary quota entitlement from a third party who is unrelated to X. Where X acquired the entitlement he bills Y with the amount paid and shows this separately; where Y buys it he places it without charge at X's disposal.

Question

Does the payment made for the quota form part of the price actually paid or payable as referred to in Article 29 of the Code?

Opinion of the Committee

The quotas, being transferable, have in themselves a value independent of the value of the textiles to which they relate; and, in the present case, Y bears the additional cost incurred in acquiring the quota entitlement, either by purchasing himself or by reimbursing X for doing so. In these circumstances such additional duly proven costs cannot be regarded as forming part of the price actually paid or payable for the goods concerned. The type (own or third party quota) and the amount of related payments need to be demonstrated on request.

Conclusion No 12 : Customs value of samples carried by air

Facts

Commercial samples carried by air are imported into the Community by Y. Y pays for the products at a unit price of 5 U.A. FOB. The transport costs to the place of introduction to the customs territory of the Community are 50 U.A. per sample. At the time of importation Y asks the Customs to take into consideration the theoretical costs for sea freight instead of the transport costs actually incurred.

Opinion of the Committee

As Article 32(1)(e) of the Code does not provide that notional transport costs should be taken into consideration, the customs value must be determined by adding to the price of 5 U.A. the transport costs of 50 U.A. per sample actually incurred.

Conclusion No 13 : Tool costs

Facts

Company X, established in a third country, manufactures and sells cassette radios to Company Y, established in the territory of the Community. Company Y, which is not related to the seller, enters the radios for free circulation.

To improve the appearance of these sets, which are standard production items, the manufacturer uses special tools designed by the buyer but produced in the third country by Company X. These tools are not intended to be imported into the territory of the Community.

On importation of one consignment of sets, the importer attaches two invoices to the customs entry :

- the purchase invoice for the consignment;
- the invoice representing the total fabrication costs of the tool.

The declared customs value is the total amount of the two invoices, the importer having chosen to allocate the tool costs to a single consignment, in accordance with the Interpretative Notes to Article 32(1)(b)(ii) of the Code.

Opinion of the Committee

In the circumstances outlined, as the value of the tool has not been included in the price paid or payable for the imported goods, it falls to be added to that price in accordance with Article 32(1)(b)(ii) of the Customs Code as having been supplied directly or indirectly by the buyer free of charge for use in connection with the production and sale for export of the imported goods (i.e. the position is no different from that of purchase of the tool from another seller). The allocation of the total cost of the tool to the first shipment of goods is one of the options indicated in the Interpretative Notes to Article 32(1)(b)(ii) as contained in the Implementing Provisions.

Conclusion No 14 : Imports through contract agents

Facts

Buyer Y, who is established in the customs territory of the Community, imports large quantities of various goods from different manufacturers/suppliers in the Far East. For the purposes of market research, investigation and representation in the Far East, buyer Y uses the services of agent X, who, among other things, acts on behalf of buyer Y where the purchase and delivery of the goods to be valued are concerned. In return for his services, agent X receives from buyer a buying commission. The amount and manner of payment of the buying commission and the agent's responsibilities are laid down in an "agent's agreement" concluded between X and Y. Under the agreement :

- (a) Agent X receives orders from buyer Y specifying the description of the goods, their price, the deadline for delivery and the delivery terms, along with any other documentation; in addition, the buyer often specifies a particular manufacturer/supplier;
- (b) He passes on these orders, sometimes in his own name, to the manufacturer/supplier and sends buyer Y an acknowledgement of the orders, in some cases by forwarding the manufacturers/supplier's stamped confirmation;
- (c) As a rule, the goods are dispatched by the manufacturer/supplier to the port in the exporting country, where the documents are handed over to agent X;
- (d) Agent X invoices buyer Y showing the price paid to the manufacturer/supplier for the goods, with his agreed commission separately distinguished.

When the goods are declared for free circulation, buyer Y declares that price for the goods for customs valuation purposes and presents the invoice issued by agent X. The consideration paid by buyer Y to agent X as a buying commission is not declared as part of the customs value.

Buyer Y is willing and ready, at the request of the customs authorities, to furnish evidence in the form of the agent's contract, his order forms, acknowledgements of orders, his correspondence with agent X, his payment records and other supporting documents that the customs value declaration has been made in due and proper form. In appropriate circumstances, buyer Y is also able to produce, at the request of the customs authorities, the invoices of the manufacturers/suppliers and the correspondence between the latter and agent X.

Opinion of the Committee

Where the price paid to the manufacturer/supplier is the basis for the transaction value under Article 29 of the Code, the declarant, pursuant to Article 181 of the Implementing provisions, is normally required to present the customs authorities with the invoice issued by the manufacturer/supplier. However in the light of the above-mentioned facts, the customs authorities may accept the invoice (net of buying commission) issued by agent X, subject to the possibility of check.

Conclusion No 15 : Quota charges claimed in respect of certificates of authenticity

Facts

Meat of a specified quality is sold by firm X, a slaughterhouse established in a third country, to firm Y in the Community. The meat is imported under a bilateral agreement between the Community and the third country which provides for the importation free of import levy of a fixed quota of such meat. The quota is administered by way of the exporting country issuing certificates of authenticity (and the Community issuing import licences). Certificates of authenticity are issued to slaughterhouses in proportion to the quantities of meat sold under the quota scheme in the previous year. X makes no payment for obtaining such certificates. The certificates cannot be transferred separately to another slaughterhouse. They can be allocated only to specific consignments of meat intended for export to the Community. X charges a price for the meat. A separate amount is charged for the certificate. Both these amounts accrue directly or indirectly to X.

Question

Does the transaction value for the meat include the charge established for the certificate of authenticity ?

Opinion of the Committee

The certificate of authenticity, not being transferable, cannot be disassociated from the meat accompanying it and likewise it has in itself no value independent of the value of the meat; also the amount invoiced for the certificate accrues directly or indirectly to X. Contrary to the situation met in Case 7/83 heard before the Court of Justice of the European Communities, the certificate cannot be traded separately and in the present case the buyer is not reimbursing X for expenditure in acquiring the certificate. In fact, the amount charged for the certificate is pure profit for X.

For these reasons the amount invoiced for the certificate must be regarded as part of the total price paid or payable for the imported goods and, by reason of paragraphs 1 and 3(a) of Article 29 of the Code is to be included in the customs value of those goods.

Conclusion No 16 : Valuation under the deductive method of goods sold through a branch office

Facts

Firm X established in a third country has a branch B in a Member State through which it sells plastic stationery accessories to unrelated buyers in the Community.

B has no separate legal identity but is trading exactly as if it were a separate company. It has its own budget, maintains separate accounts and is responsible for developing business by its own marketing and sales force.

B does not buy the goods but on receiving them from X, B enters them into free circulation and stores them at its premises.

A customs value for identical or similar goods sold for export to the Community cannot be established.

B claims that the customs value should be determined under Article 30(2)(c) of the Code and that, in particular, its actual profit and general expenses may be deducted from the selling price duly established.

Opinion of the Committee

Insofar as the customs value cannot be determined under Articles 29 or 30(2)(a) and (b) of the Code, it would be appropriate to value the goods under the provisions of Article 30(2)(c). In the light of the above-mentioned facts, B sells the imported goods for X within the Community. Accordingly, under the provisions of Article 30(2)(c) the deduction of an amount representative of the profit and general expenses of B in respect of the sale of these goods can be permitted, provided that these are consistent with the figures usual in sales in the Community of goods of the same class or kind.

Consequently, the customs value should be based on the unit price determined under the provisions of Article 30(2)(c), subject to the deductions provided for in Article 152(1)(a)(iii) of the Customs Code Implementing provisions.

Conclusion No 17 : Precedence under the deductive method

Facts

Goods produced in a third country were imported into the Community on consignment by firm X.

As the goods were not the subject of a sale at the time they were entered for free circulation, their customs value could not be determined under Article 29 of the Code. Also, information was not available at that time to establish a customs value under Article 30(2)(a) to (c) of the Code; but firm X, nevertheless, indicated then that he wished in due course to avail himself of Article 30(2)(c) in establishing the customs value of the goods. In the circumstances it was necessary to delay the final determination of the customs value.

The goods were sold within a week after importation. Following the sale and for the purpose of finally determining their customs value, firm X declares a customs value based on the unit price of similar imported goods sold in the Community since the time his goods were imported.

Question

Does firm X, for the purposes of applying Article 30(2)(c), have a choice between the unit price at which the goods imported are sold and the unit price at which similar imported goods are sold ?

Opinion of the Committee

In this case, the unit price at which the goods being valued are sold in the Community is known at or about the time of their importation, as well as the unit price at which identical or similar imported goods are so sold. Given the hierarchical nature of the valuation system, the unit price of the goods being valued takes precedence over the unit price of identical or similar imported goods for the purpose of finally determining the customs value under Article 30(2)(c).

Conclusion No 18 : Demurrage charges

Facts

Importer Y in the Community has incurred demurrage charges in respect of goods which he declares for entry for free circulation. The charges have been incurred because of delays both in loading the goods in the country of exportation and in unloading them in the customs territory of the Community.

