



# COMPENDIUM OF CUSTOMS VALUATION TEXTS

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*Taxation and  
Customs Union*

## **Foreword**

A Compendium of the legal provisions and accompanying texts relating to application of Customs Valuation legislation was last published in consolidated form in 2008. 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. But mainly, the new regulatory package (the UCC and Implementing and Delegated Acts) entered into application as from 1.5.2016, rendering indispensable an in-depth updating and revision of the Compendium in the light of the new legislation.

This is an updated and revised version of the Compendium of customs valuation texts as concerns instruments concluded by the Customs Code Committee and the Customs Expert group - Customs Valuation Section.

The present compendium has been prepared primarily for Member States administrations but should be available to all interested parties.

The instruments of the Compendium are the result of considerations in the Committee and Expert Group. 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. They reflect the view of the Customs Code Committee and of the Customs Expert Group – Customs Valuation Section and support uniform interpretation and application. Economic operators are however advised to consult their national customs administration as regards concrete decisions in individual cases.

All instruments adopted prior the entry into force of the UCC package have been the subject of in-depth scrutiny. Instruments still fully relevant under the new legislation have been updated with the new legal references. Other instruments have been amended in their text, but not in their conclusions, taking into account certain modifications in law, whereas other, no longer useful or inconsistent with the new provisions, have been deleted.

A summary of judgements of the Court of Justice of the European Union is included.

A section indicating instruments adopted by the Technical Committee for Customs Valuation of the World Customs Organisation is also included for the sake of completeness.

The authentic texts of EU Regulations and Directives are those published in the Official Journal of the EU. As regards judgements of the European Court of Justice the authentic texts are those given in the reports of cases before the Court of Justice.

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**SECTION A:**  
**UE LEGAL TEXTS ON CUSTOMS VALUATION**  
**(REFERENCES)**

## **THE UCC PACKAGE**

### **THE UCC**

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

Articles 69-76

### **THE UCC DA**

Commission Delegated Regulation (EU) 2015/2246 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

Article 71

### **THE UCC IA**

Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 (the UCC IA) laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

Articles 127-146

Annexes 23-01 and 23-02

### **THE UCC TRANSITIONAL DELEGATED ACT**

Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending delegated Regulation 2015/2246

Article 6

Annex 8



## **Other provisions of the UCC referring to the establishment of the customs value<sup>1</sup>**

### **a) Customs formalities**

Article 5 - Definitions

Article 15 – Provision of information to the customs authorities

Article 18 – Customs representative

Articles 22-30 – Decisions relating to the application of the customs legislation

Article 51 – Keeping of documents and other information

Article 53 – Currency conversion

Articles 77-80 - Incurrence of a customs debt on import

Article 85 – General rules for calculating the amount of import or export duty

Article 86 – Special rules for calculating the amount of import duty

Article 87 – Place where the customs debt is incurred

Article 127 – Lodging of an entry summary declaration

### **b) General rules on customs procedures**

Article 162 – Content of a standard customs declaration

Article 163 – Supporting documents

Article 166 – Simplified declaration

Article 167 – Supplementary declaration

Article 172 – Acceptance of a customs declaration

### **c) Release for free circulation and special procedures**

Article 201 – Release for free circulation – scope and effect

Article 226 – External transit

Article 240 – Storage in customs warehouses

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<sup>1</sup> This list is limited to the UCC provisions most relevant for customs valuation. These provisions are implemented or supplemented, as the case may be, in accordance with the relevant conferral of implementing power or delegation of power, by additional provisions of the UCC IA and DA.

Article 250 – Temporary admission

Article 254 – End-Use procedure

Article 256 – Scope of inward processing

Article 259 – Scope of outward processing

### **Other provisions of the EU legislation referring to the establishment of the customs value**

#### **a) Import value for VAT purposes**

COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax – Article 85

#### **b) External trade statistics**

COMMISSION REGULATION (EU) No 113/2010 of 9 February 2010 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards trade coverage, definition of the data, compilation of statistics on trade by business characteristics and by invoicing currency, and specific goods or movements – Article 4

#### **c) Measures in the field of the Common Agriculture Policy**

REGULATION (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products – Article 181

COMMISSION IMPLEMENTING REGULATION (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors - Articles 133-137

**SECTION B:**  
**INTERPRETATIVE NOTES ON CUSTOMS VALUATION**  
**(WTO Customs Valuation Agreement)**

**Note:** This Section reproduces the Interpretative Notes to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (also referred to as "the WTO Customs Valuation Agreement – CVA -"), of which they form integral part. The CVA is binding for all WTO members, and must be reflected in their legislation.

These interpretative notes have now been grouped according to the valuation method they refer to, with the indication in front of each of them of the relevant EU legal Provisions.

## TRANSACTION VALUE METHOD

Provisions of the UCC and the UCC IA	Notes
<p><i>Article 70 (1) and (2) UCC</i></p> <p><i>Article 129 UCC IA</i></p>	<p>The price paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.</p> <p>An example of indirect payment in the meaning of Article 129 UCC IA would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.</p>
<p><i>Article 70 (3)(a)(iii) UCC</i></p>	<p>An example of such restriction would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.</p>
<p><i>Article 70 (3)(b) UCC</i></p> <p><i>Article 133 UCC IA</i></p>	<p>Some examples of this include:</p> <ul style="list-style-type: none"> <li>a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;</li> <li>b) The price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;</li> <li>c) The price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.</li> </ul> <p>However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the Union shall not result in rejection of the transaction value for the purposes of Article 70 UCC.</p>
<p><i>Article 70 (3)(d) UCC</i></p> <p><i>Article 134 UCC IA</i></p>	<ol style="list-style-type: none"> <li>1. Article 134 UCC IA provides different means of establishing the acceptability of a transaction value.</li> <li>2. Paragraph 1 provides that where the buyer and seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs authorities have no doubts about the acceptability of the price, it should be accepted without requesting further information from the declarant. For example,</li> </ol>

the customs authorities may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs authorities are unable to accept the transaction value without further inquiry, they should give the declarant an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs authorities should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and the seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and the seller, although related under the provisions of Article 127 UCC IA, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.
4. Paragraph 2 provides an opportunity for the declarant to demonstrate that the transaction value closely approximates to a 'test' value previously accepted by the customs authorities and is therefore acceptable under the provisions of Article 70 UCC. Where a test under paragraph 2 is met, it is not necessary to examine the question of influence under paragraph 1. If the customs authorities already have sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2 has been met, there is no reason for them to require the declarant to demonstrate that the test can be met.
5. A number of factors must be taken into consideration in determining whether one value 'closely approximates' to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and whether the difference in value is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the 'test' values set forth in Article 134 (2) IA.

<p><i>Article 71 (1)(b) (ii) UCC</i></p> <p><i>Article 135 UCC IA</i></p>	<ol style="list-style-type: none"> <li>1. There are two factors involved in the apportionment of the elements specified in Article 71 (1) (b) (ii) to the imported goods – the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be in reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.</li> <li>2. Concerning the value of the element, if the buyer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the buyer or by a person related to him, its value should be the cost of producing it. If the element had been previously used by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would have to be adjusted downwards to reflect its use in order to arrive at the value of the element.</li> <li>3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment, if the buyer wishes to pay duty on the entire value at one time. As another example, he may request that value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the buyer.</li> <li>4. As an illustration of the above, a buyer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The buyer may request the customs authorities to apportion the value of the mould over 1,000 or 4,000 or 10,000 units.</li> </ol>
<p><i>Article 71 (1)(b) (iv) UCC</i></p> <p><i>Article 135 UCC IA</i></p>	<ol style="list-style-type: none"> <li>1. Additions for the elements specified in Article 71 (1) (b) (iv) should be based on objective and quantifiable data. In order to minimize the burden for both the declarant and the customs authorities in determining the values to be added, data readily available in the buyer's commercial record system should be used insofar as possible.</li> <li>2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for the elements available in the public domain, other than the cost of obtaining copies of them.</li> <li>3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.</li> </ol>

	<p>4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment can be made under the provisions of Article 71.</p> <p>5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 71 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.</p> <p>6. Variations to the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.</p> <p>7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the Union.</p>
<p><i>Article 71 (1)(c) UCC</i> <i>Article 136 UCC IA</i></p>	<p>The royalties and licence fees referred to in Article 71 (1) (c) may include, among other things, payments in respect to patents, trademark and copyrights.</p>
<p><i>Article 71 (2) UCC</i></p>	<p>Where objective and quantifiable data do not exist with regard to the additions required under the provisions of Article 71, the transaction value cannot be determined under the provisions of Article 70. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the Kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller) it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price paid or payable can be made.</p>

## METHODS OF IDENTICAL AND SIMILAR GOODS

Provisions of the UCC and the UCC IA	Notes
<p><i>Article 74 (2)(a) and (b) UCC</i></p> <p><i>Article 141 UCC IA</i></p>	<ol style="list-style-type: none"> <li>1. In applying these provisions, the customs authorities shall, where possible, use a sale of identical or similar goods, as appropriate, at the same commercial level and in substantially the same quantity as the goods being valued. Where no such sale is found, a sale of identical or similar goods, as appropriate, that takes place under any one of the following three conditions may be used:               <ol style="list-style-type: none"> <li>a) A sale at the same commercial level but in a different quantity;</li> <li>b) A sale at different commercial level but in substantially the same quantity;</li> <li>c) A sale at a different commercial level and in different quantity.</li> </ol> </li> <li>2. In Article 141 (1) IA the expression 'and/or' allows the flexibility to use the sales and make the necessary adjustments in any one of the Three conditions here above described.</li> <li>3. Having found a sale under any one of these three conditions, adjustments will then be made, as the case may be, for               <ol style="list-style-type: none"> <li>a) Quantity factors only;</li> <li>b) Commercial level factors only; or</li> <li>c) Both commercial level and quantity factors.</li> </ol> </li> <li>4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or decrease of the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical or similar imported goods, as appropriate, for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 74 (1) and (2) is not appropriate.</li> </ol>



## DEDUCTIVE (UNIT PRICE) METHOD

Provisions of the UCC and the UCC IA	Notes
<p><i>Article 74 (2)(c) UCC</i></p> <p><i>Article 142 UCC IA</i></p>	<ol style="list-style-type: none"> <li>1. In Article 142 (5) (a) IA the words "profit and general expenses" should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by the declarant unless his figures are inconsistent with those obtaining in sales in the Union of imported goods of the same class or kind. Where the declarant's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by the declarant.</li>   <li>2. In determining either the commissions or the usual profits and general expenses under this provision, the question whether certain goods are of the same class as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of this provision, 'goods of the same class or kind' includes goods imported from the same country as the goods being valued as well as goods imported from other countries.</li>   <li>3. Whether this method of valuation is used, deductions made for the value added for further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of constructions, and other industry practices would form the basis of the calculations.</li>   <li>4. This method of valuation would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty.</li> </ol> <p>On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the Union that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.</p>

Article 74 (2)(c) UCC

Article 142 UCC IA

1. As an example of the notion of 'greatest aggregate quantity', goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 to 10 units	100	10 sales of 5 units 5 sales of 3 units	65
11 to 25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

2. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.
3. A third example would be the following situation where various quantities are sold at various prices

**a. Sales**

<i>Sale quantity</i>	<i>Unit price</i>
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

	<b>b. Total</b>	
	<i>Total quantity sold</i>	<i>Unit price</i>
	65	90
	50	95
	60	100
	25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

## COMPUTED VALUE METHOD

Provisions of the UCC and the UCC IA	Notes
<p><i>Article 74 (2)(d) UCC</i></p> <p><i>Article 143 UCC IA</i></p>	<ol style="list-style-type: none"> <li>1. As a general rule, customs value is determined under these provisions on the basis of information readily available in the Union. In order to determine a computed value, however, it may be necessary to examine the cost of producing the goods being valued and other information which has to be obtained from outside the Union. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the Member State. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of import the necessary costings and to provide facilities for any subsequent verification which may be necessary.</li> <li>2. The 'cost or value' referred to in Article 74 (2) (d) first indent, is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.</li> <li>3. The 'amount for profit and general expenses' referred to in Article 74 (2) (d) second indent, is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.</li> <li>4. No cost or value of the elements referred to in this Article shall be counted twice in determining the computed value.</li> <li>5. It should be noted in this context that the 'amount for profit and general expenses' has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the Union and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where</li> </ol>

producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Whether certain goods are 'of the same class or kind' as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 74 (2) (d), sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 74 (2) (d), 'goods of the same class or kind' must be from the same country as the goods being valued.

