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REGULATION (EEC) No 1788/69 OF THE COMMISSION

of 10 September 1969

determining certain exceptions within the meaning of Article 3 (2) of Council Regulation (EEC) No 803/68

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 803/68[1] of 27 June 1968 on the valuation of goods for customs purposes, and in particular Articles 3 (2) and 17 thereof;

Whereas Regulation (EEC) No 803/68 lays down, in particular in Article 3 (1) thereof, that when the goods to be valued are imported under a trade mark or are imported for sale, other disposal or use under a foreign trade mark, the normal price is to be determined on the assumption that it includes the value of the right to use the trade mark in respect of such goods;

Whereas Article 3 (7) of that Regulation provides that a trade mark is to be treated as a foreign trade mark for purposes of that Article if it is the mark of:

(a) any person by whom the goods to be valued have been grown, produced, manufactured or offered for sale, or otherwise dealt with, outside the customs territory of the Community; or

(b) any person who is associated in business with any of the persons referred to under (a); or

(c) any person whose rights in the mark are restricted by an agreement with any person referred to under (a) or (b);

Whereas, where the right to use the trade mark belongs to a person established in a Member State, the application of Article 3 (1) and (7) of that Regulation may lead to a valuation which in certain cases is difficult to justify; whereas the exceptions which may be made under Article 3 (2) must aim to avoid such results;

Whereas, in particular, the value of the right to use a trade mark which is not to be treated as a foreign trade mark and belongs to a person established in a Member State should not be included in the value for customs purposes when, for practical reasons, such trade mark was affixed in a foreign country at the request of that person to goods purchased by him bearing no trade mark; whereas such a case should not be treated differently from the case in which a trade mark not treated as a foreign trade mark is affixed to goods after importation;

Whereas when the right to use a foreign trade mark gives rise to payment of a royalty the amount thereof must be included in the value for customs purposes; whereas, on the other hand, when the payment of such royalty is not required and the trade mark owned by a person established in a Member State is to be treated as a foreign trade mark by reason of the business association existing between him and the supplier of the goods to be valued, the value of that right should not, in certain cases and under certain conditions, be included in the value for customs purposes;

Whereas the application of such exceptions is justified when goods are imported for the purpose of sale, other disposal or use under a foreign trade mark after subsequent manufacture or processing; whereas Article 3 (3) of the above-mentioned Regulation is worded in such manner that it must be given the same field of application as Article 3 (1);

Whereas it is important to ensure uniform application of the provisions of Regulation (EEC) No 803/68 in the matter and to adopt all necessary provisions to that end;

Whereas the provisions of this Regulation are in accordance with the Opinion of the Customs Valuation Committee;

[1] OJ No L 148, 28.6.1968, p. 6.

HAS ADOPTED THIS REGULATION:

Article 1

The value of the right to use a trade mark which is not treated as a foreign trade mark within the meaning of Article 3 (7) of Regulation (EEC) No 803/68 shall not be included in the value for customs purposes, where such trade mark is that of a person established in a Member State, if that person is the importer of the goods and the mark was affixed abroad at his request.

Article 2

1. In so far as the right to use a trade mark treated as a foreign trade mark within the meaning of Article 3 (7) of Regulation (EEC) No 803/68 does not entail the payment of any royalty, the value of such right shall not be included in the value for customs purposes where one or more of the following conditions are satisfied:

(a) The trade mark is that of a sole agent or sole concessionaire established in a Member State, there is no business association between the agent or concessionaire and the supplier of the goods to be valued other than the relationship created by the agency or concession and the rights of the agent or concessionaire in the trade mark are not restricted within the meaning of Article 3 (7) (c) of Regulation (EEC) No 803/68;

(b) The trade mark is that of a person established in a Member State who is associated in business with the supplier of the goods to be valued but who also imports for sale under the same trade mark, identical goods obtained in the open market, as provided for in Article 1 (1) of Regulation (EEC) No 803/68;

(c) The trade mark is that of a person established in a Member State whose business association with the supplier of the goods to be valued stems solely from the fact that a third party has a share in the property of both, if such association has no influence whatsoever on transactions involving the goods in question;

(d) The trade mark is that of a person established in a Member State whose business association with the supplier of the goods to be valued stems solely from the fact that he has granted a loan to the supplier, or has received a loan from him, or that both have received a loan from a third party, if such association has no influence whatsoever on transactions involving the goods in question.

2. The rules set out in paragraph 1 shall also apply where goods are imported for sale, other disposal or use, under a foreign trade mark, after subsequent manufacture or processing.

Article 3

This Regulation shall enter into force on 1 January 1970.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 September 1969.

For the Commission

The President

Jean REY