Questions

Should such charges be included in the customs value of the goods ? If so, should they be included irrespective of where they are incurred ?

Opinion of the Committee

As demurrage charges are payable to a transport company in respect of the use of the means of transport, they are to be considered as part of the costs of transport for the purposes of Article 32(1)(e) of the Code.

Application of that provision is limited to costs incurred before arrival of the goods at the place of introduction into the customs territory of the Community. Consequently, demurrage charges related to delays occurring before that arrival are to be included in the customs value of the goods. On the other hand, demurrage charges related to delays occurring after that arrival are not to be included in the customs value of the goods, providing the conditions laid down in Article 33(1) are met.

Conclusion No 19: cancelled

Conclusion No 20 : Quota costs (importation of manioc from Thailand)

Facts

There is a bilateral agreement between the EEC and the government of Thailand for the exportation by Thailand and the importation by the EEC of Thai manioc.

This agreement is based on an autolimitation commitment by Thailand, and there is a special low-duty rate for a fixed amount of manioc exported to the EEC.

Control is based on a system of double-control including the use of export and import licences.

Commercial practice indicates that trade takes place in the acquisition of export quotas in Thailand. The relevant Thai regulations indicate in this regard that export quotas are assignable and an export quota can only be assigned from one exporter to another exporter if the manioc covered by the export quota is also assigned to the new exporter.

The allotment of export quotas of manioc takes place on the basis of the request of the exporter. Before the allotment takes place, the exporter has to inform the authorities of the quantity of his stock. The allotment granted to him is based on the stock, the allotted quota being in proportion to his stock. By being granted this quota, the exporter has the obligation to export this quantity in the time-period given. An assignment of the export quota is only granted (and is only possible) if the stock is also assigned to the new exporter, who is responsible for the exportation of the assigned quantity.

The cost to acquire the export quota can be either presented in a separate invoice, or separately shown on the invoice for the manioc.

Question

Does the payment made for the quota form part of the price actually paid or payable as referred to in Article 29 of the Customs Code ?

Opinion of the Committee

It is evident that trade in export quotas only does not take place. The transactions which occur cover both the export quota and the manioc in respect of which this quota is assigned. Payments made in the context of these transactions are for both the export quota and the associated manioc. These payments should therefore form part of the price paid or payable in order to establish the customs value under Article 29 of the Customs Code.

Conclusion No 21 : Test fees

Facts

Importer X exports silicon die to related company Y in country A for assembly into semi-conductor devices under Outward Processing Relief procedure. The silicon die is sold by company X to company Y under a sell and buy back agreement. After processing, company Y invoices and charges company X for the costs incurred in processing plus the costs of the silicon die processed. Company X then arranges for the processed goods to be tested by related company Z in country B. After testing has been completed, company Z charges company X for the costs incurred. The tested goods which meet the required standard are then imported into the European Community by company X. The unsatisfactory goods are scrapped in country B.

The importer has stated that the manufacture of semi-conductor devices is a multi-process affair and that it is commonplace in the trade for the processes to be carried out separately and at different locations, sometimes by related companies and sometimes by unrelated companies. Further, at each stage in the process of manufacture, repeated testing is normal. In this case, the silicon dies are electronically tested by the die fabricator prior to shipment to country A and the processed goods are tested visually by the assembler in country A. In country B, the processed goods are visually tested again and electronically tested using high value equipment.

Questions

Is the testing fee for the testing in country B includible in the customs value because the testing is an integral part of the processing ?

Alternatively, is the testing fee for the testing in country B excludible from the customs value because the testing is an activity incurred by the buyer on his own account after purchase of the goods but before importation ?

Opinion of the Committee

The testing operation is part of the process necessary to produce goods of the type in question. This testing is essential to ensure that the goods are functional and meet the specifications applicable. Thus, the goods to be valued are the tested goods, and the customs value is to be determined under Article 29(1) of the Customs Code on the basis of the charge made for testing plus an addition under Article 32(1)(b)(i) for the cost of material supplied including the cost of processing and an addition under Article 32(1)(e) for costs of delivery to the customs territory of the European Community.

Conclusion No 22 (Revised): Valuation of computers with adjustable memory capacity

Facts

Firm X established in a third country supplies to firm Y within the Community via its subsidiary X1 (fiscal representative of X in a Member State as well as importer) a high performance computer which is to be leased to firm Y.

Only a very small number of this type of computer is manufactured and each one is adapted to the particular needs of the user. However, for internal strategic reasons (both technical and commercial), firm X designs standard central processing units with 64 million words of main memory (64 Mb). However, it is provided for that depending on the users' requirements, main memory can be inhibited or neutralised before importation into the Community. Firm X1 imports a computer of 64 MB of which 32 are inhibited.

The commercial contract, signed between X and Y concerns a unit of 32 MB. This contract does not mention the existence of a supplementary memory capacity which can be activated at any time.

In effect, the memory initially inhibited is restored only if user Y (or another user if the system is transferred to another location after importation) so requests on the basis of his additional requirements. This can be done by a simple technical operation on the equipment without the addition of other equipment either imported or obtained locally.

Only the supplier possesses the technology necessary to make operational the inhibited memory. When this is activated, the supplier and his client signs either an endorsement to the existing contract or a new contract covering leasing and specifying, in particular, the additional royalties payable as a result of increased memory capacity.

Question

At the time of customs clearance, should this system be valued on the basis of total memory capacity (64 Mb), although 32 MB are in fact suppressed, or on the actual "active" capacity of 32 Mb?

Opinion of the Committee

1. Valuation is to be based on the goods presented to customs at the material time for valuation for customs purposes. In this case, the goods consist of a computer with a memory capacity of 64 Mb, the full availability of which is subject to technical restrictions.
2. It is the actual payments made or to be made for the imported goods which are ultimately to be taken into account for customs valuation purposes. In this context, it is appropriate that the customs value at time of entry of the goods for free circulation be determined on the basis of the duly substantiated contractual payments for the goods which are provided for at that time.
3. If additional payments are made e.g. for further utilisation of the complete memory capacity such payments shall form part of the customs value.

Conclusion No 23 : Transport costs for goods sold ex warehouse

Facts

An importer X situated inside the Community buys goods from a seller Y, situated outside the Community, on the basis of a FOB price. These goods arrive by rail and are deposited in a customs warehouse.

X resells to Z to whom he is related and who is established in another Member State of the Community.

Z brings the goods into free circulation on the basis of the invoice price between X and Z. Z also hands over the International consignment note (CIM) on which the transport costs are specified. The note is issued to bring the goods from outside the Community to a railway station near to the warehouse.

Question

The transport costs inside the territory of the Community incurred at the time of the first transaction, are they deductible on the basis of Article 164 of the CCIP.

Opinion of the Committee

Deduction of intra-community transport costs is justified if all of the conditions of Article 164 of the implementing provisions are fulfilled. The price paid or payable by Z to X includes all transport costs. The international consignment note (CIM) gives all necessary information relating to transport costs inside and outside the EC.

There are no special provisions concerning either the person responsible for payment of the transport costs nor a requirement that these transport costs should be part of the sale transaction on the basis of which the customs value is determined.

Consequently, the inter-Community transport costs incurred in the circumstances indicated above are deductible on the basis of Article 164 CCIP.

**Conclusion 24 : Royalties and licence fees (has been replaced by
Commentary No 11)**

Conclusion 25 : Goods sold for export to the Community

Interpretation of Art. 147 of Regulation No 2454/93

The facts:

Case 1: Company A buys goods at the going Far East rates from manufacturer H (both contracting parties are established outside of the Community), but they are delivered to A's dependent branch A1 in the EU.

Case 2: As case 1, but where A1 is A's subsidiary (Article 143(1)(e) CCIP).

Further details

For accounting purposes and in both cases A invoices the goods to A1 at a transfer price. This transfer price passes verification of their relationship which is important in case 2 due to the fact that there is a second sale between A and A1 at import into the Community.

In both cases the customs clearance is done on the basis of the sale between H and A.

Following customs clearance by A1, the goods are delivered to A, where they undergo the requisite checks. They are then sold on to customers throughout the world. About 50% of the goods find their way to customers back in the EU.

Observations and questions:

Case 1

1. Under Article 147(1) CCIP and for the purposes of Article 29 of the Code, the fact that goods which are the subject of a sale are declared for free circulation is deemed sufficient indication that they were sold for export to the customs territory of the Community. Under Article 147(3) CCIP the buyer need satisfy no condition other than that of being a party to the contract of sale. In particular, therefore, he does not need to have an establishment in Community customs territory.

Question on case 1 (where neither contracting party is established in the Community): does the fact that 50 % of the goods are not actually intended for sale in the Community customs territory take precedence over the above mentioned indication?

Answer: Only the actual transaction leading to importing the goods into Community territory from a third country is relevant (Article 147 (1) CCIP). What happens to the goods thereafter (i.e. whether they are reconsigned or sold on) is not.

2. According to Conclusion No 5 of the Compendium of Customs Valuation texts, where goods are imported by a branch of an undertaking (consigned from one division of a business to another division of the same business) this is not a transaction within the meaning of Article 29 CC and the appropriate evaluation method must be found in the sequence listed in Article 30 CC.