## RESIDUAL (FALL-BACK) METHOD

Provisions of the UCC and the UCC IA	Notes
<p><i>Article 74 (3) UCC</i></p> <p><i>Article 144 UCC IA</i></p>	<ol style="list-style-type: none"> <li>1. Customs values determined under the provisions of Article 74 (3) should, to the greatest extent possible, be based on previously determined customs values.</li> <li>2. The methods of valuation to be employed under Article 74 (3) should be those laid down in Articles 70 and 74 (1) and (2), but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 74 (3).</li> <li>3. Some examples of reasonable flexibility are as follows:               <ol style="list-style-type: none"> <li>a. <i>Identical goods</i> – the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Article 74 (2) (c) and (d) could be used;</li> <li>b. <i>Similar goods</i> – the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexible interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Article 74 (2) (c) and (d) could be used;</li> <li>c. <i>Deductive method</i> – the requirement that the goods shall have been sold in the 'condition as imported' in Article 142 (1) IA could be flexibly interpreted; the '90 days' requirement could be administered flexibly.</li> </ol> </li> </ol>

**SECTION C:**  
**COMMENTARIES OF THE CUSTOMS CODE COMMITTEE**  
**AND THE CUSTOMS EXPERT GROUP**  
**(VALUATION SECTIONS)**

**Note:** The instruments of this section do not constitute legally binding acts and are of an explanatory nature. The purpose is to ensure a common understanding for both customs authorities and economic operators and to provide tools to facilitate the correct and harmonised application by MS.

Legal provisions of customs legislation take precedence over the content of these instruments and should always be consulted. The authentic texts of the EU legal provisions are those published in the Official Journal of the European Union.

## **Commentary No 1**

### **Application of Article 71(1)(b) of the UCC on the valuation of goods for customs purposes**

#### **Introduction**

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

#### **Legal basis**

2. Article 71(1)(b) of the UCC is applicable in cases where :
  - the customs value of the imported goods is determined under Article 70 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

#### **Country from which the assists are supplied**

3. The country from which assists are supplied is not relevant in determining whether particular goods or services fall within the scope of Article 71(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 Union itself. However, in keeping with the provisions of Article 71(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 71(1)(b) if the work referred to has been carried out in the Union.

#### **Transport and associated costs**

5. By reason of Article 135 UCC IA, 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 71(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 EU 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 71(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 71(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. 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 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 to know how that value is being apportioned.

**Example 2:** Company A in the union 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 71(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 71(1)(b) to be included in the customs value of the jackets is the whole price for the patterns.

Note: See also case C-116/89 of the European Court of Justice.

## **Commentary No 2**

### **Application of Article 132 of the UCC IA**

#### **Introduction**

1. Article 132 UCC IA sets out the treatment available where goods are damaged or defective at time of importation.
2. Under Article 132, 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.
3. 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.
4. 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 3<sup>rd</sup> parties, or exchange goods which cannot be regarded as acceptable forms of price adjustment.

#### **Nature of defective goods**

5. The UCC already contains provisions on defective goods. No particular definition of what constitutes defective goods is provided for in Article 132 UCC IA. 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 132 (b) 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 132 does not otherwise indicate that a legal basis exists for the acceptance of price review mechanisms.

## **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 Union. 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 present<sup>2</sup>, 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

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<sup>2</sup> Defects to be established on the basis of manufacturer's specifications and technical norms set out in the relevant warranty documentation.

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.

### **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 70 of the UCC and Article 132 UCC IA?

### **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 1 year 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 70 of the UCC and Article 132 of the UCC IA.

## **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 Union.
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 present<sup>3</sup>, 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.

### **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 70 of the UCC and Article 132 of the UCC IA?

### **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

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<sup>3</sup> Defects to be established on the basis of manufacturer's specifications and technical norms set out in the relevant warranty documentation.

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 132 UCC IA as only actually defective vehicles could have benefited from that provision.

## **Commentary No 3**

### **Incidence of royalties and licence fees in the customs value**

#### **Introduction**

1. The practical application of the principles set out in Union 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 Union. This Commentary by the Customs Valuation Committee has been written therefore to provide some general guidance on this subject.
2. The Union legal provisions relating to the incidence of royalties and licence fees in customs value are:
  - Article 71(1)(c), Article 71(2) and Article 72(d) and (g) of the UCC;
  - Article 136 of the UCC

#### **Payment of royalty or licence fees**

3. 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.
4. A definition of "know-how" is reproduced in paragraph 12 of the OECD Commentary on Article 12 of the OECD Model Double Taxation Convention on Income and on Capital (1977) 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**

5. 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.

6. "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.
7. 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**

8. 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. 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**

9. 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. 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 71(2) of the UCC)**

10. In general royalties and licence fees are calculated after importation of the goods to be valued. In such cases final valuation may be delayed. 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.
11. 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.



12. 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.
13. 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.
14. 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**

15. In accordance with Article 72(d) and (g) of the UCC, 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 Union; 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 Union of the goods.

## **Commentary No 4**

### **Rates of exchange to be used in the determination of the customs value**

The rules regarding the rates of exchange to be used in determining the customs value of imported goods are set out in Article 146 UCC IA. They implement the basic principles laid down in Article 53 UCC.

The exchange rates to be used:

- are published and/or made available by the competent authorities of the Member States; and
- apply during a fixed period.
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The rates of exchange used in determining the customs value are fixed monthly and remain unchanged for the whole following month.,

The provisions of Article 146 UCC IA are commented on below:

#### **Paragraph 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.

#### **Paragraph 4**

This provision deals with the situation where a rate of exchange is not published on the second-last Wednesday of a given month (either for all or particular currencies

The absence of a publication may arise for such reasons as the closing of the exchange markets on a public holiday or the suspension of dealings pending 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.

Example of application of Article 146(4)

Resort to use of the most recent published rate 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 146 (4).

## **Commentary No 5**

### **Assessment of certain elements to be included in or excluded from the customs value of imported goods**

#### **Introduction**

1. Articles 71 and 72 of the UCC 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 Union. The purpose of this commentary is to provide guidance regarding the practical assessment of these elements, without prejudice of the specific provisions regarding some of them (like for examples Articles 135 and 136 UCC IA).
2. As laid down in Article 71(2) UCC, additions to the price paid or payable shall be made only on the basis of objective and quantifiable data. Although this requirement is specifically laid down with reference to additions only, it must be considered to be a general valuation principle, applicable therefore also to the elements referred to in Article 72 (elements to be excluded from the customs value).
3. The elements referred to in Article 72 of the UCC are the following:
  - costs of transport of the goods after their entry into the customs territory of the Union
  - charges for construction, erection, assembly, maintenance or technical assistance undertaken after the entry into the customs territory of the Union
  - charges for interest under a financial arrangement entered into by the buyer and relating to the purchase of the goods being valued;
  - charges for the right to reproduce imported goods
  - buying commissions
  - import duties or other charges payable in the Union by reason of the import or sale of the goods.

Some of the above listed elements are also the subject of specific comment at paragraphs 9 to 14.

## **General**

4. For the purpose of satisfying the requirement of the existence of objective and quantifiable data on whose basis additions and/or deductions are made, it is necessary that the value of these elements is clearly identifiable and separate from the price of the goods.
5. To this purpose , it is necessary not only to make a claim in the appropriate boxes of the declaration (or where still used, of the value declaration) but also, where appropriate, to establish the nature of the element and its amount in monetary terms.
6. 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.

7. To facilitate valuation, declarants should make prior arrangement to have the documentary evidence referred to at paragraph 6 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 the provisions on simplified declarations, for the declarant to obtain the documents in question and communicate them to the Customs.
8. Normally the conditions referred to at paragraphs 4 to 7 above must be met before an exemption can be allowed in the determination of the customs value.

## **Customs duties and other taxes**

9. The concept of the segregation of the indication of the amounts to be deducted with 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. There it is stated 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.

10. 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.
11. In keeping with paragraph 4 above, the amount to be excluded from the customs value should be specified in the declaration (or in the value declaration, where applicable).

### **Interest charges**

12. Regarding the exclusion of interest charges from customs value, Article 72(1)(c) of the UCC prescribes additional conditions to be met. 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 declaration in accordance with paragraph 5 above.

### **Cost of transport after arrival at place of introduction in the customs territory of the Union**

13. Where the goods are imported at a price which includes delivery at a destination within the customs territory of the Union, the invoice or other commercial documents may not separately specify the cost of transport inside the Union. It is likely that in such cases a declarant will declare a customs value which does not include the cost of transport within the Union and will indicate this cost in the appropriate box. This, of course, would not in itself be sufficient for these costs to be considered as "distinguishable". The amount to be excluded must also be established in the manner mentioned at paragraph 6 above.
14. 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 Union, 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 Union, 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 72(a) of the UCC.
- (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 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 Union or, lacking that, the usual

cost for such transport. In the latter case it is reasonable to expect that the deductions allowed with reference to 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 Union freight rates.

## **Commentary No 6**

### **Documents and information which customs may require as evidence for the determination of a customs value**

#### **Introduction**

1. The declarant must provide the necessary information for the determination of the customs value of imported goods. With the entry into force of the UCC package, it is now stipulated that the relevant elements for the determination of the customs value, previously provided by means of the DV1 document, are now to be included directly into the customs declaration.
2. Nonetheless, Article 6 of Regulation No 2016/341 (the UCC Transitional Delegated Act) stipulates that, until the upgrading of the relevant national IT system, the particulars referring to customs value can still be provided by means other than data processing techniques, by means of a form substantially identical to the "old" DV1.
3. Like other declarations or statements presented to the Customs the information relating to a customs value, however provided, may need to be established with supporting evidence. So the particulars referred to customs value are usually 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 of the customs value is insufficient, the customs have the right to require the declarant to present further particulars or information.
3. Under specific circumstances, the customs may waive the requirement of certain particulars referring to the customs value.

#### **Legal basis**

4. A general right of the Customs to require documents or information in support of a customs declaration is laid down in Article 15 of the Union Customs Code.

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

5. Article 15 of the Code stipulates that all requisite information and documents for the accomplishment of customs formalities shall be supplied to the Customs. This provision does not specify what documents or information have to support the different particulars declared.

6. Concerning the determination of the customs value, Article 145 UCC IA stipulates that the invoice related to the declared transaction value is required as a supporting document of the declaration.

However, the invoice 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 145 UCC IA Provisions the declarant shall furnish the customs with a copy of the invoice on the basis of which the transaction 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 70 of the UCC, but also for establishing other particulars, such as the following :

- the price of goods when resold in the Union, for the purposes of applying the deductive method laid down in Article 74(2)(c) of the UCC;
- the cost of assists

- (b) A contract of sale can be used/required in support of various aspects of the invoice, such as :

- any possible restriction, condition or consideration
- any possible arrangement between the seller and the buyer affecting the customs value of the goods
- activities undertaken after importation
- the currency in which a price is settled
- contracts and other documents concerning reproduction rights for the imported goods

- (c) A royalty contract for establishing whether or not a royalty payment should be included in the customs value and, if so, to what extent.

- (d) An agency contract for establishing an addition for commissions or brokerage or for the exclusion of a buying commission.



- (e) Transport and insurance documents for the purpose of determining, inter alia:
- the terms of delivery
  - the costs of delivery to the place of entry into the EU customs territory and
  - the costs of transport after arrival at that point of entry.
- (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
- (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,
  - 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 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 possibility of 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. EDI. Again, in these cases, the customs may accept any such documents or other forms of evidence subject to the conditions stated above in paragraph 8.

