OPINION OF ADVOCATE GENERAL TESAURO
delivered on 13 May 1992 *

Mr President,
Members of the Court,

1. In the present case the Court is invited to clarify the provisions applicable for determining the value of compensating products and goods exported temporarily under the outward processing relief arrangements.

As stated in Article 1(2) of Council Regulation (EEC) No 2473/86 [1] of 24 July 1986, these arrangements allow Community goods to be exported temporarily from the customs territory of the Community in order to undergo processing, working or repair and the products resulting from these operations ('compensating' products) to be released for free circulation in the customs territory of the Community with total or partial relief from import duties.

The purpose of that mechanism is to avoid the levying of customs duty on goods exported from the Community for processing. To that end, Article 13(1) of the abovementioned regulation provides in particular that:

'The total or partial relief from import duties provided for in Article 1(2) shall be effected by deducting from the amount of import duties applicable to the compensating products released for free circulation the amount of import duties that would be applicable to the temporary export goods if they were imported into the customs territory of the Community from the country in which they underwent the processing operation or last such operation'.

In practice, the import duty actually due on compensating products is calculated by subtracting from the theoretical amount of duty applicable to such products upon importation into the Community the notional amount of duty applicable to the temporary export goods.

2. The facts of the case are relatively simple.

Wacker Werke exports petrol engines and diesel engines to the United States of America under the outward processing relief arrangements and imports equipment which is manufactured by Wacker Corporation (with which it has financial links) and in which the said engines are incorporated.

* Original language: Italian.
1 — OJ 1986 L 212, p. 1.

In particular, Wacker Werke invoices the petrol engines manufactured by it on the basis of production costs, increased by 25% for general expenses and profit margins, whereas it invoices the diesel engines purchased from third party producers on the basis of the purchase price increased by 5%. The imported equipment, by contrast, is invoiced at the prices indicated in the selling company's price lists, reduced by 45%.

In the view of the national court, there is no reason to believe that the prices invoiced for the temporary export goods and for the compensating products are influenced by the links between the two companies.

3. The Hauptzollamt München-West initially calculated the customs value of the compensating products and of the temporary export goods on the basis of the prices that the two companies had invoiced to one another; subsequently, however, it considered that whereas the value of the compensating products should be fixed on the basis of the invoiced selling prices, that of the temporary export goods should be determined on the basis of production costs (in the case of the petrol engines) or the purchase price (in that of the diesel engines), that is disregarding the increase of 25% or 5% applied by Wacker Werke; accordingly it took steps to recover DM 36 057.20 by way of customs duty.

Taking the view that the correct method of calculation was the one initially adopted, Wacker Werke first contested the demand for payment and then brought an action before the Finanzgericht München. The company maintained in substance that the engines had been supplied for valuable consideration and that it was therefore not possible to rely on Article 8(1)(b)(i) of Council Regulation (EEC) No 1224/80 [2] of 28 May 1980 on the valuation of goods for customs purposes, according to which the value of 'materials, components, parts and similar items incorporated in the imported goods' must be taken into account when determining the value of the goods before processing, on the grounds that this provision applies only if such materials and components have been supplied 'free of charge or at reduced cost', as is clear from the wording of the provision.

4. By order of 20 December 1990 the Finanzgericht München decided to stay the proceedings until the Court of Justice had given a preliminary ruling on three questions.

In the first of those questions, the national court asks whether Article 13(1) of Regulation No 2473/86 must be interpreted as meaning that for the calculation of import duty the customs value of the compensating products and of the temporary export goods must in principle be based on the transaction value in accordance with Article 3(1) of Regulation No 1224/80.

The question, which aims essentially to ascertain how import duties actually chargeable on products processed under outward processing arrangements should be determined, raises two separate issues. The first relates to the calculation of the theoretical duty applicable to the compensating

2 — OJ 1980 L 134, p. 1.

products and the second to the calculation of the notional amount of duty applicable to the temporary export goods.

5. I shall begin by examining the first of those aspects.

In that regard, it must be stated by way of introduction that the wording of Article 13 of Regulation No 2473/86 does not provide direct indications as to the method of calculating the customs value of the compensating products; however, according to the second subparagraph of paragraph 2 of that article, the value of the temporary export goods is that taken into consideration for those goods when determining the customs value of the compensating products in accordance with Article 8(1)(b)(i) of Council Regulation No 1224/80. From this wording, and in particular from the reference to Article 8 of Regulation No 1224/80, it is sufficiently clear in my opinion that the value to be taken into consideration when calculating the theoretical amount of duty applicable to compensating products is the transaction value of the goods, as defined in Article 3(1) of Regulation No 1224/80, which states that 'the customs value of imported goods ... shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted in accordance with Article 8'.

That statement is corroborated, moreover, by the actual wording of Article 13 of Regulation No 2473/86, the first paragraph of which refers to the amount of import duty applicable to the compensating products released for free circulation and which therefore appears to presuppose that the relevant provisions of Community legislation on the calculation of the customs value of goods apply to compensating products.