Question on case 1: In the case in point (unlike conclusion n° 5) the goods are not manufactured by A but by a third party (H) and there is a contract of sale between A and H. Does Conclusion No 5 apply?

Answer: Conclusion No 5 does not apply as this is in fact an instance of goods which can be regarded as being sold for export to the Community. There is a sales transaction between H and A; Article 29 CC and Article 147 (1) first sentence therefore apply. . Conclusion No 16 does not interfere with this result.

Case 2

1. In case 2 there has been a second sales transaction by the time valuation takes place, Conclusion No 5 is therefore not relevant either. Under Article 147(1) second subparagraph CCIP, the price of a sale preceding the last sale which led to the introduction of the goods into the customs territory of the Community may be declared. Here, however, it must be demonstrated to the satisfaction of the customs authorities that this sale of goods took place for export to the Community customs territory. Further conditions applicable here are set out in Commentary No 7 of the Compendium of Customs Valuation texts.

In fact the only difference between cases 1 and 2 is that the party receiving the goods in case 1 is a dependent branch whilst in case 2 it is a related subsidiary.

Question on case 2: May the sales transaction between H and A be accepted if it complies with the criteria in Commentary No 7?

Answer: Article 147 is the relevant legal rule, and in the context of the application of this article the criteria of Commentary No 7 is applied to the sales transaction between H and A.

General conclusions

In case 1 the "sale" (i.e. transfer) between A and the branch is not a sale, that means that the sale between A and H is the only sale which could be accepted. There is only one relevant sales transaction before the goods are imported and the rules on successive sales transactions are therefore not applicable.

In case 2 the sale between A and the subsidiary is a "de jure" sale and therefore, according to Art. 147 (1) second subparagraph, the sale between A and H (if declared for customs valuation purposes) has to be proved to be a sale for export to the Community.

In both cases, the fact that 50% of the goods are resold on to customers outside the EU after their release for free circulation is not in itself grounds for rejecting a customs value based on an earlier sale in accordance with Article 147.1. However, in these circumstances it would be reasonable to take this fact into account when considering evidence submitted to support the case that the goods were, at the time of the sale in question, sold for export to the EC.

By application of Art. 147 (1) second subparagraph the declarant in case 2 (successive sales) has a higher standard of proof than the declarant in case 1 (one sale only) if he declares the sale between A and H.

Indeed, the objective of Art. 147 (1) second subparagraph is to indicate that it is possible, against a higher standard of proof, to base the customs value on a sale before the last sale (i.e. before the introduction of the goods into the customs territory of the Community). If there is only one sale, Art. 147 (1) par. 1 applies.

Conclusion 26: Software and related technology: treatment under Article 32 (1)(b) Customs Code (CC)

Subject:

This issue concerns the customs valuation treatment of software/technology, which is made available, free of charge, to the producer, by the buyer of the imported goods, for use in connection with the production and sale of the imported goods.

A. Definition of the case and question raised:

In the cases to be considered, the software/technology is developed/produced in the Community and made available to the producer of the imported goods. The software/technology is supplied mostly via Internet or on data storage media.

These software/technologies contained in the imported goods are necessary either for the operability of the goods or to improve their operation.

Frequently, goods are already equipped in the production process with software/technologies (e.g. in the area of the automobile or automobile ancillary industry), which are only released and made available at the customer's request at a later stage using a coding procedure (e.g. preinstalled navigation equipment, a day headlight, outdoors temperature gauge or higher engine performance in a car).

B. Application of Article 32(1)(b) of the Customs Code

The software/technology represents without doubt an intangible assist which must be taken into account if the goods are to be valued under the transaction value method. A basic question is whether the software/technology used in the production of the imported goods should be treated under Art. 32(1)(b)(i) or (iv) CC.

Art. 32(1)(b)(i): covers materials, components, parts and similar items incorporated in the imported goods.

Art. 32(1)(b)(iv): covers engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community and necessary for the production of the imported goods.

If the software/technology falls under letter (i), the value of such software is part of the customs value, since there is no exemption in the case of its production in the Community. On the other hand, if the software/technology falls under letter (iv), the value of the software developed in the EC is not included in the customs value.

The opinion of the Advocate General in the Compaq case C-306-04 is useful to consider in this context. The Advocate General made a distinction between:

1. "Intangible components" installed in the imported goods which are not strictly necessary for the production of the goods but are a constituent part of the end product, enhance its capabilities, or even add a new functionality and thereby contributes significantly to the value of the imported goods (Art. 32 (1) (b) (i) CC),
and
2. "Intellectual assists" (patents, designs, models etc.) which are necessary for the production process of the goods (Art. 32 (1) (b) (iv) CC).

C. Conclusion:

1) Intangible components which are installed in the imported goods for their operability, (for example the software of an on-board computer in the car, the operating system of a computer, or the MPEG-technology in a DVD player), are not necessary for the production of the imported goods. These intangible components are, however, an integral part of the final goods, since they are connected to or part of them, make their operability possible or improve them. Furthermore, they add a new functional character and thereby contribute significantly to the value of the imported goods.

Such intangible assists fall under Article 32(1)(b)(i) CC.

2) On the other hand, there are intangible assists (e.g. also software/technologies), which are made available by the buyer for purposes of the production of the imported goods. In other words, they are a necessary part of the production process of the goods. Examples include the know-how of production (patented or not patented) or design.

Such intangible assists fall under Article 32 (1)(b)(iv) CC.

SECTION D: OTHER MEASURES

Customs value of sound and cinematographic recordings on magnetic tape (videos) and other carrier media

Case 1 Recordings intended for transmission by television and cinema networks

FACTS

Sound and cinematographic-type recordings in the form of magnetic tape videos (Community customs tariff heading 85.24) or in the form of other carrier media and intended for distribution and/or diffusion by television and cinema networks and advertising agencies (cf. case No 2) are imported.

It is for consideration whether valuation should be on the basis of pro-forma invoices which indicate only the value of the support material (a nominal amount of currency units) or on the total payments made. Contracts show that payments to obtain the transmission rights of the film, concluded between television and cinema networks and the foreign distributor/producer, can amount to several million currency units.

Conclusion

The Committee concludes that the amounts paid by the buyers of the audiovisual programmes in question in respect of a charge for broadcasting/distribution rights should be considered in the light of Art. 32(1)(c) of the Code. In this context they should be regarded as equivalent to payment for the right to reproduce the imported goods within the meaning of Article 32(5)(a) of the Code.

Consequently, these amounts should not be taken into account in determining the customs value, provided that they are distinguished from the price paid or payable for the support media.

Case 2 Recordings intended for advertising agencies

Videos (or other carrier media) which consist of recordings for the advertising industry, also intended for broadcasting by television networks, are imported in the same manner as in Case 1 above.

The question arises as to whether the value should be based on the total payments made to the producers. In this particular case, this can involve evaluation of the goods taking into account the totality of the invoices presented to the buyer (studio rental costs, musician and model fees, tape costs ,...).

Valuation treatment

The Committee concludes that the amounts paid by the buyers of the audiovisual programmes in question in respect of a charge for broadcasting/distribution rights should be considered in the light of Art. 32(1)(c) of the Code. In this context they should be regarded as equivalent to payment for the right to reproduce the imported goods within the meaning of Article 32(5)(a) of the Code.

Case 3 Recordings intended for distribution and sale

Video tapes (or other carrier media) which carry a variety of audiovisual material (e.g. feature films) for distribution and sale to consumers is imported. Payment for the goods is invoiced in the context of a normal sale and no other payments are involved.

Valuation treatment

The transaction value is to be based on the total price paid or payable for the goods.

Statement of administrative practice on article 156a¹⁵

"Scope

Article 156a is intended to provide for an application of Article 19 of the Customs Code to allow import operations which occur in a repeated and ongoing manner to take place in circumstances which facilitate application of the Community rules in force.

Period of authorisation

In the context of granting the authorisation referred to in Article 156a, the period referred to in paragraph 2 of that Article has to be determined in a manner consistent with the objective of ensuring own resources at stake are safeguarded."

¹⁵ (Adopted by the Committee on its meeting on 6 May 1996)

Treatment of the transport costs for customs valuation purposes of air express consignments declared for free circulation into the customs territory of the Community

Administrative arrangement

The representatives of the customs administrations of the Member States have concluded that:

- in view of the necessity to ensure the effective and uniform application of Articles 32 and 33 of the Customs Code (Council Regulation (EEC) n° 2913/92) and
- in view of the Judgement of the Court of Justice concerning deduction of intra-Community transport costs (Case n° 290/84),
- after consultations with representatives of the air carrier operators,
- following an examination of how the requirements of the legal provisions in force can be met in the treatment of air express consignments carried by express carriers,

the provisions set out in the annex are to be applied in a uniform manner throughout the Community.

Rules of administration

Treatment of transport costs for customs valuation purposes of air express consignments declared for free circulation into the customs territory of the Community.

Application of legal provision in force

1. In keeping with the rules on customs value, in particular Articles 32(1) (e), 32(2) and 33 of the Customs Code :
 - a) In cases where the actual air express consignment charge is known at the time of customs clearance, such charge shall be taken into account in determining the customs value of the express consignment. The transport cost incurred after the arrival in the customs territory of the Community shall not be included in the customs value, provided that such cost is distinguished from the total charge.

