

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down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (repealed)

PART I

GENERAL IMPLEMENTING PROVISIONS

TITLE V

CUSTOMS VALUE

CHAPTER 1

General provisions

Article 141

1 In applying the provisions of Articles 28 to 36 of the Code and those of this title, Member States shall comply with the provisions set out in Annex 23.

The provisions as set out in the first column of Annex 23 shall be applied in the light of the interpretative note appearing in the second column.

2 If it is necessary to make reference to generally accepted accounting principles in determining the customs value, the provisions of Annex 24 shall apply.

Article 142

1 For the purposes of this title:

- a 'the Agreement' means the Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade concluded in the framework of the multilateral trade negotiations of 1973 to 1979 and referred to in the first indent of Article 31 (1) of the Code;
- b 'produced goods' includes goods grown, manufactured and mined;
- c 'identical goods' means goods produced in the same country which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical;
- d 'similar goods' means goods produced in the same country which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable; the quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;
- e 'goods of the same class or kind' means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

2 'Identical goods' and 'similar goods', as the case may be, do not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches

for which no adjustment has been made under Article 32 (1) (b) (iv) of the Code because such elements were undertaken in the Community.

Article 143

1 For the purposes of Articles 29 (1) (d) and 30 (2) (c) of the Code, persons shall be deemed to be related only if:

- a they are officers or directors of one another's businesses;
- b they are legally recognized partners in business;
- c they are employer and employee;
- d any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them;
- e one of them directly or indirectly controls the other;
- f both of them are directly or indirectly controlled by a third person;
- g together they directly or indirectly control a third person; or
- h they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another:
 - husband and wife,
 - parent and child,
 - brother and sister (whether by whole or half blood),
 - grandparent and grandchild,
 - uncle or aunt and nephew or niece,
 - parent-in-law and son-in-law or daughter-in-law,
 - brother-in-law and sister-in-law.

2 For the purposes of this title, persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria of paragraph 1.

Article 144

1 For the purposes of determining customs value under Article 29 of the Code of goods in regard to which the price has not actually been paid at the material time for valuation for customs purposes, the price payable for settlement at the said time shall as a general rule be taken as the basis for customs value.

2 The Commission and the Member States shall consult within the Committee concerning the application of paragraph 1.

Article 145

Where goods declared for free circulation are part of a larger quantity of the same goods purchased in one transaction, the price actually paid or payable for the purposes of Article 29 (1) of the Code shall be that price represented by the proportion of the total price which the quantity so declared bears to the total quantity purchased.

Apportioning the price actually paid or payable shall also apply in the case of the loss of part of a consignment or when the goods being valued have been damaged before entry into free circulation.

Article 146

Where the price actually paid or payable for the purposes of Article 29 (1) of the Code includes an amount in respect of any internal tax applicable within the country of origin

or export in respect of the goods in question, the said amount shall not be incorporated in the customs value provided that it can be demonstrated to the satisfaction of the customs authorities concerned that the goods in question have been or will be relieved therefrom for the benefit of the buyer.

Article 147

1 For the purposes of Article 29 of the Code, the fact that the goods which are the subject of a sale are declared for free circulation shall be regarded as adequate indication that they were sold for export to the customs territory of the Community. This indication shall also apply in the case of successive sales before valuation; in such case each price resulting from these sales may, subject to the provisions of Articles 178 to 181, be taken as a basis for valuation.

2 However, where goods are used in a third country between the time of sale and the time of entry into free circulation the customs value need not be the transaction value.

3 The buyer need satisfy no condition other than that of being a party to the contract of sale.

Article 148

Where, in applying Article 29 (1) (b) of the Code, it is established that the sale or price of imported goods is subject to a condition or consideration the value of which can be determined with respect to the goods being valued, such value shall be regarded as an indirect payment by the buyer to the seller and part of the price actually paid or payable provided that the condition or consideration does not relate to either:

- (a) an activity to which Article 29 (3) (b) of the Code applies; or
- (b) a factor in respect of which an addition is to be made to the price actually paid or payable under the provisions of Article 32 of the Code.