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 "pro-forma invoices" (or similar). These documents could not be acceptable as supporting documents for a declared transaction value. However, for goods that have been sold such documents 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 15 of the UCC stipulates that any person directly or indirectly involved in the accomplishment of customs formalities or in customs control shall, at the request of the customs authorities and within any time-limit specified, provide the customs authorities with all requisite information and documents, and all the assistance necessary for the completion of customs formalities and controls.

The wording "any person directly or indirectly involved in the completion of customs formalities" in principle includes the declarant (as defined in Article 5(15) of the UCC) and, as the case may be, a representative in accordance with Article 18 of the UCC,

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 be treated by the customs authorities in accordance with the provisions of Article 12 of the UCC.

### **Acceptance of information supplied to the customs authorities**

14. Customs are entitled to request further information in accordance with Article 140 UCC IA. All relevant documents could be presented and examined in the context of such a procedure. In any case, customs administrations would not be limited to examination of the documents listed in this commentary.

**Commentary No 7**

**DELETED**

## **Commentary No 8**

### **Treatment of discounts under Article 70 UCC and Article 130 UCC IA**

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 time, a discount can affect the amount of the price paid or payable in accordance with the relevant provisions applicable (Articles 70 UCC and 130 UCC IA).

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 70 of the 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.<sup>4</sup>

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<sup>4</sup> 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).

6. The price payable for settlement at the material time shall, as a general rule, be taken as a basis for customs value (Art. 130 (2) UCC IA). 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). The valuation rules do now set out a basis for acceptance of the price paid or payable in such 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 Union 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 Union.

### **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.

## **Commentary No 9**

### **Apportionment of air transport costs (according to Annex 23-01 of the UCC IA)**

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 EU?

#### **EXAMPLE**

The buyer purchases the goods from a supplier in Colombia, where the goods originate, and are transferred by airfreight to an 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 EU. 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 EU), using the percentage which applies for an operation beginning at that airport of departure, as per Annex 23-01 UCC IA (Zone B).

#### **OPTION 2**

The air transport apportionment is applied to the whole airfreight cost (Bogotá to Miami plus Miami to EU) using the Bogotá rate in Annex 23-01 UCC IA (also Zone B).

#### **CONCLUSION**

In the case outlined above the apportionment in principle should apply only to the air transport costs from Miami to the EU, 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 EU, as required by the rule of the "same mode of transport" (Article 138 (1) UCC IA).

The apportionment in Annex 23-01 simplifies the calculation of transport costs with a view to avoid having to calculate the intra-EU 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 Union 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 23-01.



## Commentary No 10

### valuation of free goods accompanying paying goods

**Case No 1:** 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. 70 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 No 11**

**DELETED**

## **Commentary No 12**

### **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 71(1)(e) of the UCC.

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. 71 (1) (e) of the Code applies. All transport costs until the point of introduction into the EU 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 23-01 UCC IA (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 cannot 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 "CIF 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 €<sup>5</sup>.

As regards the intra-Union costs, the total portion of these freight costs included in the invoiced CIF price (for deliveries from China 30% of 2,000 € = 600 €, see annex 23-01 UCC IA) can be deducted according to Article 72 UCC. The customs value of the imported goods will therefore add up to 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 "CIF arrival airport" instead of by sea. The delivery terms are thus modified from FOB to CIF. 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 €<sup>1</sup>.

As regards the intra-Union costs, the total portion of these freight costs included in the invoiced CIF price (for deliveries from China 30% of 2,000 € = 600 €, see annex 23-01 ICC IA) can be deducted according to Article 72 UCC. The customs value of the imported goods will therefore add up to 39,400 €.

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<sup>5</sup> This calculation is done for illustration purposes only, the invoice may only show the total amount of 40.000€.

**SECTION D:**  
**CONCLUSIONS OF THE CUSTOMS CODE COMMITTEE AND**  
**THE CUSTOMS EXPERT GROUP**  
**(VALUATION SECTIONS)**

**Note:** The instruments of this section do not constitute legally binding acts and are of an explanatory nature. The purpose is to ensure a common understanding for both customs authorities and economic operators and to provide tools to facilitate the correct and harmonised application by MS.

Legal provisions of customs legislation take precedence over the content of these instruments and should always be consulted. The authentic texts of the EU legal provisions are those published in the Official Journal of the European Union.

**Conclusion No 1**

**DELETED**

**Conclusion No 2**

**DELETED**



### **Conclusion No 3 : Engineering, development, artwork and design work undertaken in the Union**

#### **Facts**

Cars manufactured in a third country by firm X in a multinational group are sold to firm Y in the Union, belonging to the same group. The engineering, development and design work has been undertaken in the Union 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 71(1)(b)(iv) of the Code, in respect of the research and development costs for work undertaken in the Union, when these costs are included in the price actually paid or payable but can be separately distinguished.

#### **Opinion of the Committee**

Article 71 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 72 of the Code. In the case illustrated above, the customs value is to be determined by reference to the transaction value under Article 70 of the Code, and under the current international and EU 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 Union. When the goods are entered for free circulation, Y submits to 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 72(b) of the Code, the customs value shall not include charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation.

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 Union 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 70 of the Code, to the exclusion of customs duties, intra-EU transport costs and associated costs.

However, as the goods imported by X-Europe for stock are not the subject of a sale, Article 70 is not applicable and the customs value is to be determined under the other methods of valuation in due order, in accordance with Article 74 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 Union. 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 Union customs territory is crossed and it does not coincide with the place where the customs office of first entry 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 customs office of entry in the Union is situated may be disregarded.

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

### **Facts**

An individual buys a musical instrument in a third country and has it sent by air to the Union. On the grounds that the importation is for non-commercial purposes, 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 EU provisions on transport costs make no general distinction between operations of a commercial nature and those of a non-commercial nature.

In the case at hand, Article 71(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 23-01 to the UCC IA needs to be included in the customs value.

## **Conclusion No 8: Air freight collection charges**

### **Facts**

Firm Y in the Union buys goods from firm X established in a third country. The goods are sold under FOB delivery terms and carried to the Union 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 71(1)(e) of the Code. Consequently, by application of the 3<sup>rd</sup> paragraph of the same Article, 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 Union. 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 142(5) of the UCC IA.

The distance covered within the Union 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 70 UCC, as there is no relevant sale between X and Y at the material time for valuation. Information necessary for application of Articles 74(2)(a) or (b) UCC is not available.

### **Opinion of the Committee**

In order to determine the customs value in accordance with Article 74(2)(c) UCC, 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 Union, 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**

**DELETED**



## **Conclusion No 11 : Purchase of export quotas - textile products**

### **Facts**

Textile products are sold by firm X established in a third country to firm Y in the Union. These products are manufactured in this third country, which has signed a bilateral textile agreement with the Union. The effect of the Agreement is to impose annual quotas by way of export licences on the supply of textile products to Union 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 70 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 Union 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 Union 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 71(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 Union. 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 Union.

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..

### **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 needs to be added to that price in accordance with Article 71(1)(b)(ii) of the 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 possible.

## **Conclusion No 14: Imports through contract agents**

### **Facts**

Buyer Y, who is established in the customs territory of the Union, 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 70 of the Code, the declarant, pursuant to Article 145 of the UCC IA, 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 Union. The meat is imported under a bilateral agreement between the Union 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 Union 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 Union. 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. 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 is to be included in the customs value of those goods under Article 70 UCC.

## **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 Union.

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 74(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 70 or 74(2)(a) and (b) of the Code, it would be appropriate to value the goods under the provisions of Article 74(2)(c). In the light of the above-mentioned facts, B sells the imported goods for X within the Union. Accordingly, under the provisions of Article 74(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 Union 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 74(2)(c), subject to the deductions provided for in Article 142(5) of the UCC IA.

## **Conclusion No 17: Precedence under the deductive method**

### **Facts**

Goods produced in a third country were imported into the Union 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 70 of the Code. Also, information was not available at that time to establish a customs value under Article 74(2)(a) to (c) of the Code; but firm X, nevertheless, indicated then that he wished in due course to avail himself of Article 74(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 Union since the time his goods were imported.

### **Question**

Does firm X, for the purposes of applying Article 74(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 Union 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 74(2)(c).



## **Conclusion No 18: Demurrage charges**

### **Facts**

Importer Y in the Union 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 Union.

### **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 71(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 Union. 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 72(a) of the Code are met.

**Conclusion No 19**

**DELETED**

**Conclusion No 20**

**DELETED**

## **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 EU 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 70 of the Code on the basis of the charge made for testing plus an addition under Article 71(1)(b)(i) for the cost of material supplied including the cost of processing and an addition under Article 71(1)(e) for costs of delivery to the customs territory of the EU.

**Conclusion No 22:**

**DELETED**

**Conclusion No 23**

**DELETED**

**Conclusion 24**

**DELETED**

**Conclusion 25**

**DELETED**



**Conclusion No 26: Software and related technology: treatment under  
Article 71 (1)(b) Union Customs Code (UCC)**

**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 Union 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 71(1)(b) of the 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 Article 71(1)(b)(i) or (iv) UCC.

Article 71(1)(b)(i): covers materials, components, parts and similar items incorporated in the imported goods.

Article 71(1)(b)(iv): covers engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Union 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 Union. On the other hand, if the software/technology falls under letter (iv), the value of the software developed in the EU 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 (Article 71(1)(b)(i) UCC),

and

2. "Intellectual assists" (patents, designs, models etc.) which are necessary for the production process of the goods (Article 71(1)(b)(iv) UCC).

### **C. Conclusion:**

1) Intangible components which are installed in the imported goods for their operability, (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 71(1)(b)(i) UCC.

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 71(1)(b)(iv) CC.

## **Conclusion No 27: treatment for customs valuation purposes of fees related to Entry Summary Declarations**

### **1. Background:**

In accordance with the provisions of Articles 127-130 UCC, before goods are brought into the territory of the UE, pre-arrival information must be submitted to the customs authorities in the form of an entry summary declaration (ENS).

Such declaration, requested mainly for safety and security purposes, is made electronically by the carrier and lodged at the first customs office of entry of the goods into the customs territory of the Union. The regulatory provisions provide for the particulars to be included in the ENS, as well as for the time limits for its submission, varying according to the type and means of transport used.

The question raised on the issue refers to the charges introduced by freight forwarders – and borne by the importers – to comply with the new provisions and in particular **whether such fees are to be considered as part of the customs value of the goods.**

Finally, it must be noted that the point is very significant as, according to the latest available statistics, about 10 million ENS have been lodged throughout the EU in the first quarter 2011.

### **2. Comments and considerations:**

1. According to Article 71(1)(e) of the UCC, in determining the customs value, there shall be added to the price actually paid or payable for the imported goods, inter alia:

- i) the cost of transport and insurance of the imported goods, and
- ii) loading and handling charges associated with the transport of the imported goods.

Both costs of transport and loading charges are to be taken into account, only for the part of such costs incurred up to the introduction of the goods into the customs territory of the Union.

2. Concerning the latter aspect, as the ENS is to be lodged before the arrival to the customs office of entry in the Union, the requirement is met and the costs are to be considered as incurred before the goods are brought to the territory of the Union.

3. It is therefore necessary to focus the analysis on the nature of these costs, that is whether they should be considered as "transport costs" or "loading and handling charges associated with the transport of the goods".

4. Costs related to the ENS cannot be considered as transport (and/or insurance) costs, in the normal usage of such terms, as they refer to an obligation, for the carrier, to

provide a set of data for risk analysis purposes to the EU customs authorities. In some cases, moreover (i.e. for containerised cargo in deep sea maritime traffic), the ENS is to be submitted even before the goods are loaded for departure. Furthermore, if the ENS is not lodged within the set time limits, it can be submitted even after the goods are presented to customs by the person who brought the goods, or assumed responsibility for the carriage of the goods (of course in such case penalties will be applied).

5. For the same reasons, neither these fees can be considered as ancillary costs relating to loading and handling charges.

### **3. Conclusion:**

**As a consequence**, and having regard to the provisions of the third paragraph of Article 71 of the Code, **charges and fees relating to the pre-arrival entry summary declaration are not part of the customs value.**

If, however, the transport charges include such fees but the amount of such fees is not specified or distinguished, then they can only be taken as part of the transport costs.