In cases where the express carrier is unable to demonstrate which costs arise before departure in the third country and which costs arise after arrival in the Community, the percentages laid down in Annex 25 to Regulation (EEC) n° 2454/93 are applicable to the whole amount of the express consignment charge, for the purposes of deducting transport costs incurred within the Community.

- b) In cases where the actual air express consignment charge is not known at the time of customs clearance, the equivalent of that charge will apply as ascertained from the tariff of the express carrier in question for the same journey or reverse journey and for the same type of consignment.

The percentages laid down in Annex 25 to Regulation (EEC) n° 2454/93 apply as at paragraph 1 (a) above.

- 2. In the application of the above rules, postal services and express carrier companies, their representatives or persons designated to carry out the customs clearance of the express consignments:
 - a) should furnish the customs with the necessary documents in support of the actual express consignment charge or, failing that, with the tariff of the carrier in question, and
 - b) should make the necessary calculations in deducting from the express consignment charge declared, the percentages laid down in Annex 25 of the CCIP.
- 3. If after an appropriate implementation period, it is considered that the methods laid down in paragraph 1 are not sufficient to ensure application of the relevant customs valuation regulations, utilisation of a series of flat-rates will be considered as an additional means to ascertain the transport costs of air express consignments for customs valuation purposes.
- 4. This methodology will apply from 1 July 1990 and replaces any other means used for the purpose in question.
- 5. The terms of paragraph 1 may be examined subsequently in order to assess their effectiveness in the light of practical experience.

SECTION E: JUDGEMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES ¹⁶

Case 7/83* - Ospig Textilgesellschaft KG W. Ahlers v. Hauptzollamt Bremen-Ost

Title : Valuation of goods for customs purposes - inclusion of quota charges.

Language : German

Question : Are costs which are incurred in the acquisition of free quotas (export quotas) and charged separately by an exporter in Hong Kong to a German customer (known as quota costs) to be included in the customs value of goods (the transaction referred to in Article 3 of Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes) ?

Ruling : Quota charges relating to the acquisition of export quotas do not form part of the value for customs purposes of goods imported into the Community for the purposes of the provisions of Council Regulation (EEC) No 1224/80 of 28 May 1980, on the valuation of goods for customs purposes, as amended by Council Regulation (EEC) No 3193/80 of 8 December 1980.

References for further information :

OJ No C 35, 8.2.1983, p. 3

OJ No C 79, 20.3.1984, p. 4

¹⁶ Full text available online : <http://curia.eu.int> or <http://europa.eu.int/eur-lex>

* Reports of Cases before the Court, No 1984, p. 609-620

**Case 290/84* - Hauptzollamt Schweinfurt v. Mainfrucht
Obstverwertung GmbH**

Title : Valuation for customs purposes - Transport costs

Language : German

Questions :

1. (a) Where a purchaser in a Member State of the European Community pays to a foreign supplier, on the basis of an itemised invoice, an amount in respect of "freight costs within the Community" along with the price of the goods, does the transaction value referred to in Article 3 (1) of Council Regulation (EEC) No 1224/80 include both amounts?
- (b) If so, must that amount be adjusted pursuant to Article 15 of Regulation (EEC) No 1224/80 in order to be taken as the customs value of the goods?
2. If those questions are answered in the affirmative :
 - (a) Is Article 15(2)(a) of Regulation (EEC) No 1224/80 applicable where the person concerned declares transport costs covering transport within the Community alone?
 - (b) If question (a) is answered in the affirmative:

In the case of through transport as referred to in Article 15 (2)(a) of Regulation (EEC) No 1224/80, is the deduction, in assessing the customs value of goods, of transport costs calculated to have been incurred within the Community conditional upon the person concerned having provided a separate figure for the total cost of through transport in accordance with Article 15(1) of the Regulation?

If so, is that condition met where the person concerned gives separate figures for those transport costs, or must he provide proof of the actual costs incurred for the through transport, by presenting verifiable documentary evidence?

If such proof is necessary, what requirements must it satisfy? May customs authorities waive such proofs where the person concerned is unable to provide it by reason of the conduct of his supplier?

* Reports of Cases before the Court, No 1985, p. 3909-3932

Ruling : Where a domestic buyer has paid the foreign seller, in addition to the price of the goods, a special amount in respect of 'intra-Community transport costs' on the basis of a separate invoice, the transaction value within the meaning of Article 3 (1) of Regulation No 1224/80 includes only the first of those amounts, but the competent customs authorities may, if the circumstances warrant it, check the invoice relating to the costs in question in order to verify that they are not fictitious.

References for further information :

OJ No C 29, 31.1.1985, p. 3

OJ No C 347, 31.12.1985, p. 22

**Case 65/85* - Hauptzollamt Hamburg - Ericus v. Van Houten
International GmbH**

Title : Valuation of goods for customs purposes - Weighing costs

Language : German

Question : Should Article 3(1) and (3) of the version of Council Regulation (EEC) No 1224/80 applying prior to 1 January 1981 be interpreted as meaning that in the case of so-called ANKUNFTKONTRAKTEN (arrival contracts) the costs of establishing the weight on arrival also forms part of the transaction value if, according to the contract of sale, those costs are to be borne by the buyer ?

Ruling : Article 3(1) and (3) of Council Regulation (EEC) No 1224/80 of 29 May 1980 is to be interpreted as excluding from the transaction value weighing costs payable by the purchaser at the destination of the goods in the case of what is known as an arrival contract.

References for further information :

OJ No C 99, 19.4.1985, p. 7

OJ No C 45, 27.2.1986, p. 4

* Reports of Cases before the Court, No 1986, p. 447-457

Case C-183/85* - Hauptzollamt Itzehoe v. H.J. Repenning GmbH.

Title : Valuation of goods for customs purposes

Language : German

Question : Does the transaction value, as referred to in Article 3(1) of Regulation (EEC) No 1224/80, include the full amount of the price actually paid even where the goods, bought free of defects, had deteriorated and thus diminished in value before the relevant valuation date, in circumstances giving rise to the indemnification of the buyer under this transport insurance but not to the refund of the purchase price by the seller ?

Ruling : Article 3(1) of Council Regulation (EEC) No 1224/80 must be interpreted as meaning that where goods bought free of defects are damaged before being released for free circulation the price actually paid or payable, on which the transaction value is based, must be reduced in proportion to the damage suffered.

References for further information :

OJ No C 166, 5.7.1985, p. 11

OJ No C 196, 5.8.1986, p. 4

* Reports of Cases before the Court, No 1986, p. 1873-1884

**Case 357/87* - Firma Albert Schmid v. Hauptzollamt Stuttgart-
West**

Title : Duty to be levied on imported packings

Language : German

Questions:

1. How is the final sentence of Section I, C.2 of Part I of the Annex to Article 1 of Council Regulation (EEC) No 950/68 of 22 June 1968 on the Common Customs Tariff (Official Journal, English Special Edition 1968 (I), p. 275) to be interpreted : does the expression 'packing' (meaning any external or internal containers, holders, wrappings or supports other than transport devices (e.g. transport containers), tarpaulins, tackle or ancillary transport equipment) include beer barrels, beer bottles and plastic crates for beer bottles where such containers are to be returned to the seller of the beer in another country ?
2. If the first question is answered in the affirmative : how is Section II, D.1(a) of Part I of the Annex to Article 1 of the aforementioned Regulation (which provides that packings are covered by the customs duty for the goods contained therein) to be interpreted : is duty on packings which are themselves dutiable paid with the duty on the goods in such a way that the duty on the goods also discharges the duty on the packings, or are the packings chargeable on the basis of their own customs value but at the rate applicable to the goods ?

Ruling :

1. The final sentence of Section I, C 2 of Part I of the Annex to Article 1 of Regulation (EEC) No 950/68 of the Council of 22 June 1968 on the Common Customs Tariff must be interpreted as meaning that the expression "packing" includes beer-barrels, beer-bottles and plastic crates for beer-bottles even where such containers are to be returned to the seller of the beer in another country.

* Reports of Cases before the Court, No 1988, p. 6239

2. Section II, D 1 (a) of Part I of the Annex to Article 1 of the aforementioned regulation must be interpreted as meaning that the packings must be chargeable to duty at the rate applicable to the goods contained therein. However, where the packings are not included in the price payable for the goods but are to be returned to the seller in another country, and the buyer is required to pay the seller financial compensation in respect of packings that are not returned, such compensation constitutes a cost within the meaning of Article 8(1)(a) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes.

References for further information :

OJ No C 349, 24.12.1987, p. 4

OJ No C 284, 8.11.1988, p. 10

Case C-219/88* - Malt GmbH v. Hauptzollamt Düsseldorf

Title : Certificates of authenticity

Language : German

Questions :

1. Must Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal of the European Communities No L 134, 31.5.1980, p. 1), and in particular Article 3(1) and (3) (a), be interpreted as meaning that in assessing the value of Argentinian beef which entered into free circulating without payment of a levy in 1981 in the framework of a Community tariff quota the amounts paid to the seller in addition to the price of the goods for the certificates of authenticity needed for recourse to the quota rules must be included in the price actually paid or payable (the transaction value) ?

