Valuation procedures under the Union Customs Code (UCC) – Earlier Sales and Royalties & License Fees

Customs Information Paper: 34 (2016)

<table>
<thead>
<tr>
<th>Who should read:</th>
<th>All economic operators involved in international trade.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is it about:</td>
<td>Details of the withdrawal of the earlier sale provision; Royalties &amp; License Fees; information for importers.</td>
</tr>
<tr>
<td>When effective:</td>
<td>1st May 2016</td>
</tr>
<tr>
<td>Extant until/ Expires</td>
<td>Indefinitely</td>
</tr>
</tbody>
</table>

1. Background.

This Customs Information Paper (CIP) is to provide further details of the valuation procedures to be followed upon implementation of the Union Customs Code commencing on the 1st May 2016.

Information is provided on the formal arrangements of the withdrawal of the ‘earlier sale’ facility currently detailed in Article 147 of Commission Regulation (EEC) 2454/93 and replaced by Article 128 of Commission Implementing Regulation (EU) 2015/2447 (UCC).

Also included here is an update on the treatment of Royalties and License Fees (Article 136 of Commission Implementing Regulation (EU) 2015/2447).

2. Withdrawal of the earlier sale facility

CIP 41 (2015) provided details of a transitional arrangement for a phased withdrawal of the earlier sale facility where existing contracts were in place by the 18th January 2016. (Article 347 of the new Commission Implementing Regulation (EU) 2015/2447 refers).
This will continue to apply until December 2017 for those contracts covered under the arrangement.

For all other importations this CIP is to confirm that with effect from the 1st May 2016 importers and their agents may no longer declare an earlier sale as the basis for the customs value.

Article 128 (1) (2015/2447) establishes the principle that the relevant sale for the application of the transaction value method, is the sale occurring immediately before the goods were brought into the EU customs territory, on condition that such sale actually constitutes a “sale for export” to the customs territory of the EU. Generally, this is to be interpreted as the effective sale for declaring the customs value.

HMRC has recently received guidance from the European Commission on how Article 128 may be interpreted. Information is included on (for example) domestic sales (i.e. sales between Member states of the EU). These sales within the EU do not qualify as sales for export to the EU.

This guidance is currently being examined by HMRC, industry and other member states and will be made available to the public once the European Commission publishes a final version.

**Article 128**

**Article 128(1)**

The transaction value of the goods sold for export to the customs territory of the Union shall be determined at the time of acceptance of the customs declaration on the basis of the sale occurring immediately before the goods were brought into that customs territory.

**Article 128(2)**

Where the goods are sold for export to the customs territory of the Union not before they were brought into that customs territory but while in temporary storage or while placed under a special procedure other than internal transit, end-use or outward processing, the transaction value will be determined on the basis of that sale.

**3. Royalties and License Fees**

Due to a lack of clarity during the negotiation process, HMRC, in common with other EU Member States, understood that the current approach to the inclusion of royalties in the customs value on goods released to free circulation was to be amended from the 1st May 2016.

This change of scope was seen by many economic operators as a significant development that would result in an increased burden. Of particular concern is the legislation that states;
**Condition of sale of the imported goods**

Article 136(4) of the Commission Implementing Regulation EU 2015/2447 states that:

> royalties and licence fees are considered to be paid as a condition of sale for the imported goods if

(a) the seller or a person related to the seller requires the buyer to make this payment;
(b) the payment by the buyer is made to satisfy an obligation of the seller in accordance with contractual obligations;
(c) the goods cannot be sold to, or purchased by the buyer without payment of the royalties or licence fees to a licensor.

The EU Commission has recently issued draft guidance to the Customs administrations of Member States stating that Article 136 IA does not include an assumption that royalties and license fees are automatically included in the customs value.

Neither is it expected that customs should have to examine all commercial contracts or reach conclusions on contractual intentions or obligations. Each case will be looked at on its own merits.

This guidance is currently being examined by HMRC, industry and other member states and will be made available to the public once the European Commission publishes a final version.

In the meantime, until the new arrangements have been confirmed by the European Commission, no changes are required to the way royalty fees are currently treated.

A further CIP will be issued in due course on valuation simplifications and authorisations.

**4. Contacts.**

If you have any questions regarding this CIP, please contact the Customs Product & Policy Team (Valuation) at: dutyliability.policy@hmrc.gsi.gov.uk

Issued on the 17 May 2016 by Customs Directorate, HMRC.

Your Charter explains what you can expect from us and what we expect from you.
For more information go to: [Your Charter](#)