## **Conclusion No 28: Production Inputs under points (ii) and (iv) of Article 71(1)(b) of the Union Customs Code**

### **1. General:**

This document concerns the issue of the application of Article 71(1)(b) in relation to the supply of designs and related data for the purposes of production of textiles.

One question is whether the outputs of CAD (computer-aided design) programs used in the textile industry and supplied free of charge by the buyer of the imported goods to the manufacturer for use in connection with the production and sale of the imported goods should be taken into account in the customs value of the goods.

In the cases in question, CAD programs are used to produce cutting-position images in the EU, which are then sent to manufacturers in third countries. This is done by e-mail.

Questions:

Are the cutting-position images to be seen as:

“means of production” assists under Article 71(1)(b)(ii) of the UCC,

or

“intellectual assists” and designs under Article 71(1)(b)(iv) of the UCC.

A schematic description of the case is provided in Annex 1.

### **2. Description of the case**

A buyer of goods imported into the EU uses a CAD (computer-aided design) program to design clothing (textiles). These computer programs are used to create cutting-position images for the manufacture of the textiles in third countries. The images are provided free of charge by the buyer of the textiles to the manufacturer in the third country and sent by electronic means (e-mail).

The file containing the images is opened by the manufacturer on a PC and then the images are printed on paper using a plotter<sup>67</sup>. The paper web with the image is then laid directly on the layers of fabric by the manufacturer and the fabric is then cut. No other operations are carried out, using the images, by the manufacturer.

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<sup>6</sup> (NB: If the cutting-position images were created directly on paper by the buyer and then supplied to the manufacturer/vendor, the result would be clear. They would be regarded as assists within the meaning of Article 71(1)(b)(ii) and their value would be added to the customs value).

<sup>7</sup> A plotter is a machine which produces designs, using a computer program.

It is unclear whether the images sent by e-mail are “means of production” assists under Article 71(1)(b)(ii) of the UCC, or “intellectual” assists under Article 71(1)(b)(iv) of the UCC.

### **3. Case assessment**

#### **Legal base**

Article 70(1) of the UCC stipulates that the customs value of imported goods is the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Community adjusted, where necessary, in accordance with Article 71 of the UCC. In the case in question, the relevant provisions on adjustment are found in Article 71(1)(b)(ii) or (iv) of the Code.

When establishing the customs value under Article 70 of the UCC, the price actually paid or payable for the imported goods is to include the value, apportioned as appropriate, of:

- the tools, dies, moulds and similar items used in the production of the imported goods (Article 71(1)(b)(ii) of the UCC);

and

- the engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community (Article 71(1)(b)(iv) of the UCC).

The value of such goods/services is to be added when they are supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that their value has not been included in the price actually paid or payable.

#### **Customs valuation analysis**

An input to the production process which incorporates or supplies a service, and is not a die, mould or similar item, would not in principle constitute an assist within the meaning of Article 71(1)(b)(ii).

However, such an input to the production process may constitute an “intellectual” assist within the meaning of Article 71(1)(b)(iv).

In the case in question, the file with the cutting-position image is opened and the image is printed on a paper plane using a plotter. The manufacturer of the imported goods does not need to provide any further intellectual input. The images sent electronically can be used directly for the production of the imported goods. In this case, the image is used for cutting the pieces of cloth.

These images (patterns) could therefore be considered as assists under Article 71(1)(b)(ii) of the Code.

### **4. Comments**

#### **General**

The assists described under Article 71(1)(b) of the Code are distinctive categories of assists. In general, the four categories of assists are relatively well described and capable of being distinguished, one from the other. However, while the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> categories of assists are relatively well defined, the 4<sup>th</sup> category of assist is relatively undefined and vague.

The problem with this 4<sup>th</sup> category is that there is no link with any production process in relation to the finished goods. The only condition to be met is that such an assist is "necessary for the production of the imported goods."

Therefore, while this assist is described in terms of designs, drawings, plans, or artwork, etc., there are no requirements or conditions as to how it is applied or used. However, the use of artwork, designs, engineering, etc. normally requires intermediate technologies and various means of copying, or transformation, in order to contribute to the production of goods.

### Specific Case

In this case, the resources provided to the manufacturer consist of an electronic file, incorporating detailed instructions for creating cutting-position images, as part of the process for the manufacture of clothing (textiles).

While it is possible to make, by analogy, a link between this input and the physical functions performed by the tools indicated under the 2<sup>nd</sup> category of assist, it is also possible to consider that this input provides services (so-called "intellectual assists") indicated under the 4<sup>th</sup> category of Assist (Article 71(b)(iv)).

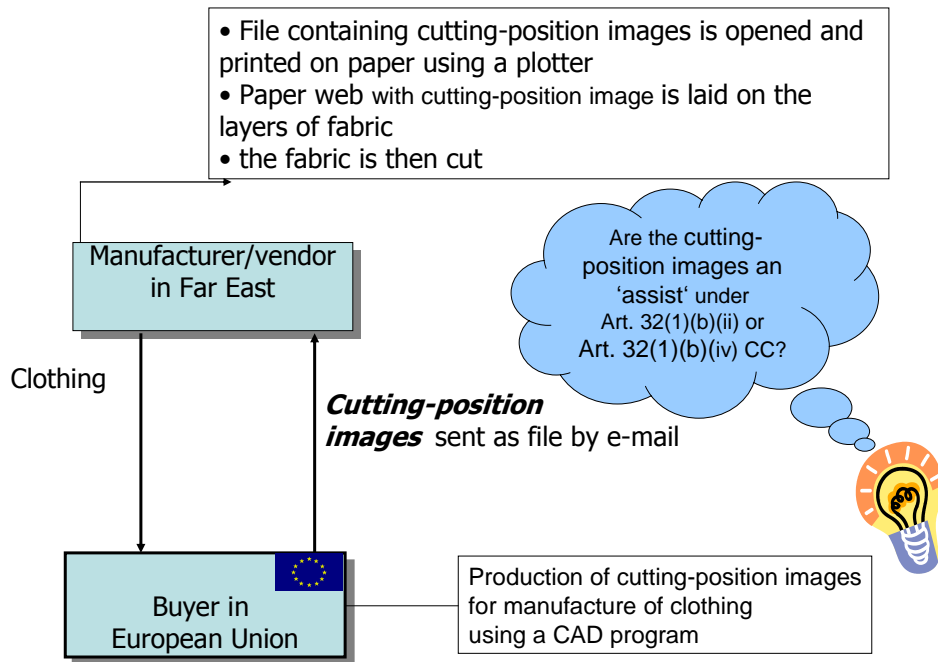
The potential overlap between the various categories of assists is more and more evident due to the use of new technologies, which allow designs to be used directly in the production process.

## **5. Conclusion**

The inputs in question are essential to the production of the goods. These inputs determine the size and shape of the finished goods. These inputs also determine the design of the finished goods. These inputs are integrated into the production process, and are used to determine the physical properties of the finished goods.

The predominant characteristic of the product and service supplied seems to more related to the criteria and functions as specified in Article 71(1) (b)(ii) of the Code.

Consequently, on balance, it is appropriate to classify these inputs under Article 71(1)(b)(ii) of the Code.





## **Conclusion No 29: Currency conversion. Price invoiced in foreign currencies with pre-fixed exchange rate**

Parties to a sale contract may agree in advance on a pre-fixed exchange rate for the conversion into a national currency of a price expressed in a foreign currency for the purposes of payment of the price of the goods. The issue is therefore to determine whether such pre-fixed exchange rate - and the resulting amount in national currency - is acceptable for the determination of the customs value.

### **Legal provisions**

- Article 70 UCC – Transaction value method
- Article 53(1)(a) and Article 146 UCC IA - Currency conversion for valuation purposes

### **Guidance**

- CCC – VAL – Commentary No 4
- WCO TCCV – Advisory Opinion No 20.1

### **Consideration and conclusions**

The calculation of the customs value, and the amount of customs duties and VAT, is made in the currency of the country where the goods are put into free circulation.

Consequently, for the determination of ad valorem duties, where the price paid or payable, as well as any other elements of the value, is expressed in a foreign currency, this amount must be converted into national currency.

The question to be answered is the following: is such conversion necessary where the sales contract provides for a fixed exchange rate?

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.

What is relevant is the currency in which such price is to be actually settled (i.e., paid).

Thus, when the price settlement is made in the currency of the country of import, no conversion would be needed. In the opposite case – price settlement in another

currency – the rules on currency conversion laid down in the legislation in force will apply. Then, no account will be taken of any pre-fixed exchange rate.

This conclusion is also in line with WCO TCCV Advisory Opinion No 20.1.

The same conclusion is to be applied – *mutatis mutandis* - where the invoice indicates the price expressed in a “virtual” currency (e.g. the so called bit-coins) and at the same time provides for a conversion into a national currency. In such cases, the customs value is to be based on the currency of settlement.

Therefore, if the invoice, and the contract, establishes that the price settlement will be made in a national currency, that amount (in national currency) will indicate the price paid or payable for the goods.

If, on the contrary, the price settlement is made or is to be made in virtual currency, then a currency conversion cannot take place, as provided for under the rules in force. This will have implications for acceptance of the price. The lack of an acceptable price indication will also have implications for the application of the transaction method.

## **Conclusion No 30: Application of Articles 71(1)(b) and 71(1)(c) of the Union Customs Code**

### **A. Issue**

1. Customs are dealing more and more often with examining matters on which a decision needs to be made as to whether Article 71(1)(b) or Article 71(1)(c) of the Union Customs Code should be applied for the customs valuation of certain operations.
2. This demarcation issue always arises when a royalty or a part of a royalty is paid to a licensor to take account of manufacturing know-how and the licensor of this manufacturing know-how makes it available to the production companies linked to him free of charge for the manufacture of the imported product.

### **B. General example and background (see graphical representation in annex)**

3. A multi-national, K, develops its products in different locations with different research and development companies (R&D companies) across the world.
4. The R&D projects are coordinated by an affiliate, S, which is based in a Member State of the European Union. S has signed contracts with all R&D companies in the group, according to which the individual companies are charged by S with carrying out specific R&D projects. These R&D companies charge for the development on a cost plus basis (i.e. development costs plus an appropriate supplement) with S. S pays and acquires the rights to the know-how developed.
5. S makes this know-how available to the production companies, including D in a MS, for the manufacture of products. S signed licensing agreements with the production companies, which stipulate that they pay royalties to S for using the know-how.  
(The amount paid is e.g. 2.5% of the net revenue from the sale of finished products to clients that are not part of the group. D partially finishes the products that are subject to licensing agreements in its own plants.)

### **Specific case**

6. D in EU obtains and imports products (goods that are subject to licensing agreements) from other companies in the group, including from company C in China. C is the seller of the imported goods and D is the buyer.
7. C receives the know-how necessary to manufacture the imported products from D. (In fact, the company S is the entity that provides the know-how to Company C.)
8. For this know-how, D pays royalties to S. These royalties are calculated on the basis of 2.5% of the net sales revenue for this know-how.

### C. Questions to consider

9. Which legal provisions apply to consideration of this specific case?
10. To what extent are the royalties D pays to S to be included in the customs value of the imported products that are subject to licensing agreements?

### D. Law applicable and application of the listed provisions

11. If Article 71(1)(c) of the Union Customs Code applies to this case, this leads to the full amount of the royalties payable for the goods imported being included in the customs value, since the manufacturing know-how is already complete when the imported goods are manufactured abroad and is therefore embodied in the imported goods.
12. On the other hand, the manufacturing know-how was made available free of charge to the foreign production company, C, supplied directly by buyer D, or rather (an alternative description) indirectly by S, for the manufacture of the imported goods.
13. This manufacturing know-how is therefore an element (and a supply) that falls within the scope of the provision of Article 71(1)(b)(iv) UCC. The value of which should only be included in the customs value of the imported goods manufactured using this know-how **if it was developed outside the Union**.
14. With this approach, the royalties paid for the assists (see ECJ judgment of 7 March 1991, C-116/89) would have to be considered for apportionment (i.e., to be split into one part that is used to refinance the development costs incurred outside the Union and another part to refinance the development work inside the Union).
15. It would be possible in practice to make such a split if S provided the necessary documentation e.g. showing the percentage share of the development costs charged by the development locations to S over a particular period of time (e.g. 1 year) and how they compare (e.g. development costs incurred by foreign locations compared with those incurred by EU locations).