2. If the answer to Question 1 is yes :

Must the above mentioned Regulation, in particular Article 3 (4) (b), be interpreted as meaning that the amounts paid for the certificates must for purposes of customs valuation be treated as taxes payable in the Community by reason of the importation ?

3. If the answer to Question 2 is yes :

Must the above mentioned Regulation, in particular Article 3 (4), be interpreted as meaning that the requirement that such charges must be distinguished from the price actually paid or payable for the imported goods is satisfied even if the invoice states the total amount paid for the goods and for the certificates (No 1) but makes clear the amounts paid for the certificates ?

Ruling :

1. Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, in particular Article 3(1) and (3) thereof, is to be interpreted as meaning that, in assessing the value of imported Argentinian beef for the purposes of Council Regulation (EEC) No 217/81 of 20 January 1981, opening a Community tariff quota for high-quality, fresh, chilled or frozen beef and veal falling within subheading 02.01 A II (a) and 02.01 A II (b) of the Common Customs Tariff, the amounts paid to the seller in addition to the price of the goods for the certificates of authenticity needed for recourse to the quota rules must be regarded as an integral part of the value for customs purposes.

* Reports of Cases before the Court, No 1990, p. I-1481

2. Article 3(4) of Regulation No 1224/80 is to be interpreted as meaning that the amounts paid for certificates of authenticity must not be regarded as taxes paid in the Community by reason of the importation.

References for further information :

OJ No C 223, 27.8.1988, p. 5

**Case C-11/89* - Unifert Handels GmbH, Warendorf v.
Hauptzollamt Münster**

Title : Customs value of goods - Transaction value - Demurrage charges

Language : German

Questions :

- 1.(a) Can the transaction value within the meaning of Article 3 (1) of Regulation No. 1224/80 also be the price stipulated in a contract of sale between persons resident in the Community ?
- (b) If question 1 (a) is answered in the affirmative, may the person concerned determine the price to be taken as the basis for customs valuation purposes if prices stipulated in other contracts of sale fulfil the requirements of Article 3 (1) of Regulation No. 1224/80 ? Is the person concerned bound by his choice once exercised ?
- (c) If question 1 (a) is answered in the affirmative, does this price also include a so-called buying commission ?
2. Are demurrage charges (compensation for delays in loading) transport costs within the meaning of Article 8 (1) (e) of Council Regulation No. 1224/80 ?
3. Is the full price paid or payable the transaction value within the meaning of Article 3 of Regulation No. 1224/80 if before the material time short shipments are found which are within an agreed weight discrepancy allowance and do not lead to a reduction of the purchase price ?".

Rulings :

1. The price stipulated in a contract of sale between persons established in the Community may be regarded as the transaction value within the meaning of Article 3 (1) of Council Regulation (EEC) No. 1224/80 of 28 May 1980 on the valuation of goods for customs purposes.

* Reports of Cases before the Court, No 1990, p. I-2275

2. Where, in successive sales of goods, more than one price actually paid or payable fulfils the requirements laid down in Article 3(1) of Regulation No 1224/80, any of those prices may be chosen by the importer for the purposes of determining the transaction value. If the importer has referred to one of those prices in the customs value declaration, he may not correct the declaration after the goods have been released for free circulation, in accordance with Article 8 (1) of Council Directive 79/695/EEC of 24 July 1979 on the harmonisation of procedures for the release of goods for free circulation.
3. A payment made by the buyer to the seller, invoiced separately and described as a "buying commission", forms part of the price actually paid or payable for the imported goods within the meaning of Article 3 (1) of Regulation No. 1224/80.
4. Demurrage charges (compensation payable for keeping vessels in port) form part of the cost of transport within the meaning of Article 8 (1) (e) of Council Regulation No. 1224/80.
5. Article 3 (1) of Regulation No. 1224/80 must be interpreted as meaning that the price actually paid or payable should not be reduced proportionately where there is a discrepancy between the quantity of goods unloaded and the quantity purchased which does not exceed the weight discrepancy allowance agreed upon between parties and does not lead to a reduction of the purchase price.

References for further information

OJ No C 43, 22.2.1989

OJ No L 134, 31.5.1980, p. 1

Case C-17/89* - Hauptzollamt Frankfurt am Main-Ost v. Deutsche Olivetti GmbH

Title : Transport costs, container transport

Language : German

Questions : According to what criteria are transport costs which, under Article 8 (1) (e) (i) of Council Regulation (EEC) No. 1224/80, are to be added to the price actually paid or payable for goods within the meaning of Article 3 to be determined if under fob terms of delivery an importer has paid a single all-inclusive price for transport of the goods beyond the place of introduction into the Community to a point inside the Community ? If the goods are imported in a container, is it material whether or not the goods were carried in the same container during the entire journey ?

Rulings :

1. Container transport cannot be considered to be a "means of transport" within the meaning of Article 15(2)(a) of Council Regulation (EEC) No. 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980, L 134, p. 1).
2. Where an importer has paid an all-inclusive price to have goods transported to a point beyond the place of introduction into the customs territory of the Community, and the goods have been carried using several different means of transport, the cost of transport referred to in Article 8(1)(e)(i) of the aforementioned regulation must be calculated either by deducting the cost of transport within the customs territory of the Community, determined on the basis of the rates normally applied, from the price actually paid or payable, or by determining the cost of transport to the place of introduction of the goods into the customs territory of the Community directly on the basis of the rates normally applied. It is for the national authorities to choose the criterion which is more likely to avoid arbitrary and fictitious values.

References for further information

OJ No. C 45, 24.2.1989

OJ No L 134, 31.5.1980, p. 1

* Reports of Cases before the Court, No 1990, p. I-2301

**Case C-79/89* - Brown Boveri & Cie AG v. Hauptzollamt
Mannheim**

Title : Software (distinguishing assembly charges) (before 1 May 1985)

Language : German

1. Was Article 3 of Regulation (EEC) No 1224/80 to be interpreted in 1982 as meaning that the transaction value of imported carrier media with software recorded on them in respect of which the supplier had provided the declarant with an invoice containing only a total price was the entire invoice price, or was the transaction value only that part of the invoice price which corresponded to the carrier medium ? Did it make any difference if the declarant distinguished between the price of the carrier medium and the price of the software at the material time or later ?
2. Are charges for assembly to be regarded as having been "distinguished" within the meaning of Article 3(4) of Regulation (EEC) No 1224/80 only when the distinction has been brought to the customs authorities' attention at the material time ?

Rulings :

1. In 1982, Article 3 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes was to be interpreted as meaning that the transaction value of carrier media containing at the time of importation recorded software in respect of which the supplier had invoiced a comprehensive price to the declarant had to be the invoiced price.
2. In order to be excluded from the customs value in accordance with Article 3 (4) (a) of Regulation No 1224/80, assembly costs must be distinguished in the declaration of the customs value from the price actually paid or payable for the goods. Pursuant to Article 8 of Council Directive 79/695/EEC of 24 July 1979 on the harmonisation of procedures for the release of goods for free circulation, that declaration cannot be corrected after the material time for valuation for customs purposes, which is to say, after the goods have been released for free circulation.

* Reports of Cases before the Court, No 1991, p. I-1853

Case C-116/89* - BayWa AG v. Hauptzollamt Weiden

Title : The valuation of goods for customs purposes - Harvest Seed - Licence fee

Language : German

Questions : In the case of a sale of harvest seed for the production of which basic seed supplied by the buyer was used, should there be added to the price paid or payable, for the purpose of determining the customs value, licence fees which the buyer has to pay in respect of the harvest seed to the breeder of the basic seed, even where the breeder's service has been performed within the Community ?

Ruling : In the case of a sale of harvest seed produced from basic seed supplied by the buyer, there should be added to the price paid or payable, for the purposes of determining the customs value in accordance with Article 8(1) (b) (i) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, licence fees which the buyer has to pay to the breeder of the basic seed in respect of the propagation of that seed, even where the breeder's service has been performed within the customs territory of the Community.

Reference for further information :

OJ No C 122, 17.5.1989

* Reports of Cases before the Court, No 1991, p. I-1095

Case C-299/90* - Hauptzollamt Karlsruhe v. Gebr. Hepp. GmbH & Co KG

Title : Customs value - Buying commission

Language : German

Questions :

1. In the event that a buying agent, acting in his own name but on behalf of another is involved, which contract must be regarded as the "sale" within the meaning of Article 3 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes ?
2. If the answer to Question 1 is that both the contract between manufacturer and agent and the contract between agent and importer meet the criteria of Article 3 of Regulation No 1224/80, and the importer has specified the price in his contract with the agent as the basis for determining the value of goods for customs purposes, must the buying commission be added to the price paid ?
3. If the answer to Question 1 is that only one sale, namely that between manufacturer and importer, has occurred, must the buying commission be included in the customs value when the importer, under the heading "Verkäufer" ("Seller") in the customs value declaration, has given the agent and his invoice price (without the commission)?
4. If the answer to Question 1 is that, although the contract between manufacturer and agent is a sale, the contract between agent and importer is not, how is the customs value to be determined under Community law when the importer has stated the customs value in the manner described in Question 3 ?