Article 149

1 For the purposes of Article 29 (3) (b) of the Code, the term ‘marketing activities’ means all activities relating to advertising and promoting the sale of the goods in question and all activities relating to warranties or guarantees in respect of them.

2 Such activities undertaken by the buyer shall be regarded as having been undertaken on his own account even if they are performed in pursuance of an obligation on the buyer following an agreement with the seller.

Article 150

1 In applying Article 30 (2) (a) of the Code (the transaction value of identical goods), the customs value shall be determined by reference to the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2 Where the costs and charges referred to in Article 32 (1) (e) of the Code are included in the transaction value, an adjustment shall be made to take account of significant differences in

such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

3 If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

4 In applying this Article, a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under paragraph 1 for identical goods produced by the same person as the goods being valued.

5 For the purposes of this Article, the transaction value of identical imported goods means a customs value previously determined under Article 29 of the Code, adjusted as provided for in paragraphs 1 (b) and 2 of this Article.

Article 151

1 In applying Article 30 (2) (b) of the Code (the transaction value of similar goods), the customs value shall be determined by reference to the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2 Where the costs and charges referred to in Article 32 (1) (e) of the Code are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

3 If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value for the imported goods.

4 In applying this Article, a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under paragraph 1 for similar goods produced by the same person as the goods being valued.

5 For the purposes of this Article, the transaction value of similar imported goods means a customs value previously determined under Article 29 of the Code, adjusted as provided for in paragraphs 1 (b) and 2 of this Article.

Article 152

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- a If the imported goods or identical or similar imported goods are sold in the Community in the condition as imported, the customs value of imported goods, determined in accordance with Article 30 (2) (c) of the Code, shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:
 - (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in the Community of imported goods of the same class or kind;

- (ii) the usual costs of transport and insurance and associated costs incurred within the Community;
 - (iii) the import duties and other charges payable in the Community by reason of the importation or sale of the goods.
- b If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value of imported goods determined under this Article shall, subject otherwise to the provisions of paragraph 1 (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Community in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

2 If neither the imported goods nor identical nor similar imported goods are sold in the Community in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Community who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1 (a).

3 For the purposes of this Article, the unit price at which imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

4 Any sale in the Community to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in Article 32 (1) (b) of the Code should not be taken into account in establishing the unit price for the purposes of this Article.

5 For the purposes of paragraph 1 (b), the 'earliest date' shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

Article 153

1 In applying Article 30 (2) (d) of the Code (computed value), the customs authorities may not require or compel any person not resident in the Community to produce for examination, or to allow access to, any account or other record for the purposes of determining this value. However, information supplied by the producer of the goods for the purposes of determining the customs value under this Article may be verified in a non-Community country by the customs authorities of a Member State with the agreement of the producer and provided that such authorities give sufficient advance notice to the authorities of the country in question and the latter do not object to the investigation.

2 The cost or value of materials and fabrication referred to in the first indent of Article 30 (2) (d) of the Code shall include the cost of elements specified in Article 32 (1) (a) (ii) and (iii) of the Code.

It shall also include the value, duly apportioned, of any product or service specified in Article 32 (1) (b) of the Code which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in Article 32 (1) (b) (iv) of the Code which are undertaken in the Community shall be included only to the extent that such elements are charged to the producer.

3 Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the customs authorities shall inform the declarant, if the latter so requests, of the source of such information, the data used and the calculations based on such data, subject to Article 15 of the Code.

5 The 'general expenses' referred to in the second indent of Article 30 (2) (d) of the Code, cover the direct and indirect costs of producing and selling the goods for export which are not included under the first indent of Article 30 (2) (d) of the Code.

Article 154

Where containers referred to in Article 32 (1) (a) (ii) of the Code are to be the subject of repeated importations, their cost shall, at the request of the declarant, be apportioned, as appropriate, in accordance with generally accepted accounting principles.

Article 155

For the purposes of Article 32 (1) (b) (iv) of the Code, the cost of research and preliminary design sketches is not to be included in the customs value.

Article 156

Article 33 (c) of the Code shall apply *mutatis mutandis* where the customs value is determined by applying a method other than the transaction value.