### E. Legal issues

16. The first question to be considered is whether Article 71(1)(c) UCC has priority over Article 71(1)(b), as *lex specialis*.
17. A second legal issue is, what are the determining factors to identify the possibility that *lex specialis* clauses apply to and amongst these rules.

## **E. Existing guidance**

### ***WCO Advisory Opinions***

18. WCO Advisory Opinions 4.8 and 4.13, in addition to examining whether royalties paid in accordance with Article 8(1)(c) of the WTO Agreement (Article 71(1)(c) UCC) are part of the customs value look at whether they can also be considered as an assist under Article 8(1)(b) of the same WTO Agreement (Article 71(1)(b) UCC).
19. These questions are not explicitly resolved in these WCO Advisory Opinions. According to the WCO Technical Committee's arguments and the structure of these expert reports, checks of this kind are necessary and could lead to the inclusion of the royalties in the customs value under Article 8(1)(b) of the WTO Valuation Agreement.
20. Also, evident in the WCO Advisory Opinions 4.8 and 4.13, is that the approach was to first check whether the royalties should be included in accordance with Article 8(1)(c) of the WTO Agreement.
21. Only after that step is performed, this approach looks at including the payments under Article 8(1)(b) of the WTO Valuation Agreement and then only because these amounts could not be included in the customs value under Article 8(1)(c).

Note: both of these WCO Advisory Opinions did not carry out a comprehensive examination of the issue. Both Advisory Opinions state that:

“whether the supply of the art and design work/labels relating to a trademark would qualify as dutiable under Article 8.1(b) is a separate consideration”

### ***WCO Case Studies***

22. Two case studies by the WCO Technical Committee suggest that Article 71(1)(b) UCC should be given priority over Article 71(1)(c) UCC.
23. Case study 8.1 is a case in which a clothing importer (ICO) makes paper templates of designs received from a licensor (LCO) under a licensing agreement available free of charge to his foreign manufacturer (XCO) for producing the clothing.
24. In return for the paper templates and designs, the licensing agreement stipulates that ICO has to pay LCO royalties of 10% of ICO's gross sale price when selling on the imported clothing. In this case the Committee considers that the customs authority must determine the exact nature of the payment described as a royalty in order to be able to decide whether this constitutes part of the customs value of the imported clothing or not.
25. According to the WCO Technical Committee, if the facts show that the payment

*described as a royalty concerns elements (assists) of Article 8(1)(b) of the WTO Valuation Agreement, then such Article is applicable. Failing this, the customs authorities should examine whether the payment meets the requirements of Article 8(1)(c).*

26. The WCO Technical Committee reaches the same conclusion in case study 8.2, which deals with the customs valuation treatment of royalties for using music videos that were made available free of charge by the buyer of the imported goods, using a master tape provided to a manufacturer.
27. Should we choose to follow the opinion of the WCO Technical Committee on Customs Valuation in these two case studies, Article 71(1)(b) UCC would be given priority over Article 71(1)(c) UCC.

This case illustrates that the International Guidance (from the Technical Committee on Customs Valuation) is not fully aligned, and may even be inconsistent.

### **G. Application of EU rules**

28. Article 71(1)(b) of the Union Customs Code is relevant if manufacturing know-how needed for the manufacture of the imported goods is provided under a licensing agreement and is made available free of charge to the manufacturer of the imported goods by the licensee or indirectly by the licensor.
29. Consequently, Article 71(1)(c) of the Union Customs Code would only need to be checked for parts of the royalty that do not concern a production factor (e.g. royalties for using trade mark rights, distribution know-how, utilisation know-how, maintenance and repair know-how, etc.).

### **H. ECJ jurisprudence**

30. The ECJ judgment in case C-116/89 supports the approach described in WCO case studies 8.1 and 8.2. In this judgment the ECJ stated that the applicant's arguments, which relied on the interpretation of Article 8(1)(c) of the Valuation Regulations in force at the time (Council Regulation (EEC) No 1224/80), no longer needed to be considered because the royalties had already been added to the price actually paid or to the price to be paid for the imported seeds in accordance with Article 8(1)(b)(i) of the same Regulation as they concerned the basic seeds provided to the supplier<sup>8</sup>.
31. In conclusion, this demarcation question is a fundamental customs valuation problem to which there is not yet a clear solution either in the existing guidance or legal acquis (i.e., documents of the EU, the WCO customs valuation

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<sup>8</sup> Article 8 of Regulation No 1224/80 was afterwards reproduced without changes in Article 32 of the Customs Code and finally in Article 71 UCC

committee or in case-law).

J. **Outline conclusions**

32. The existing advice (conclusions and guidelines concluded in the Customs Code Committee, as well as the WCO Technical committee, and in case-law) does not provide definitive or consistent indications to address cases in general.
33. It is not possible to set out an interpretative approach based on a priority rule approach within Article 71 UCC, or indeed to specify a *lex specialis* in this regard.
34. However, this example is important. It illustrates that there is a dynamic between the customs valuation of final goods, and the valuation of inputs (assists) to the production of final goods.
35. Furthermore, this case illustrates that a choice must be made between the valuation treatment **of assists as assists** *per se*, regardless of how the cost/payment of assists is computed, structured and classified, and the valuation treatment of *assists as royalties*, because the means of compensation (payment) of these assists **take the form of royalties**.

However, Article 71 (1) (b) UCC covers “assists” and is a rule which deals with circumstances where the buyer provides inputs to the production etc. of the goods, and value of the inputs must be included in the customs value.

This is a starting point to consider that any assist as a production factor, of material or even immaterial nature, has to be considered under Article 71(1)(b) UCC. Whenever, therefore, this occurs, the provisions on assists will apply.

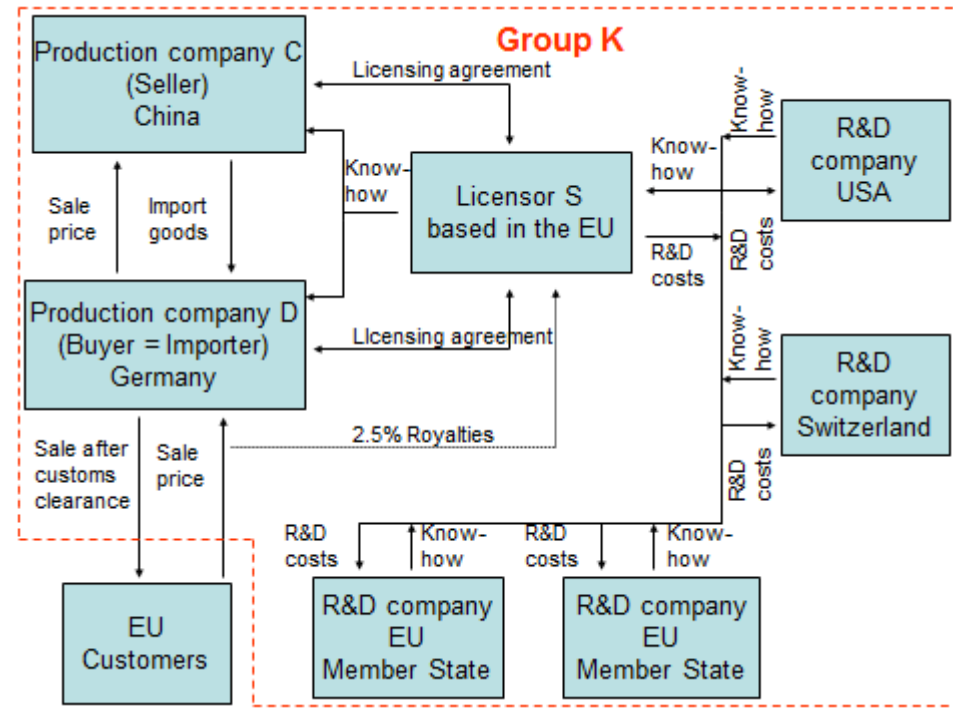
36. Further, while the rule does not specify the nature (type) of payments used to value the assists, the relevant Interpretative Notes refer to various ways (purchase price, cost of production, etc).

In this respect, royalties and licence fees are a suitable means of payment for an assist listed in Article 71(1)(b).

37. In such cases, the usage of one or another method to compensate (pay) the owner (and supplier) of the assist should not lead to a switch in the legal rule to be applied. Similarly, the characteristics (*nature*) of an assist should not lead to a switch in the legal rule to be applied.
38. In the specific case described in this document (see paragraph 6 and 7 above), since it appears that the assist under consideration indeed constitutes a factor of production of the imported goods, a customs value can be determined by application of Article 71(1)(b).
39. It must be stressed that the conclusions reached above are directly affecting the

presented set of facts. Though the same conclusions might have general application, each case must nonetheless be examined in its own individual terms, with respect to the relevant facts reported and documents produced.

**ANNEX**





## Conclusion No 31: Valuation of perishable fruits and vegetables – sales on consignment

### I. Regulatory background

#### A. Valuation of fruit and vegetables

1. The valuation of fruit and vegetables not subject to the entry price mechanism (i.e., goods not listed in Annex XVI to Regulation (EC) 543/2011, or goods listed in that Annex but imported outside the periods covered by this Regulation), follows the common valuation rules and principles (Articles 69-76 UCC):
2. In practice, given the nature of the goods being valued, the declarant shall use the **transaction value** method or, for imports on consignment, the **deductive method**.

#### B. Valuation of fruit and vegetables which are subject to the entry price mechanism

3. For fruits and vegetables and for the periods of application laid down in Annex XVI to Regulation (EU) No 543/2011, it is also appropriate to apply the common valuation rules, provided for in Articles 69-76 UCC and Articles 127-146 UCC IA).
4. Thus, the entry price is equal to the customs value, determined through the normal use of the following valuation methods:
  - \* Transaction value in accordance with Article 70 UCC;
  - \* In the absence or in the event of rejection of the transaction value: secondary methods in accordance with Article 74 UCC :
    - Transaction value of identical goods;
    - Transaction value of similar goods;
    - 'General' deductive method in accordance with Article 74(2)(c) UCC;
    - Computed value method;
    - Fall-back method.
  - \* goods imported on consignment: the deductive method (Standard Import Value - SIV) is compulsory.
5. In practice, given the nature of the goods being valued, the declarant shall either use the transaction value method or, for imports on consignment, the SIV.

#### C. Additional Guidance

6. Advisory Opinion 1.1 of WCO TCCV refers to goods imported on consignment, which corresponds to the situation in which the goods are sent to the importing country with the intention to sell them there at the best price for the account of the supplier. At the time of import no sale has taken place.

7. The consignee of the goods usually acts as a sales agent (as defined in the explanatory note 2.1 of WCO TCCV). Sales agents act on behalf of the seller, collect orders and, sometimes, store the goods and take care of their delivery. They participate in the conclusion of the sales contract and are remunerated by a fee, usually expressed as a percentage of the price of the goods.

## **II. Situation 1**

### **A. Presentation of the trade scheme and issues raised**

8. A fruit and vegetables supplier "F", established outside the European Union, sends goods to an importer "I", established in that territory.
9. The two companies are in regular business association, where "I" acts as the selling agent on behalf of "F" to customers located inside and outside the European Union. Imports are made on consignment, as defined in the preceding paragraph.
10. The question arises whether "F" and "I" can adjust their contractual relationship by providing that they may choose, before release for free circulation, to enter into a sale for the goods. If this is the case, of course "I" does not act as a sales agent, but is in the position of "buyer" in a sale contract.