Rulings :

1. The transaction between the manufacturer or supplier of goods, on the one hand, and the importer, on the other, is the transaction to be taken into account in the determination of the customs value in accordance with Article 3(1) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, if a buying agent has acted in his own name and has in fact represented the importer by acting on his behalf.
2. The price in the transaction between the manufacturer or supplier, on the one hand, and the importer, on the other, constitutes the customs value for the purposes of Article 3(1) of Regulation (EEC) No 1224/80. The buying commission is not to be included in that value even when the importer has described the buying agent as the seller and has declared the price of the goods as invoiced by that agent.

Reference for further information :

OJ No C 274, 31.10.1990

* Reports of Cases before the Court, No 1991, p. I-4301

**Case C-16/91* - Wacker Werke GmbH & Co. KG v. Hauptzollamt
München-West**

Title : Outward processing - Total or partial relief from import duties -
Determination of the value of the compensating products and of the
temporary export goods

Language : German

Questions :

1. Must Article 13(1) of Council Regulation No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system (OJ 1986 L 212, p. 1) be interpreted as meaning that for the calculation of import duty the customs value of the compensating products and of the temporary export goods must in principle be based on their transaction value in accordance with Article 3(1) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1), as last amended by Council Regulation (EEC) No 1055/85 of 23 April 1985 (OJ 1985 L 112, p. 50)?
2. If the answer to the first question is in the negative, must the first alternative provided for in the second subparagraph of Article 13(2) of Regulation No 2473/86 be interpreted as meaning that the customs value of the compensating products is to be determined in accordance with this provision even where the holder of the outward processing authorisation has temporarily exported goods neither free of charge nor at reduced cost within the meaning of Article 8(1)(b)(i) of Regulation No 1224/80?
3. If the answer to the second question is in the affirmative, must Article 8(1)(b)(i) of Regulation No 1224/80 be interpreted as meaning that in order to determine the value of the products mentioned in that provision which have been manufactured by the holder of the outward processing authorisation himself only manufacturing costs are to be taken into account and that the transaction value is to be adjusted for the general expenses and profit margin included in the selling price of those products ?

If so, in order to determine the value of the compensating products, is their transaction value also to be adjusted for cost components forming part of the value of the temporary export goods to the extent that they are included in the transaction value of the compensating products ?

* Reports of Cases before the Court, No 1992, p. I-6821

Ruling :

Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system is to be interpreted as meaning that, in calculating the total or partial relief from import duty for which it provides, the calculation of import duty on the compensating products must in principle be based on the transaction value of those products, while the value of the temporary export goods must be calculated using one of the two methods set out in the second subparagraph of Article 12(2) of that regulation. If the value of the compensating products has been determined without any adjustment for the purposes of Article 8(1)(b)(i) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, the value of the temporary export goods corresponds to the difference between the customs value of the compensating products and the processing costs determined by reasonable means, such as taking account of the transaction value of the goods in question.

References for further information :

OJ No C 43, 19.2.1991

OJ No L 212, 2.8.1986, p. 1

OJ No L 134, 31.5.1980, p. 1

OJ No L 112, 25.4.1985, p. 50

**Case C-21/91* - Firma Wünsche Handelsgesellschaft International
(GmbH & Co.) v. Hauptzollamt Hamburg-Jonas**

Title : Financing costs

Language : German

Questions :

1. Must Article 3 of Regulation (EEC) No 1495/80 be interpreted as meaning that there is a "financing arrangement relating to the purchase of the imported goods" if the seller allows the buyer time for payment for which a purchase price increased by interest is agreed?
2. In that respect is Article 3(2) of Regulation (EEC) No 1495/80 as amended by Regulation (EEC) No 220/85 to be interpreted in the same manner as Article 3(c) of Regulation (EEC) No 1495/80 in its original version?

Rulings :

1. The expression 'financing arrangement' used in Article 3(2) of Commission Regulation (EEC) No 1495/80 of 11 June 1980 implementing certain provisions of Articles 1, 3 and 8 of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes, as amended by Commission Regulation (EEC) No 220/85 of 29 January 1985 is to be interpreted in the same manner as the expression 'financing arrangement' in the original version of Article 3(c) of Regulation No 1495/80.
2. Article 3 of Commission Regulation (EEC) No 1495/80 of 11 June 1980 implementing certain provisions of Articles 1, 3 and 8 of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purpose is to be interpreted as meaning that the words 'interest payable under a financing arrangement' refer also to the interest payable as a result of time allowed by the seller and accepted by the buyer for payment for imported goods.

* Reports of Cases before the Court, No 1992, p. I-3647

**Case C-59/92* - Hauptzollamt Hamburg-St. Annen v. Ebbe
Sönnichsen GmbH**

Title : Loss of quality - relevant time to be taken into account

Language : German

Questions :

1. Does the second sentence of Article 4 of Commission Regulation No 1495/80 (OJ 1980 L 154, p. 14) as amended by Commission Regulation No 1580/81 (OJ 1981 L 154, p. 36) apply also where goods purchased already contain defects reducing their value (inherent defects) before the transfer to the buyer of the risk of possible damage (passing of risk)?
2. If not: Is Article 3(1) of Council Regulation No 1224/80 of 28 May 1980 (OJ 1980 L 134, p. 1) to be interpreted as meaning that the transaction value is to be determined simply on the basis of agreement or a new purchase price taking account of the inherent defect found, or is the deciding factor the fact that the agreement altering the original purchase price has in fact also been implemented?

Ruling :

The second sentence of Article 4 of Commission Regulation (EEC) No 1495/80 of 11 June 1980, on measures for the implementation of Articles 1, 3 and 8 of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes, as amended by Commission Regulation (EEC) No 1580/81 of 12 June 1981, is to be interpreted as meaning that in event of a deterioration of goods which reduces their customs value no differentiation is to be made according to whether it occurred before or after the risk passed to the buyer.

* Reports of Cases before the Court, No 1993, p. I-2193

**Case C-29/93* - KG in Firma OSPIG Textil-Gesellschaft W. Ahlers
GmbH & Co v. Hauptzollamt Bremen-Freihafen**

Title : Quota costs

Language : German

Question :

Do quota charges arising from the acquisition of export quotas also not constitute part of the customs value of goods imported into the Community within the meaning of the provisions of Council Regulation (EEC) No 1224/80 of 28 May 1980 (OJ 1980 L 134, p. 1) in cases where export licences cannot be the subject of lawful trade in the relevant country of export (in this case, Taiwan) ?

Rulings :

Quota charges incurred in the acquisition of export quotas do not form an integral part of the value for customs purposes of goods imported into the Community pursuant to Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes and it is for that reason not necessary to determine whether export licences may be the subject of lawful trade in the country of export in question.

References for further information :

OJ No C 75, 17.3.1993

OJ No L 134, 31.5.1980, p. 1

* Reports of Cases before the Court, No 1994, p. I-1963

Case C-340/93* - Klaus Thierschmidt GmbH v. Hauptzollamt Essen

Title : Quota costs

Language : German

Questions :

1. Are payments by the buyer to the seller for export licences allocated to the seller (export quotas) part of the customs value ?
2. Must quota charges be "distinguished" ?
3. Are quota charges which have been incurred on the basis of the Community rules in Regulation (EEC) No 4134/86 to be treated in the same way as quota charges arising under Regulation (EEC) No 4136/86 ?

Rulings :

1. Quota charges paid by the buyer to the seller in respect of own quotas issued to the latter free of charge are included in the customs value of goods;
2. Quota charges not included in the customs value of goods do not need to be indicated separately in the declaration of customs value;
3. As regards the customs value of imports from Taiwan subject to Council Regulation (EEC) No 4134/86 of 22 December 1986 on the arrangements for imports of certain textile products originating in Taiwan, third-party quota charges must be treated in the same way as quota charges relating to imports subject to Council Regulation (EEC) No 4136/86 of 22 December 1986 on common rules for imports of certain textile products originating in third countries.

References for further information :

OJ No C 215, 10.8.1993

OJ No L 134, 31.5.1980, p. 1

OJ No L 333, 11.12.1980, p. 1

* Reports of Cases before the Court, No 1994, p. I-3905

Case C-93/96* - Indústria e Comércio Têxtil SA (ICT) v Fazenda Pública.

Title : Reference for a preliminary ruling: Supremo Tribunal Administrativo - Portugal. Anti-dumping duty - Council Regulation (EEC) No 738/92 - Free-at-frontier price - Increase in the event of deferred payment.

Language : Portuguese

Questions :

1. Is the increase (of 1% for each month that elapses without payment being made, following the 30th day after the arrival of the goods in the customs territory of the Community) provided for in Article 1(3) of Council Regulation (EEC) No 738/92 of 23 March 1992 applicable to the free-at-Community-frontier price whenever it is agreed that the price is payable on a date falling after that 30th day?
2. If the answer to the foregoing question cannot be unconditionally affirmative, as a result of the need for a distinction to be drawn, is the said increase applicable in circumstances like those of this case (see the facts proved) where the price of the imported goods, agreed as payable in 90 days, was about 2.3% (in one case) and 2.5% (in another case) greater than the price payable CAD (cash against documents)?
3. If the foregoing question is answered in the affirmative, must that increase be applied to the price corresponding to payment CAD or to the price agreed as payable in 90 days?

