COMMISSION REGULATION (EEC) No 477/79

of 9 March 1979

determining certain exceptions within the meaning of Article 3 (2) of Council Regulation (EEC) No 803/68 on the valuation of goods for customs purposes

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 of 27 June 1968 on the valuation of goods for customs purposes (1), as last amended by Regulation (EEC) No 1735/75 (2), and in particular Article 3 (2) thereof,

Whereas Regulation (EEC) No 803/68 provides, in Article 3 (1) thereof in particular, 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 shall be treated as a foreign trade mark for the 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 associated in business with any person referrred to in subparagraph (a) ; or

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

Whereas, where the trade mark is held by a person established in a Member State, the application of the provisions 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 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 or other fee the amount thereof must be included in the value for customs purposes ; whereas, on the other hand, when the payment of such royalty or other fee 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 be taken into consideration in determining the value for customs purposes when the price of the goods to be valued has not been influenced by the use of the trade mark ;

Whereas the application of such exception is also justified where goods are imported for sale, other disposal or use, after further manufacture under a foreign trade mark ; whereas Article 3 (3) of Regulation (EEC) No 803/68 is worded in such manner that it must be given the same scope as Article 3 (1) ;

Whereas Commission Regulation (EEC) No 1788/69 (3) should be repealed ;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Customs Valuation Committee,

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.

(1) OJ No L 148, 28. 6. 1968, p. 6.
(2) OJ No L 183, 14. 7. 1975, p. 1.
(3) OJ No L 230, 11. 9. 1969, p. 8.

Article 2

1. The value of the right to use a trade mark of a person established in a Member State and which is treated as a foreign trade mark within the meaning of Article 3 (7) of Regulation (EEC) No 803/68 shall not be taken into consideration in determining the value for customs purposes when no royalty or other fee has been or is to be paid and when the price of the goods is not influenced by the use of the trade mark.

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

Article 3

Regulation (EEC) No 1788/69 is hereby repealed.

Article 4

This Regulation shall enter into force on 1 July 1979.

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

Done at Brussels, 9 March 1979.

For the Commission

Étienne DAVIGNON

Member of the Commission