### **B. Analysis and solution**

11. The determination of the customs value and the method of customs valuation, must in principle take place at the time the goods are declared for free circulation, in accordance with Article 77 UCC.
12. Thus, it is possible to apply the transaction value method, even if the sale is concluded just before the goods are declared for free circulation. That approach is often illustrated by the example where the seller of goods does not yet know, at the time the goods are sent, the buyer with whom he will conclude the sale used to assess the value of the goods. (This is also stated in in example 4 of the TCCV Advisory Opinion 14.)
13. This approach must, however, be applied with more caution when the parties to the sale are already in a business association which includes the sending of goods on consignment and where the importer usually carries on an activity of sales agent on behalf of the supplier.
14. The valuation method applied is directly linked to the underlying commercial framework:
  - If, on the date of release for free circulation, the goods were sold for export to the customs territory of the European Union, it is appropriate to apply the transaction value method;

- If, on the date of release for free circulation, such sale has not been established, then the goods are imported **on consignment**; consequently, the transaction value method is not applicable, and the customs value should be determined in accordance with the secondary methods.
  - In practice, given the particular nature of the goods in question (perishable fruits and vegetables) the value will be determined under the deductive method.
  - This application takes the form of the SIV for goods subject to the entry price mechanism. For other fruit and vegetables, it will take the form of the 'general' deductive method in accordance with Article 74(2)(c) UCC or of the Unit Prices methodology, where appropriate.
15. There is a clear distinction between the two methods of customs valuation – transaction value and deductive method<sup>9</sup>, each applying in a specified and distinct commercial framework, not least because the role and status of the importer - is radically different in these two situations.
16. Indeed, if the importer purchases the goods in order to resell them after release, he acts in his own name and on his own account and, as a result of his position as the owner of the goods; as a party of a sale contract, he takes a commercial and financial risk (loss or profit on sale, loss of goods in the course of transport under the Incoterm agreed).
17. On the other hand, where the importer receives the goods under the **on consignment** arrangement, he generally acts as a selling agent, acts in his own name but on behalf of the supplier. Insofar as he never acquires the ownership of the goods, he bears no risk as owner, and receives remuneration for his service.
18. In principle, parties are fully free to choose any form of legal and licit trade pattern to regulate their business. Consequently, in the framework of a regular business relationship between two companies, an importer may legally enter into contracts and therefore process certain flows under the **on consignment**, system and other flows under the outright sale. At the same time, such contractual arrangements should be capable of being distinguished, both as such and, with respect to the goods covered by such contracts.
19. On the other hand, it appears difficult to consider that the commercial choices (outright sale or *on consignment*) for each consignment may come at the last moment, immediately before release for free circulation.
20. Because of its impact on the role of the importer, such choice should fall within a commercial context resulting from negotiations (for which evidence

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<sup>9</sup> For reasons of simplification, in the case of use of the transaction value method, it is assumed that the requirements laid down in Article 70 (3) UCC for the application of this method are fulfilled.

can and must be provided) or a written agreement between the supplier and the importer, which needs to occur prior to the material time of import.

21. Therefore, while it is possible to consider that certain flows will be imported as an outright sale concluded between “F” and “I”, it is reasonable to consider that the flows treated under the *on consignment* system and those of the outright sale must be differentiated according to specific, objective and solid criteria. These criteria may, in specific cases, be linked to the variety of fruit and vegetables imported or their packaging.
22. Similarly, in the interests of legal certainty, it may be advisable for the operators to contractually agree on the criteria to segregate the two types of transactions.

### **III. Situation 2**

#### **A. Presentation of the trade scheme and problems**

23. A fruit and vegetables supplier “F”, established outside the customs territory of the European Union, sends goods to an importer “I”, situated in that territory.
24. The two companies are in regular business association, where “I” acts as the selling agent on behalf of “F” to customers “C” located inside and outside the European Union..
25. Customers “C” are found by I prior to import. There are three types of customers and commercial (contractual) arrangements:
  - Those with whom a framework agreement has been concluded with or without estimated trade volume over a certain period;
  - Those with whom a framework agreement has been concluded with or without estimated trade volume over a certain period, but with a unit price defined in advance by variety/category/commercial quality over a given period.
  - Those with whom no agreement has been concluded. However, it may happen that “I” has regular relations with customers in this category.
26. These framework agreements do not imply any obligation to buy goods during the period that they cover.
27. As regards imports, three situations may arise:

Situation No. 1: “C” orders to “I” a certain quantity of a product for a given price, then “I” forwards the order to “F”. “F” then sends the goods to “I”, who receives the goods, verifies, prepares and delivers them to “C”;

Situation No. 2: “F” sends goods to “I”. However, during transport, “C” orders to “I” a given quantity of the product for a given price, then “I” forwards the order to “F”. “I” receives the goods, verifies, prepares and delivers the requested quantity to “C”;

Situation No. 3: “F” sends goods to “I”. The latter receives the goods and either places them in temporary storage or directly declares them for free circulation. Where the goods are in temporary storage, “I” may declare them for free-circulation either in the absence of any order or following an order of “C” for a certain quantity and price. “I” will then verify the goods, prepares them and delivers to “C” the ordered quantity.

28. The question arises as to the valuation method considered by “I” under each of these three situations.

### B. Analysis and solutions

29. Firstly, it is possible to consider that prior to orders for goods, there is no sale of the goods. Indeed, such framework agreements, concerning only a projected quantity of goods to be imported during a specified period, would not involve a sale contract, whose execution would be staggered.

#### 1. Case 1

30. In that case, there is a sale concluded before the departure of the goods from the country of export between “C” and “F”, via the intermediary “I”. Goods are not imported on consignment.
31. This sale is concluded before the goods are released for free circulation, and the price actually paid or payable by C can serve as a basis to implement the transaction value method.

#### 2. Case 2

32. In such a situation, it appears that the goods are sent to “I” in order to market them in the customs territory of the Union on behalf of “F”. However, goods are sold by “I” on behalf of “F” during their transport.
33. A sale is concluded before the goods are declared for free circulation, and therefore the goods cannot be considered as imported **on consignment**, although selling agent “I” merely managed to sell the goods on behalf of “F” before arriving at its premises.
34. Consequently, the valuation of the goods must be carried out on the basis of the transaction value method.

35. Similarly, this analysis implies that proof of the conclusion of a contract of sale during transport may be adduced by any appropriate means, to the satisfaction of the customs authorities. In this respect, it must be stressed that in accordance with Article 145 UCC IA the invoice is required as a supporting document.

### 3. Case 3

36. In such a situation, it appears that the goods are sent to “I” in order to market them in the customs territory of the Union on behalf of “F”. The goods are released for free circulation before being sold by “I” on behalf of “F”.

37. In the absence of a sale at the time of release for free circulation, it appears clearly that the goods are imported in consignment. Therefore, they should be assessed using the SIV in force at the date of release for free circulation where they are subject to the entry price mechanism. Otherwise, they will be assessed either under the deductive method of Article 74(2)(c) of the UCC or under Unit prices.

## **Conclusion No 32: Treatment of transport costs in specific cases** **(Assessment of so-called “kickback incentives”)**

### **Background**

The term "kickback incentive" has been defined as a payment made to a recipient as compensation or reward for providing favourable treatment to another party. It is often considered as an unethical or even illegal practice.<sup>10</sup>

In the context under examination here, freight agents in third countries offer, to the exporters, cargo space at reduced or even negative prices.

This happens mainly at level of the Less than Container Load (LCL) containers.

<b>Note:</b>	LCL is a shipment that is not large enough to fill a standard cargo container. This means that more and different loads are transported (stowed) in one and the same container.
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These cases mostly concern loads that have been bought based on the delivery condition<sup>11</sup> CIF or CFR (the so-called prepaid freight).

Furthermore, to compensate for its reduced gain on the freight charges, due to the offer of cargo space at lower rates, the third country agent charges extra costs to the agent dealing with the container in the EU. Such costs are billed separately, and may be described under several terms, like for instance (non-exhaustive list):

*China Import (Service) Fee, THC surcharge, ISPS surcharge, Eco tax, Surcharge, Transfer fees, Incentive Refund, LCL Services Charge, Handling Fee, Refund Delivery Order, Agency, Discharging, Refund or Far East Import Surcharge etc.*

These costs will be paid to the third country agent, as a so called Kickback Incentive, Rebate or Refund.

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<sup>10</sup> [www.investopedia.com/terms/k/kickback.asp](http://www.investopedia.com/terms/k/kickback.asp)

<sup>11</sup> (INCOTERM)

## Example

*(in USD per cubic meter (cbm))*

### Payments

The third country agent has to pay to the shipping company	
60	
Profit for third country agent (hypothetical)	10
	----
Real costs of freight	70

But, in cases of Less Than Container load, the third country agent offers to the exporter/seller a freight price of 20 under CIF terms of delivery.

Therefore, the third country agent has a “loss” of USD 50.

To compensate for the “discount” granted (here in this example, USD 50), the third country agent instructs the agent in the EU, to charge a corresponding extra fee to the importer. The EU agent charges these extra fees to the forwarder, who in turn passes on the costs to the ultimate importer.

Finally, the payments are returned to the third country agent.

### Analysis

Audits carried out by some EU customs administrations showed that these extra costs are not included in the customs value, when the imported goods are declared for free circulation. Often the declarant does not even know the amount of the “kickback payments”.

At the end, the extra costs will be charged to the ultimate importer and paid back to the agent in the third country. As indicated above, these extra costs and amounts (called: 'Kickback Incentive', or 'Rebate', or 'Refund') constitute the compensation for the discounts granted on the freight charges given by the third country agent.

Therefore, the importer eventually pays, separately from the price of the goods, also an extra amount of freight costs (of in this example USD 50) differently defined (because of the CIF clause, USD 20 is already included in the price).

Although it is a CIF shipment, still an amount of USD 50 per cbm (in this example) is charged. Shall these payments be included in the customs value?

### Conclusion

Inclusion of transport costs into the customs value applies regardless of the agreed delivery terms, which are the subject of an internal contractual arrangement between buyer and seller.



Therefore, the main analysis to be carried out is whether these costs are directly linked to the transport of the goods and meant to cover no other service than the transport of goods into the EU customs territory. Also, it has to be considered whether these costs actually occurred before the entry of the goods in the EU customs territory.

Should both these conditions be met, then these costs must be included in the customs value of the imported goods, under Article 71, paragraph 1, letter e) of the Union Customs Code.

## **Conclusion No 33: Treatment of certain costs for weighing of containers**

### **Background**

1. Due to the security regulations by the IMO (International Maritime Organization), all containers need to be weighted in the port of exportation to get permission to be loaded on to the ship.
2. The shipper is responsible for providing the verified gross mass by stating it in the shipping document, and the captain is responsible for the verification of the gross mass stated in the transport document.
3. In practice, the same equipment that is used for loading the goods (containers) onto ships may also be equipped to carry out the weighing of the containers.

### **Issue at stake**

4. This new weighting requirement generates an additional cost. This cost may be borne by the exporter, or passed on to the importer. Also, depending on the terms of delivery (Incoterm), the cost may be directly incurred by the importer.
5. The issue is whether such cost is to be included in the customs value of the imported goods.

### **Relevant Regulatory provisions**

6. According to Article 71 of the UCC, *In determining the customs value under Article 70, the price actually paid or payable for the imported goods shall be supplemented by:*
  - (e) *the following costs up to the place where goods are brought into the customs territory of the Union:*
    - (i) *the cost of transport and insurance of the imported goods; and*
    - (ii) *loading and handling charges associated with the transport of the imported goods*

### **Observations and conclusions**

7. Under Article 70(2) UCC, the price paid or payable includes all payments made or to be made as a condition of sale of the imported goods.
8. In the case at hand, these costs may appear as related to, or as a condition of, transport of the goods.

9. Therefore, the question must be addressed having regard to Article 71(e) UCC. EU rules do not provide a definition of transport costs (or of loading or handling charges).
10. Neither the WCO TCCV nor the Customs Code Committee has adopted general instruments on transport costs that are relevant here.
11. On the other hand, the ECJ, in its ruling on Case C-11/89, has stated that... *the term 'cost of transport' must be interpreted as including all the costs, whether they are main or incidental costs, incurred in connection with moving the goods to the customs territory of the (Union)...*
12. This general approach seems to be applicable to the case at hand. Indeed, the weighing obligation (and related costs) constitutes an essential step of the whole transport operation, which could not take place if the containers were not weighed.
13. It seems therefore reasonable to consider that the cost of operations such as weighting, linked to the loading of the goods, and the containers loaded on vessels, should be considered as related to the transport of the goods, and therefore included in customs value in accordance with Article 71 (1) (e)(ii) of the UCC.