Rulings :

In answer to the questions referred to it by the Supremo Tribunal Administrativo by judgment of 14 February 1996, hereby rules: The increase provided for in Article 1(3) of Council Regulation (EEC) No 738/92 of 23 March 1992 imposing a definitive anti-dumping duty on imports of cotton yarn originating in Brazil and Turkey must be applied whenever it is agreed that imported goods are to be paid for more than 30 days after their arrival in the customs territory of the Community, even where the difference between the price for deferred payment and that for payment CAD is greater, in percentage terms, than the increase to be applied. That increase must be based on the price actually paid or payable for the goods when they are sold for export to the customs territory of the Community, excluding charges for interest as consideration for the deferred payment terms granted, provided that those terms are the subject of a 'financing arrangement' within the meaning of Article 3(2) of Commission Regulation (EEC) No 1495/80 of 11 June 1980 implementing certain provisions of Articles 1, 3 and 8 of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes, as amended by Commission Regulation (EEC) No 220/85 of 29 January 1985, and that the level of charges reflects current prevailing rates.

* Reports of Cases before the Court, No 1997, p. I-02881

Case C-142/96* - Hauptzollamt München v Wacker Werke GmbH -

Title : Reference for a preliminary ruling: Bundesfinanzhof - Germany. Outward processing relief - Total or partial relief from import duties - Determination of value of compensating products and temporary export goods - Reasonable means of determining value.

Language : German

Questions :

1. Is the second alternative provided for in the second subparagraph of Article 13(2) of Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements ... (OJ 1986 L 212, p. 1) to be interpreted as meaning that a method of determining processing costs is reasonable only if the resulting value of the temporarily exported goods corresponds approximately to the purchase price paid by the holder of an outward processing authorization or to the production costs?
2. If the answer to the first question is in the negative, in determining the processing costs can reference be made to the purchase price for the inputs inclusive of uplifts paid by the processor to the holder of an outward processing authorization, and does that apply equally where there is a tariff anomaly resulting in a higher rate of duty for the unprocessed goods than for the compensating products?'

Ruling :

The second subparagraph of Article 13(2) of Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system is not to be interpreted as meaning that a method of determining processing costs may be considered reasonable only if the resulting value of the temporary export goods corresponds approximately to the purchase price paid by the person entitled to outward processing relief or to the manufacturing costs. Reference to the transaction value of the temporary export goods is a reasonable means within the meaning of that provision. Moreover, in determining the processing costs, reference may be made to the purchase price, inclusive of uplifts, of the temporary export goods even if this results in a higher rate of duty for the unprocessed goods than for the compensating products.

* Reports of Cases before the Court, No 1997, p. I-04649

**Case C-15/99* - Hans Sommer GmbH & Co. KG v Hauptzollamt
Bremen.**

Title : Reference for a preliminary ruling: Finanzgericht Bremen - Germany.
Common Customs Tariff - Customs value - Cost of analysing goods - Post-clearance recovery of import duties - Remission of import duties.

Language : German

Questions :

1. Does the transaction value, within the meaning of Article 3(1) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1) as amended by Council Regulation (EEC) No 3193/80 of 8 December 1980 (OJ 1980 L 333, p. 1), of consignments of honey imported from 1989 to 1991 from the USSR include the "expenses" (Spesen) or the "costs of completing the transaction" (Abwicklungskosten), which the German importer invoices to the buyer on the basis of separate contractual agreements, if the importer is obliged to take samples after importation in order to establish the quality of the honey in accordance with the applicable German regulations and to supply the chemical results of those analyses?
2. If Question 1 is answered in the affirmative: Is Commission Decision C(95) 2325 of 28 September 1995 null and void?
3. If Question 2 is answered in the affirmative: Must the authorities refrain from post-clearance recovery of duty pursuant to Article 5(2) of Regulation (EEC) No 1697/79 if, at a previous on-the-spot inspection of importations, they raised no objection to the exclusion of flat-rate expenses from the customs value of similar transactions and it does not appear that the trader could have been in doubt about the correctness of the result of the inspection?
4. If Question 3 is answered in the negative: Do the circumstances described in Question 3 amount to a special situation within the meaning of Article 13 of Regulation No 1430/79 justifying the remission of duties?

Ruling :

1. The costs of analyses designed to establish the conformity of imported goods with the national legislation of the importing Member State, which the importer invoices to the buyer in addition to the price of the goods, must be regarded as an integral part of their 'transaction value' within the meaning of Article 3(1) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, as amended by Council Regulation (EEC) No 3193/80 of 8 December 1980.

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2. The customs authorities of a Member State must refrain from post-clearance recovery of duty pursuant to Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment of goods entered for a customs procedure involving the obligation to pay such duties, if, at a previous on-the-spot inspection of importations, they raised no objection to the non-inclusion of flat-rate expenses in the customs value of similar transactions and it does not appear that the trader, who had complied with all of the provisions laid down by the rules in force as far as his customs declaration is concerned, could have been in doubt about the correctness of the results of the inspection.

**Case C-379/00* - Overland Footwear Ltd v Commissioners of
Customs & Excise.**

Title: Customs Code - Customs value of imported goods - Price of goods and buying commission - Reimbursement of duty payable on full amount.

Language: English

Questions:

1. Could the bona fide buying commission be dutiable as part of the price actually paid or payable for the goods under Article 29 of the Customs Code?
2. If the answer to the first question is negative, could the bona fide buying commission be deductible from the declared transaction value bearing in mind the provisions of Articles 32(3) and 33 of the Customs Code?
3. In such circumstances are the customs authorities obliged under the Customs Code, and in particular Article 78(3) thereof, to accept the amendment to the price paid or payable for the imported goods and thereby reduced customs value?
4. Is the importer therefore entitled under the Customs Code, and in particular Article 236 thereof, to a refund of the duty paid on the buying commission?

Rulings:

1. Articles 29, 32 and 33 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be construed as meaning that a buying commission which is included in the customs value declared and is not shown separately from the selling price of the goods in the import declaration must be considered to be part of the transaction value within the meaning of Article 29 of that regulation and is, therefore, dutiable.
2. In a situation where the customs authorities have agreed to undertake a revision of an import declaration and have adopted a decision 'regularising the situation' within the meaning of Article 78(3) of Regulation No 2913/92 taking account of the fact that the declaration was incomplete as a result of an inadvertent error by the declarant, those authorities may not go back on that decision.

* Reports of Cases before the Court, No 2002 Page 00000

**Case C-422/00* - Capespan International plc v Commissioners of
Customs & Excise.**

Title: Community Customs Code – Fruit and vegetables – Calculation of customs value.

Language: English

Questions:

1. For products listed in the Annex to Commission Regulation (EC) No 3223/94, as replaced by Commission Regulation (EC) No 1890/96, and entered into the European Community from 18 March 1997 but before 18 July 1998, being the date upon which Commission Regulation (EC) No 1498/98 ... amending Article 5 of Regulation No 3223/94 is expressed to have entered into force, is the customs value of such products to be determined in accordance with
 - (a) the rules set out in Chapter 3 of Title II (namely Articles 28 to 36) to Council Regulation (EEC) No. 2913/92 ... and the rules set out in Title V (namely Articles 141 to 181a) to Commission Regulation (EEC) No. 2454/93 ...; or
 - (b) Article 5 of Regulation 3223/94?
2. If the customs value is not to be determined in accordance with either of the above, what is the correct basis for the determination of the customs value of such products?
3. Is Regulation No 1498/98, amending with effect from 18 July 1998 Article 5 of Regulation No 3223/94 valid?
4. If Regulation No 1498/98 is not valid, how is the customs value of products of the type identified in question (i), which are entered into the European Community from 18 July 1998, to be determined?
5. Whether or not Regulation No 1498/98 is valid, does Regulation No 3223/94 preclude the giving of a provisional indication of customs value in accordance with Article 254 of the Implementing Regulation?

Rulings:

1. The customs value of fruit and vegetables coming within the scope of Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables must, in respect of the period between 18 March 1997 and 17 July 1998

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inclusive, be determined in accordance with the rules for calculating entry price provided for in Article 5 of that regulation.

2. Consideration of the third question referred has disclosed no factor capable of affecting the validity of Commission Regulation (EC) No 1498/98 of 14 July 1998 amending Regulation No 3223/94.
3. On a proper construction of Article 5 of Regulation No 3223/94, an importer who is not in a position to make a definitive declaration of customs value at the time of customs clearance of fruit and vegetables coming under the scope of that regulation may give a provisional indication of that value under Article 254 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code only where the value of the abovementioned products is determined according to the method provided for in Article 5(1)(b) of Regulation No 3223/94.

C-468/03 - Overland Footwear Ltd v Commissioners of Customs & Excise

Title: Common customs tariff – Import customs duties – Declared customs value including a buying commission – Payment of customs duty on full amount declared – Revision of the customs declaration – Conditions – Refund of customs duties paid on the buying commission.

