

Customs Valuation: Royalties and Licence Fees

HMRC officials recently announced that all existing agreements with traders on the customs valuation of royalties and licence fees will be reviewed for compliance with the Union Customs Code (UCC), which comes into force on 1 May 2016.

HMRC consider that it is necessary to review these agreements because of changes in the UCC implementing provisions which concern the interpretation of the term “condition of the sale”.

The primary provision relating to the customs valuation of royalties and licence fees is contained in Article 71 (1) (c) of the UCC (Regulation 952/2013, which can be found [here](#)). This provision is identical in wording to that of the current Community Customs Code (Regulation 2913/92) Article 32 (1) (c). These provisions both specifically state that a royalty or licence fee is includible in the customs value only if that royalty or licence fee is a “condition of the sale” of the imported goods. However the current draft of the Implementing Act, Article IA-II-3-10 (230-11- IA) at page 59, states:

4. *Royalties and licence fees are considered to be paid as a condition of sale for the imported goods when any of the following conditions is met:*
 - a) *the seller or 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.*

This is a considerable change from the current position which is governed by Articles 160 and 161 of the Customs Code Implementing Regulation (Commission Regulation 2454/93) which is largely silent on the meaning of the term “condition of the sale”. There is concern that new interpretation would potentially render dutiable almost any payment of royalties or licence fees paid by importers of goods into the EU. It remains to be seen whether this part of the Implementing Act will survive to the final legislation but, in any case, reviews of existing agreements on customs valuation with HMRC are likely to be a priority following the publication of the final text of the Implementing Act. Prudent importers will want to conduct their own reviews to ensure compliance with the new rules, to understand the impact on customs charges and, if possible, to identify mitigation strategies.

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The current (January 2014) draft of the Implementing Act can be found [here](#).

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4 Eyes Ltd has assisted many clients to establish the correct customs valuation for their goods, and to negotiate appropriate customs valuation agreements with the authorities. If you would like to know more about the changes to customs valuation rules which will result from the UCC, we welcome your call.

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