## **Conclusion No 34: Treatment of storage costs**

### **Background**

1. It is the usual commercial practice that certain goods, already sold, could be stored for an “intermediate period” before being cleared. In certain cases, goods are stored for some time before being loaded, since during this period they must undergo some treatments to make loading operations possible.
2. The most common practice is to temporarily store them in a terminal waiting for the loading procedures which precede the shipment. During this period the goods *could also undergo necessary treatments* in order to make possible the loading operations (e. g. fluidizing by heating and pumping of semiliquid materials such as molasses and palm oil).

### **Issue at stake**

3. Must the costs of the intermediate storage of goods (and of intermediate treatments such as heat treatment) in the country of export, or even in other third country ports (in the case of transshipment) be included in the value of goods?

### **Considerations**

4. Apart from the case of intermediate storage costs which are already included in the transaction value of the imported goods, when the costs for those (intermediate) operations in a wider sense (storage and handling) are in any way borne by the buyer and need to be evaluated by the Customs at the moment of clearance?

### ***WCO Guidance***

5. Commentary No. 7.1 of WCO Technical Committee for Customs Valuation offers a view on the matter because it refers to *storage costs*, not considering therefore the constellation of *other intermediate costs such as loading costs* and explicitly excluding any other cost related to *intermediate treatments*.
6. Paragraph 5 of this Commentary concludes that *storage costs* related to the transportation of the goods can be considered as *costs related to the transportation*. Such costs are therefore covered by Article 8.2 (b) of the WTO Agreement. (In the EU legislation, Article 71 paragraph 1, letter e) point ii) of the Union Customs Code).
7. However, in some cases it can be difficult or even impossible (e. g. even during post-clearance audit) to determine whether the storage of the goods (and possible intermediate treatments in storage) *is related to their transportation*.

### Observations and proposed approach

8. In this respect, it is useful to consider whether there is *a legal and practical basis* to *apply a practical reference time threshold* in order to distinguish between a) *storage within a prescribed period of time* (to be considered as directly associated to transport, and b) *storage in excess of a prescribed period of time*. In the latter case a detailed examination of the reasons and circumstances of the storage (of the goods) would be necessary in order to determine whether the storage (and possible intermediate treatments in storage) is still associated with the transport.
9. However, in strictly legal terms, such an approach would need a regulatory (legal) basis. Further, a fixed time threshold would be extremely difficult to establish, as the "normal" storage time may significantly vary (due to the nature of the goods, preliminary treatments needed etc.)
10. A possible approach would then consist in determining whether this **intermediate storage**, and the related treatment, is functional and indispensable for the transportation of goods. In other words, if the transport cannot take place where the goods are not the subject of specific treatments, then the costs of these treatments (and of the storage necessary for performing them) should be considered as directly related to the transport of the goods (or assimilated to loading charges) and therefore included in customs value in accordance with Article 71 (1) (e)(ii) of the UCC).

It is evident that such analysis must be carried out for individual situations on a case-by-case basis.

## SECTION E

### JUDGEMENTS OF THE EUROPEAN COURT OF JUSTICE

**Note** This section includes a summary of judgements of the Court of Justice of the European Union, relevant for the application of the legislation on customs valuation. The authentic texts are those given in the reports of cases before the Court of Justice.

**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

**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?



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

**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

## **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.

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.

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.



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

## **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.

## **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

## **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

**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?

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.



**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.

**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

## 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

**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.

## **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.

## **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.
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.



**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 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.

**Case 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.

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

**Title:** Community Customs Code – 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:

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.

**Case C-256/07 Mitsui & Co. Deutschland GmbH v Hauptzollamt  
Düsseldorf**

Title: Community Customs Code – Repayment of customs duties – Article 29(1) and (3)(a) – Value for customs purposes – Regulation (EEC) No 2454/93 – Article 145(2) and (3) – Taking into account, for customs valuation purposes, of payments made by the seller in performance of a warranty obligation provided for in the contract of sale – Temporal application – Substantive rules – Procedural rules – Retroactive application of a rule – Validity

Language: German

Questions:

(1) Do payments by the seller/manufacturer to the buyer which, as in the present case, are made in the context of a guarantee agreement and by which the buyer is reimbursed the expenditure on repairs invoiced to him by his [distributors] reduce the customs value under Article 29(1) and (3)(a) of [the Customs Code] which was declared on the basis of the price agreed between the seller/manufacturer and the buyer?

(2) Do the payments referred to in Question 1 by the seller/manufacturer to the buyer for the reimbursement of expenses incurred under a guarantee constitute an adjustment of the transaction value under Article 145(2) of [the Implementing Regulation]?

(3) Should either of the first two questions be answered in the affirmative: is Article 145(2) and (3) of [the Implementing Regulation] to be applied to imports in respect of which the customs declarations were accepted before entry into force of [Regulation No 444/2002]?

(4) Should Question 3 be answered in the affirmative: is Article 145(2) and (3) of [the Implementing Regulation] valid?

Ruling:

1. Article 29(1) and (3)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Article 145(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002, must be interpreted as meaning that, when defects affecting goods became apparent after the goods were released for free circulation but it is demonstrated that they existed before such release, and those defects give rise, under a warranty obligation, to subsequent reimbursements by the seller/manufacturer to the buyer, reimbursements which correspond to the costs of repairs invoiced by the buyer's own distributors, such reimbursements can result in a reduction of the transaction value of the goods and, as a result, of their customs value, which was declared on the basis of the price initially agreed between the seller/manufacturer and the buyer.



2. Article 145(2) and (3) of Regulation No 2454/93, as amended by Regulation No 444/2002, do not apply to imports in respect of which the customs declarations were accepted before 19 March 2002.

## **Case C- 354/09 Gaston Schul BV v Staatssecretaris van Financiën**

**Title:** Community Customs Code – Article 33 – Value of goods for customs purposes – Inclusion of the customs duties – Delivery term ‘Delivered Duty Paid’

**Language:** Dutch

**Question:**

In the case of subsequent entry in the accounts within the meaning of Article 220 of the Community Customs Code, must it be assumed that the condition laid down in Article 33 [of that code], under which import duties are not to be included in the customs value, is satisfied where the seller and buyer of the goods concerned have agreed on the delivery term “delivered [duty] paid” and this is stated in the customs declaration, even if in determining the transaction price they – wrongly – assumed that no customs duties would be owed upon importation of the goods into the Community and consequently no amount of customs duties was stated in the invoice or in or with the declaration?

**Ruling:**

The condition specified in Article 33 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, to the effect that import duties must be ‘shown separately’ from the price actually paid or payable for the imported goods, is satisfied in the case where the parties to the contract have agreed that those goods are to be delivered DDP (‘Delivered Duty Paid’) and have incorporated that information in the customs declaration but, by reason of a mistake as to the preferential origin of those goods, have failed to state the amount of the import duties.

**Case C-116/12 - Ioannis Christodoulou, Nikolaos Christodoulou,**  
**Afi N. Christodoulou AE v Elliniko Dimosio**

Title: Customs value – Goods exported to a third country – Export refunds – Processing in the exporting country regarded as non-substantial – Re-export of goods to the European Union – Determination of the customs value – Transaction value

Language: Greek

Questions:

1. Do Articles 29 and 32 of [the Customs Code] apply to the determination of the customs value of imported goods where the contract is for processing or working of materials (exported to the country of processing without being placed under the customs procedure of outward processing) which is not at the level provided for in Article 24 of that [code] or which is otherwise insufficient to permit it to be held that the origin of the goods produced is the country where that processing or working was carried out?
2. If the answer to Question 1 is in the affirmative, is a distinction to be made where the import, on the basis of invoices and other documents held to be inaccurate, appears to have taken place under a contract of sale, but it is proven that the contract was for non-substantial processing of materials originating in the country of import in return for a specific fee, which can be determined, and that the declared customs value does not correspond to the real price payable or paid?
3. If the answer to Question 2 is in the negative, is a distinction to be made where there is also evidence of a practice that constitutes abuse of Community rules with the aim of enabling the interested party to derive an advantage?
4. If it is held that Articles 29 and 32 of [the Customs Code] can be applied to a case such as that described in Question 2, even when the objective circumstances and subjective factor of Question 3 coincide, what is considered to be the value of the component (in the present case sugar) which was incorporated into the imported goods and supplied at no cost to the importer, where the component in question, which could not be subject to a customs procedure of outward processing in accordance with Article 146(1) of the said Regulation, was not produced by him, but was acquired by him at the export price (which was lower than the price that applied on the internal market, since the product is subject to the refund system)?

Ruling:

1. Articles 29 and 32 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as applying to the determination of the customs value of goods imported on the basis of a contract which, although described as a contract of sale, in fact proves to be a working

or processing contract. For the purposes of that determination, it is immaterial whether the working or processing operations satisfy the conditions laid down in Article 24 of that regulation, so that the goods concerned may be regarded as originating in the country where those operations took place.

2. Articles 29 and 32 of Regulation N 2913/92, as amended by Regulation No 82/97, must be interpreted as meaning that, when the customs value is determined, account must be taken of the value of the export refund which a product has benefited from and which was obtained by putting into effect a practice involving the application of provisions of European Union law with the aim of wrongfully securing an advantage.

## **Case C-430/14 - Valsts ienēmumu dienests versus Artūrs Stretinskis,**

Title: Community Customs Code — Article 29(1)(d) — Determination of the customs value — Regulation (EEC) No 2454/93 — Article 143(1)(h) — Definition of ‘related persons’ for the purposes of determining the customs value — Kinship relationship between the buyer, a natural person, and the director of the company which sold the goods

Language: Latvian

### Questions:

(1) Must Article 143(1)(h) of Regulation No 2454/93 be interpreted as referring not only to situations in which the parties to the transaction are exclusively natural persons, but also to situations in which there is a family or kinship relationship between a director of one of the parties (a legal person) and the other party to the transaction (a natural person) or a director of that party (in the case of a legal person)?

(2) If the answer is affirmative, must the judicial body hearing the matter carry out an in-depth examination of the circumstances of the case in relation to the actual influence of the natural person concerned over the legal person?

### Ruling:

Article 143(1)(h) 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, as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999, must be interpreted as meaning that a buyer, who is a natural person, and a seller, which is a legal person, within which a kin of that buyer actually has the power to influence the sales price of goods for the benefit of that buyer, must be regarded as being related persons within the meaning of Article 29(1)(d) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996.

## **Case C-173/15 - GE Healthcare GmbH v Hauptzollamt Düsseldorf**

Title: Customs Union — Community Customs Code — Article 32(1)(c) — Determination of the customs value — Royalties or licence fees in respect of the goods being valued — Meaning — Regulation (EEC) No 2454/93 — Article 160 — ‘Condition of sale’ of the goods being valued — Payment of royalties or licence fees to an undertaking related to both the seller and the buyer of the goods — Article 158(3) — Adjustment and apportionment measures

Language: German

### Questions:

1. Can royalties or licence fees within the meaning of Article 32(1)(c) of [the Customs Code] be included in the customs value even if it is not established, either at the time at which the contract was concluded or at the relevant date as regards the incurring of the customs debt (the latter date being determined in the event of any dispute in accordance with Articles 201(2) and 214(1) of the [Customs] Code), that royalties or licence fees were owed?
2. If the reply to Question 1 is in the affirmative: can royalties or licence fees for trademarks within the meaning of Article 32(1)(c) of the [Customs] Code relate to the imported goods notwithstanding the fact that those royalties or licence fees are also paid for services and for the use of the first part of the name of the common group of undertakings?
3. If the reply to Question 2 is in the affirmative: can royalties or licence fees for trademarks within the meaning of Article 32(1)(c) of the [Customs] Code be a condition of the sale for export to the Community of the imported goods within the meaning of Article 32(5)(b) of the [Customs] Code even if they are payable, and paid, to an undertaking related to the seller and to the buyer?
4. If the reply to Question 3 is in the affirmative and the royalties or licence fees relate, as here, partly to the imported goods and partly to post-importation services: does it follow from the appropriate apportionment made only on the basis of objective and quantifiable data, in accordance with Article 158(3) of ... [Regulation No 2454/93] and the interpretative note on Article 32(2) of the [Customs] Code in Annex 23 to ... Regulation [No 2454/93], that only a customs value in accordance with Article 29 of the [Customs] Code may be corrected, or, if a customs value cannot be determined in accordance with Article 29 of the [Customs] Code, is the apportionment laid down in Article 158(3) of ... Regulation [No 2454/93] also possible, in so far as those costs would not otherwise be taken into account, when determining a customs value to be established in accordance with Article 31 of the [Customs] Code?’