Language: English

Questions:

1. Could the bona fide buying commission be dutiable as part of the price actually paid or payable for the goods under Article 29 of the Customs Code?
2. If the answer to the first question is negative, could the bona fide buying commission be deductible from the declared transaction value bearing in mind the provisions of Articles 32(3) and 33 of the Customs Code?
3. In such circumstances are the customs authorities obliged under the Customs Code, and in particular Article 78(3) thereof, to accept the amendment to the price paid or payable for the imported goods and thereby reduced customs value?
4. Is the importer therefore entitled under the Customs Code, and in particular

Rulings:

1. Articles 29, 32 and 33 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that a buying commission included in the declared customs value and not distinguished from the sale price of the goods in the customs declaration is to be regarded as forming part of the transaction value within the meaning of Article 29 of the Code and therefore dutiable.
2. On a proper interpretation of Articles 78 and 236 of Regulation No 2913/92:
 - after the release of the imported goods, the customs authorities, presented with an application from the declarant seeking revision of his customs declaration in relation to those goods, are required, subject to the possibility of a subsequent court action, either to reject the application by a reasoned decision or to carry out the revision applied for;
 - where they find, at the conclusion of that revision, that the declared customs value erroneously included a buying commission, they are required to regularise the situation by reimbursing the import duties applied to that commission.

**C 306/04 – Compaq Computer International Corporation vs.
Inspecteur der Belastingdienst – Douanedistrict Arnhem**

Title: Community Customs Cod – Customs value – Laptop computers equipped with operating systems software

Language: Dutch

Questions: Where computers equipped with operating systems by the seller are imported, must the value of the software made available to the seller by the buyer free of charge be added to the transaction value of the computers pursuant to Article 32(1)(b) of the Community Customs Code where the value of the software is not included in the transaction value?

Ruling:

In order to determine the customs value of imports of computers equipped by the seller with software for one or more operating systems made available by the buyer to the seller free of charge, in accordance with Article 32(1)(b) or (c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, the value of the software must be added to the transaction value of the computers if the value of the software has not been included in the price actually paid or payable for those computers.

The same is true when the national authorities accept as the transaction value, in accordance with Community law, the price of a sale other than that made by the Community purchaser. In such cases, ‘buyer’ for the purposes of Article 32(1)(b) or (c) of the Customs Code must be understood to mean the buyer who concluded that other sale.

**Case C 491/04* - Dollond & Aitchison Ltd v Commissioners of
Customs & Excise**

Title: Community Customs Code – Customs value – Customs import duties – Delivery of goods by a company established in Jersey and supplies of services effected in the United Kingdom

Language: English

Questions:

1. Is that part of the payment which is made by a customer to [DALD] for the supply of specified services by [D & A] or by its franchisees to be included in the total payment for the specified goods so as to be part of the price paid or payable for the specified goods within the meaning of Article 29 of [the Customs Code] in circumstances where the customer is a private consumer and importer on whose behalf [DALD] accounts for VAT on importation?

The specified goods are:

- (i) contact lenses
- (ii) cleaning solutions
- (iii) soaking cases.

The specified services are:

- (iv) a contact lens examination
- (v) a contact lens consultation
- (vi) any on-going aftercare required by a customer.

2. If the answer to [Question] 1 above is No, may the amount of the payment for the specified goods nonetheless be calculated under Article 29 or is it necessary to make such calculation under Article 30 of [the Customs Code]?

3. In view of the fact that the Channel Islands are part of the customs territory of the Community but are not part of the VAT territory for the purposes of the [Sixth Directive], does any of the guidance set out in Case C-349/96 *Card Protection Plan v Commissioners of Customs and Excise* [[1999] ECR I-973] apply for the purposes of determining which part or parts of the transaction comprising the provision of specified services and specified goods fall to be valued for the purposes of applying the [Common] Customs Tariff of the European Communities?

Rulings:

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1. Article 29 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that, in circumstances such as those of the main proceedings, payment for the supply of specified services, such as examination, consultation or aftercare required in connection with contact lenses, and for specified goods, consisting of those lenses, the cleaning solutions and the soaking cases, constitutes as a whole the 'transaction value' within the meaning of Article 29 of the Customs Code and is, therefore, dutiable.

2. The principles laid down in the *CCP* judgment (Case C-349/96) of 25 February 1999 cannot be used directly to determine the elements of the transaction to be taken into account for the purposes of applying Article 29 of the Customs Code.

Case C 263/06* - Carboni e derivati Srl v Ministero dell'Economia e delle Finanze, Riunione Adriatica di Sicurta Spa

Title: Common commercial policy – Protection against dumping – Anti-dumping duty – Hematite pig iron originating in Russia – Decision No 67/94/ECSC – Determination of customs value for purposes of the application of a variable anti-dumping duty – Transaction value – Successive sales at different prices – Whether the customs authority may take into consideration the price indicated in a sale of goods effected prior to that on the basis of which the customs declaration was made)

Language: English

Questions:

1. According to the principles of Community customs law and for the purpose of application of an anti-dumping duty such as that laid down by Commission Decision No 67/94, the customs authority may refer to the price indicated in a sale of the same goods which took place prior to that on the basis of which the customs declaration was made, where the buyer is a Community subject or, in any case, the sale took place for import into the Community?

Rulings:

1. In accordance with Article 1(2) of Commission Decision No 67/94/ECSC of 12 January 1994 imposing a provisional anti-dumping duty on imports into the Community of hematite pig iron, originating in Brazil, Poland, Russia and Ukraine, the customs authorities may not determine the customs value for the purpose of applying the anti-dumping duty established by that decision on the basis of the price indicated for the goods concerned in a sale prior to that on the basis of which the customs declaration was made when the declared price corresponds to the price actually paid or payable by the importer.

If the customs authorities have reasonable doubts as to the accuracy of the declared value and their doubts are confirmed after they have asked for additional information or documents and have provided the person concerned with a reasonable opportunity to respond to the grounds for those doubts, without it being possible to determine the price actually paid or payable, they may, in accordance with Article 31 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, calculate the customs value for the purpose of applying the anti-dumping duty established by Decision No 67/94 by reference to the price agreed for the goods in question in the most recent sale prior to that on the basis of which the customs declaration was made and in regard to which the customs authorities have no objective reason to doubt its accuracy.

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SECTIONS F: INDEX OF TEXTS OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION OF THE WCO¹⁷

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- 5.1. Treatment of cash discount under the Agreement.
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¹⁷ Please note that the instruments listed in this section cannot be reproduced in this document. They have been published in the WCO Compendium on customs valuation which contains the WTO agreement and texts of the technical Committee of Customs valuation of the WCO. It is available from the World Customs Organisation, RUE DU MARCHE 30, B-1210 BRUXELLES, PHONE: (32-2)209.92.11, FAX: (32-2) 209.92.92 OR E-MAIL: VALUATION@WCOOMD.ORG. Selected information is also available online under the following address : <http://www.wcoomd.org>.

- 8.1. Treatment under the Agreement of credits in respect of earlier transactions.
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- 10.1. Adjustment for difference in commercial level and in quantity under Article 1.2 (b) and Articles 2 and 3 of the Agreement.
- 11.1. Treatment of tie-in sales.
- 12.1. Meaning of the term “restrictions” in Article 1.1 (a) (iii).
- 13.1. Application of the decision on the valuation of carrier media bearing software for data processing equipment.
- 14.1. Application of Article 1, paragraph 2.
- 15.1. Application of deductive value method.
- 16.1. Activities undertaken by the buyer of his own account after purchase of the goods but before importation.
- 17.1. Buying commissions.
- 18.1. Relationship between Articles 8.1 (b) (ii) and 8.1 (b) (iv).
- 19.1. Meaning of the expression “right to reproduce the imported goods” within the meaning of the Interpretative Note to Articles 8.1 (c).
- 20.1. Warranty charges.
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LIST OF EXPLANATORY NOTES

- 1.1. Time element in relation to Articles 1, 2 and 3 of the Agreement.
- 2.1. Commissions and brokerage in the context of Article 8 of the Agreement.
- 3.1. Goods not in accordance with contract.
- 4.1. Consideration of relationship under Article 15.5, read in conjunction with Article 15.4.
- 5.1. Confirming commissions.
- 6.1. Distinction between the term “maintenance” in the Note to Article 1 and the term “warranty”.

LIST OF CASE STUDIES

- 1.1 Report on a case study with special reference to Article 8.1 (*b*) : engineering, development, artwork, etc.
- 2.1 Application of Article 8.1 (*d*) of the Agreement.
- 2.2 Treatment of proceeds under Article 8.1 (*d*).
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- 4.1 Treatment of rented or leased goods.
- 5.1 Application of Article 8.1 (*b*).
- 5.2 Application of Article 8.1 (*b*).
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- 7.1 Application of the price actually paid or payable.
- 8.1 Application of Article 8.1.
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- 9.1 Sole agents, sole distributors and sole concessionaires.
- 10.1 Application of Article 1.2.
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LIST OF STUDIES

- 1.1. - Treatment of used motor vehicles.
 - Supplement to Study 1.1.
- 2.1. Treatment of rented or leased goods.