COMMISSION REGULATION (EEC) No 3158/83

of 9 November 1983

on the incidence of royalties and licence fees in customs value

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes [1], as amended by Regulation (EEC) No 3193/80 [2], and in particular Article 19 thereof;

Whereas for the purpose of implementing Articles 3 and 8 (1) (c) of Regulation (EEC) No 1224/80 it is desirable that rules and criteria should be laid down in respect of royalties and licence fees related to the goods being valued;

Whereas Commission Regulation (EEC) No 1494/80 of 11 June 1980 on interpretative notes and generally accepted accounting principles for the purposes of customs value [3] contains the provisions about royalties and licence fees laid down in Annex I to the Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade [4]; whereas Article 11 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 [5] only provides that the country of residence of the recipient of the payment of royalties or licence fees shall not be a material consideration in applying Article 8 (1) (c) of Regulation (EEC) No 1224/80;

Whereas the rules and criteria laid down in this Regulation define the conditions in which must be effected the adjustments to the price actually paid or payable provided for in Article 8 (1) (c) of Regulation (EEC) No 1224/80 and the corresponding interpretative note which appears in Regulation (EEC) No 1494/80;

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

1. For the purposes of Article 8 (1) (c) of Regulation (EEC) No 1224/80, royalties and licence fees shall be taken to mean in particular payment for the use of rights relating:

— to the manufacture of imported goods (in particular, patents, designs, models and manufacturing know-how), or

— to the sale for exportation of imported goods (in particular, trade marks, registered designs), or

— to the use or resale of imported goods (in particular, copyright, manufacturing processes inseparably embodied in the imported goods).

2. Without prejudice to Article 8 (5) of Regulation (EEC) No 1224/80, when the customs value of imported goods is determined under the provisions of Article 3 of that Regulation, a royalty or licence fee is to be added to the price actually paid or payable only when this payment:

— is related to the goods being valued, and

— constitutes a condition of sale of those goods.

Article 2

1. When the imported goods are only an ingredient or component of goods manufactured in the Community, an adjustment to the price actually paid or payable for the imported goods shall only be made when the royalty or licence fee relates to those goods.

2. Where goods are imported in an unassembled state or only have to undergo minor processing before resale, such as diluting or packing, this shall not prevent a royalty or licence free from being considered related to the imported goods.

3. If royalties or licence fees relate partly to the imported goods and partly to other ingredients or component parts added to the goods after their importation, or to post-importation activities or services, an appropriate apportionment shall be made only on the

---

[1] OJ No L 134, 31. 5. 1980, p. 1.
[2] OJ No L 333, 11. 12. 1980, p. 1.
[3] OJ No L 154, 21. 6. 1980, p. 3.
[4] OJ No L 71, 17. 3. 1980, p. 107.
[5] OJ No L 154, 21. 6. 1980, p. 14.

basis of objective and quantifiable data, in accordance with the interpretative note to Article 8 (2) of Regulation (EEC) No 1224/80 as set out in Regulation (EEC) No 1494/80.

Article 3

A royalty or licence fee in respect of the right to use a trade mark is only to be added to the price actually paid or payable for the imported goods where :

— the royalty or licence fee refers to goods which are resold in the same state or which are subject only to minor processing after importation,

— the goods are marketed under the trade mark, affixed before or after importation, for which the royalty or licence fee is paid, and

— the buyer is not free to obtain such goods from other suppliers unrelated to the seller.

Article 4

When the buyer pays royalties or licence fees to a third party, the conditions provided for in Article 1 (2) shall not be considered as met unless the seller or a person related to him requires the buyer to make that payment.

Article 5

Where the method of calculation of the amount of a royalty or licence fee derives from the price of the imported goods, it may be assumed in the absence of evidence to the contrary that the payment of that royalty or licence fee is related to the goods to be valued.

However, where the amount of a royalty or licence fee is calculated regardless of the price of the imported goods, the payment of that royalty or licence fee may nevertheless be related to the goods to be valued.

Article 6

This Regulation shall enter into force on 1 January 1984.

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

Done at Brussels, 9 November 1983.

For the Commission

Karl-Heinz NARJES

Member of the Commission