### Ruling

1. Article 32(1)(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No

1791/2006 of 20 November 2006, must be interpreted as, first, not requiring the amount of royalties or licence fees to be determined at the time when a licence agreement was concluded or when the customs debt was incurred in order for those royalties or licence fees to be regarded as related to the goods being valued and, second, allowing such royalties or licence fees to be 'related to the goods being valued' even if those royalties or licence fees relate only partly to those goods.

2. Article 32(1)(c) of Regulation No 2913/92, as amended by Regulation No 1791/2006, and Article 160 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 1875/2006 of 18 December 2006, must be interpreted as meaning that royalties or licence fees are a 'condition of sale' of the goods being valued where, within a single group of undertakings, those royalties or licence fees are required to be paid by an undertaking related to both the seller and the buyer and were paid to that same undertaking.

3. Article 32(1)(c) of Regulation No 2913/92, as amended by Regulation No 1791/2006, and Article 158(3) of Regulation No 2454/93, as amended by Regulation No 1875/2006, must be interpreted as meaning that the adjustment and apportionment measures, referred to in those provisions respectively, may be applied where the customs value of the goods at issue has been determined, not on the basis of Article 29 of Regulation No 2913/92, as amended, but on the basis of the alternative method laid down in Article 31 of that regulation.

**Case C-291/15 – Euro 2004 Hungary Kft versus Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Vám- és Pénzügyőri Főigazgatósága**

Title: Common Customs Tariff — Value for customs purposes — Determination of the Customs value — Transaction value — Price actually paid — Doubts based on the veracity of the declared price — Declared price lower than the price paid in respect of other transactions relating to similar goods

Language: Hungarian

Question:

Must Article 181a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 be interpreted as precluding a practice of a Member State whereby the customs value is determined on the basis of the “transaction value of similar goods” if it is considered that the declared transaction value, in comparison with the statistical average of the purchase prices verified in the context of the importation of similar goods, is unreasonably low and, consequently, incorrect, despite the fact that the customs authority does not refute or call into question the authenticity of the invoice or the bank transfer certificate produced in order to establish the price actually paid for the imported goods, without the importer having submitted additional evidence to demonstrate the transaction value?

Ruling:

Article 181a 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, as amended by Commission Regulation No 3254/94 of 19 December 1994, must be interpreted as not precluding a customs authority practice, such as that at issue in the main proceedings, whereby the customs value of imported goods is determined on the basis of the transaction value of similar goods, the method in Article 30 of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, where the declared transaction value is considered to be unreasonably low in comparison with the statistical average of the purchase prices verified in the context of the importation of similar goods and despite the fact that the customs authority does not refute or call into question the authenticity of the invoice or the bank transfer certificate produced in order to establish the price actually paid for the imported goods, without the importer having submitted, in response to a request to that effect from the customs authority, additional evidence to demonstrate the accuracy of the declared transaction value of those goods.



## Case C-661/15 – X BV versus Staatssecretaris van Financiën

Title: Customs union — Community Customs Code — Article 29 — Import of vehicles — Determination of the customs value — Article 78 — Revision of the declaration — Article 236(2) — Repayment of import duties — Period of three years — Regulation (EEC) No 2454/93 — Article 145(2) and (3) — Risk of defects — Period of 12 months — Validity)

Language: Dutch

### Questions:

- (1)(a) Should Article 145(2) of the implementing regulation, read in conjunction with Article 29(1) and (3) of the Customs Code, be interpreted as meaning that the rule laid down therein also applies in a case where it is established that, at the time of acceptance of the declaration for specific goods, there was a manufacture-related risk that a component of the goods might become defective during use, and in view of this the seller, pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk?
- (b) In the event that the rule laid down in Article 145(2) of the implementing regulation does not apply in the case referred to above, are the provisions of Article 29(1) and (3) of the Customs Code, read in conjunction with Article 78 of the Customs Code, sufficient, without more, to reduce the declared customs value after the aforementioned price reduction has been granted?
- (2) Is the condition laid down in Article 145(3) of the implementing regulation for adjustment of the customs value referred to therein, namely that the adjustment of the price actually paid or payable for the goods must have been made within a period of 12 months following the date of acceptance of the declaration for entry to free circulation, contrary to the provisions of Articles 78 and 236 of the Customs Code, read in conjunction with Article 29 of [that code]?’

### Ruling:

1. Article 145(2) 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, as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002, read in conjunction with Article 29(1) and (3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, must be interpreted as meaning that it applies in a case, such as that at issue in the main proceedings, where it is established that, at the time of acceptance of the declaration for entry to free circulation for specific goods, there was a manufacture-related risk that the goods might become defective in use, and in view of this the seller,

pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk.

2. Article 145(3) of Regulation No 2454/93, as amended by Regulation No 444/2002, in so far as it provides for a time limit of 12 months from acceptance of the declaration for entry to free circulation of the goods, within which an adjustment of the price actually paid or payable must be made, is invalid.

## **Case C-46/16 – Valsts ienēmumu dienests v LS Customs Services**

Title: Customs union — Regulation (EEC) No 2913/92 — Community Customs Code — Non-Community goods — External Community customs transit procedure — Unlawful removal from customs supervision of goods liable to import duties — Determination of the customs value — Article 29(1) — Conditions for the application of the transaction value method — Articles 30 and 31 — Choice of the method for determining the customs value — Obligation imposed upon the customs authorities to state reasons for the chosen method)

Language: Latvian

### Questions:

- (1) Should Article 29(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code be interpreted as meaning that the method laid down in that article is also applicable when the import of the goods and their release for free circulation in the customs territory of the Community took place as a consequence of the fact that during the transit procedure the goods were removed from customs supervision, the goods concerned being goods liable to import duties, and the goods were not sold for export to the customs territory of the Community but for export outside the Community?
- (2) Should the expression ‘sequentially’ used in Article 30(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, in the light of the right to good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union read together with the principle that reasons must be stated for administrative measures, be interpreted as meaning that, in order to be able to conclude that the applicable method is that set out in Article 31 of the regulation, the customs authorities are under an obligation to state in all administrative measures why in those specific circumstances the methods for determination of customs value of goods set out in Articles 29 and 30 cannot be used?
- (3) Should it be deemed to be sufficient, to exclude the application of the method in Article 30(2)(a) of the Customs Code, that the customs authority declare that it does not have in its possession the appropriate information, or is the customs authority obliged to obtain information from the producer?
- (4) Must the customs authority state reasons why the methods established in Article 30(2)(c) and (d) of the Customs Code are not to be used, if it determines the price of similar goods on the basis of Article 151(3) of Regulation No 2454/93?
- (5) Must the decision of the customs authority contain a full statement of reasons as to what information is available in the Community, within the meaning of Article 31 of the Customs Code, or can it produce that statement of reasons subsequently, in legal proceedings, submitting more complete evidence?

### Ruling:

1. Article 29(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council of 13 April 1999, must be interpreted as meaning that the method for determining customs value laid down by that provision is not applicable to goods that were not sold for export to the European Union.

2. Article 31 of Regulation No 2913/92, as amended by Regulation No 955/1999, read in conjunction with Article 6(3) of that regulation, as amended, must be interpreted as meaning that the customs authorities are obliged to state, in their decision fixing the amount of import duties due, the reasons leading them to set aside the methods for determining customs value set out in Articles 29 and 30 of that regulation, as amended, before they could decide to apply the method laid down in Article 31 of that regulation, as amended, and the data on the basis of which the customs value of the goods was calculated, in order to enable the person concerned to assess whether that decision is well founded and to decide in full knowledge of the circumstances whether it is worthwhile for him to bring an action against it. It is for the Member States, exercising their procedural autonomy, to regulate the consequences of a failure by the customs authorities to fulfil their obligation to state reasons and to determine whether and to what extent such a failure may be remedied in the course of legal proceedings, subject to observance of the principles of equivalence and effectiveness.

3. Article 30(2)(a) of Regulation No 2913/92, as amended by Regulation No 955/1999, must be interpreted as meaning that, before it can set aside the method for determining customs value laid down by that provision, the competent authority is not required to ask the producer to provide it with the information necessary for the application of that method. That authority is, however, required to consult all the information sources and databases available to it. It must also allow the economic operators concerned to provide it with any information which may contribute to determining the customs value of the goods pursuant to that provision.

4. Article 30(2) of Regulation No 2913/92, as amended by Regulation No 955/1999, must be interpreted as meaning that the customs authorities are not required to state reasons why the methods set out in subparagraphs (c) and (d) of that provision are not to be applied, if they determine the customs value of the goods on the basis of the transaction value of similar goods in accordance with Article 151(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 1762/95 of 19 July 1995.

## **Case C- 59/16 - The Shirtmakers BV versus Staatssecretaris van Financiën**

Title: Customs union — Regulation (EEC) No 2913/92 — Community Customs Code — Article 32(1)(e)(i) — Customs value — Transaction value — Determination — Concept of ‘cost of transport’

Language: Dutch.

### Question:

Should Article 32(1)(e)(i) of the Customs Code be interpreted as meaning that the term “cost of transport” should be understood to mean the amounts charged by the actual carriers of the imported goods, even where those carriers have not charged those amounts directly to the buyer of the imported goods but to another operator who has concluded the contracts of carriage with the actual carriers on behalf of the buyer of the imported goods, and who has charged the buyer higher amounts in connection with his efforts in arranging the transport?

### Ruling:

Article 32(1)(e)(i) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that the concept of ‘cost of transport’, within the meaning of that provision, includes the supplement charged by the forwarding agent to the importer, corresponding to that agent’s profit margin and costs, in respect of the service which it provided in organising the transport of the imported goods to the customs territory of the European Union.

**Case C-529/16 – Hamamatsu Photonics Deutschland GmbH v  
Hauptzollamt München**

Title: Common Customs Tariff (SIC!) — Customs Code — Article 29 — Determination of the customs value — Cross-border transactions between related companies — Advance transfer pricing arrangement — Agreed transfer price composed of an amount initially invoiced and a flat-rate adjustment made after the end of the accounting period)

Questions:

1. Do the provisions of Article 28 CCC et seq. permit an agreed transfer price, which is composed of an amount initially invoiced and declared and a flat-rate adjustment made after the end of the accounting period, to form the basis for the customs value, using an allocation key, regardless of whether the subsequent debit charge or credit is made to the declarant at the end of the accounting period?
2. If so, may the customs value be reviewed and/or determined using simplified approaches where the subsequent transfer pricing adjustments (both upward and downward) can be recognised?

Ruling:

Articles 28 to 31 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as meaning that they do not permit an agreed transaction value, composed of an amount initially invoiced and declared and a flat-rate adjustment made after the end of the accounting period, to form the basis for the customs value, without it being possible to know at the end of the accounting period whether that adjustment would be made up or down.

**SECTION F**  
**INDEX OF TEXTS OF THE TECHNICAL COMMITTEE ON CUSTOMS**  
**VALUATION OF THE WCO**

**Note:** 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.

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- 1.1. The concept of “sale” in the Agreement.
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- 4.5. Royalties and licence fees under Article 8.1 (c) of the Agreement.  
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connection with the manufacture and sale of licensed preparations in the country of importation)

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