6. The calculation of the value of the temporary export goods is a different matter. For such products the Community legislature expressly stipulated the method of calculating their value in the second subparagraph of Article 13(2) of Regulation No 2473/86, laying down that 'the value of the temporary export goods shall be that taken into consideration for those goods in accordance with Article 8(1)(b)(i) of Council Regulation (EEC) No 1224/80, as last amended by Regulation (EEC) No 1055/85, when determining the customs value of the compensating products or, if the value cannot be determined in this way, the difference between the customs value of the compensating products and the processing costs determined by reasonable means'.

I would point out in passing that Article 8(1)(b)(i) lays down that in order to determine the customs value under Article 3 of Regulation No 1224/80, it is necessary to add to the price actually paid or payable for the imported goods the value, apportioned as appropriate, of materials, components, parts and similar items incorporated in the imported goods where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the

imported goods, to the extent that such value has not been included in the price actually paid or payable.

In practice, provision is made for the value of the temporary export goods to be calculated in two distinct ways. The first sets out what is probably the more frequent case, in which the customs value of the compensating products is determined in accordance with Article 3 of Regulation No 1224/80 and the temporary export goods are supplied by the buyer free of charge or at reduced cost.

In those circumstances, in order to ascertain the customs value of the compensating products it will be necessary to make the adjustments provided for in Article 8 of Regulation No 1224/80 and it will therefore be possible to use the value so determined for establishing the value of the temporary export goods as well.

The second possibility envisaged in the regulation, by contrast, relates to situations in which the product incorporated in the imported goods has been supplied for valuable consideration, as in the present case, so that the prerequisites for applying Article 8 of Regulation No 1224/80, which refers to products supplied by the buyer free of charge or at reduced cost, are not met. In those circumstances, according to the provision in question, the value of the temporary export goods must therefore be determined by deducting from the customs value of the compensating goods the processing costs determined by reasonable means.

7. The problem that arises in the present case therefore consists in determining how the costs of processing the products should be calculated and, more especially, whether the general expenses and the profit margin that the applicant in the main proceedings added to the cost of the engines supplied to Wacker Corporation should be considered as processing costs borne by the processing undertaking.

In abstract terms it could be held that the costs borne by the processing undertaking in manufacturing the compensating products are all processing costs. Such an approach would, however, mean that the customs value of the compensating products corresponded to the amount of processing costs, with the result that the value of the temporarily exported goods would be equal to zero.

It is clear that such a consequence was not intended by the Community legislature and would patently be in contradiction with the outward processing relief arrangements.

Where there is no doubt as to the transaction value of the temporary export product, as in the present case, a correct and reasonable method of calculating the processing costs may consist in subtracting from the costs borne by the processing industry — which are reflected in the selling price and hence in the customs value of the compensating products — the cost of purchasing the temporary export goods, since it is these goods that are the subject of the processing operation.

In practice the cost of processing the compensating products supplied by Wacker Corporation corresponds to the selling price taken into consideration in calculating the customs value of such goods, less the sums paid by Wacker Corporation for the purchase of the engines, including the increases applied by the applicant in the main proceedings.

In reality, it seems to me that in adopting Regulation No 2473/86 the Community legislature intended to leave the national courts a margin of discretion in the choice of the method of ascertaining the value of temporary export goods, obviously subject to the proviso that attainment of the objective pursued by the regulation, which is to avoid the taxation of goods exported from the Community for processing, is guaranteed.

8. Such an approach leads to the same result as that posited by the national court, which seems to consider, however, that where it is possible to determine the transaction value of both the compensating products and the temporary export goods in accordance with Article 3(1) of Regulation No 1224/80, those values should necessarily be taken as the basis for calculating the duty actually applicable to the products resulting from processing, on the basis of Article 13(1) of Regulation No 2473/86.

Hence in my opinion Article 13(1) of Regulation No 2473/86 should be interpreted as meaning that for the purpose of determining import duty the transaction value of the compensating products established in accordance with the relevant provisions of Regulation No 1224/80 should be taken as their customs value while the value of the temporary export goods should be determined in the manner laid down in the second subparagraph of Article 13(2) of Regulation No 2473/86.

I do not consider this approach to be correct from a formal point of view, however, first because Regulation No 2473/86 expressly lays down, in Article 13(2), the method of calculating the value of temporary export goods and secondly because, if one accepts the proposition that the value of the temporary export goods corresponds to their customs value calculated in accordance with Regulation No 1224/80, it is difficult to see why this should hold good only if that value is calculated on the basis of Article 3 of the regulation in question.

9. The above considerations also provide the answer to the second question, in which the national court asks whether the first sentence of the second subparagraph of Article 13(2) of Regulation No 2473/86 must be interpreted as meaning that the customs value of compensating products is to be determined in accordance with this provision even where the holder of the outward processing authorization has not temporarily exported the goods free of charge or at reduced cost within the meaning of Article 8(1)(b)(i) of Regulation No 1224/80.

Given that, as stated above, Article 13(2) of Regulation No 2473/86 relates not to the customs value of the compensating products but to the value of the temporary export goods, I consider it necessary to state that, with regard to such goods as well, the second alternative set out in the second subparagraph of Article 13(2) of Regulation No 2473/86 is applicable only where the conditions referred to in Article 8 of Regulation No 1224/80 are met, that is to say where the temporary export goods have been supplied free of charge or at reduced cost.

The negative answer to the second question obviates the need for me to reply to the third question put by the national court on the interpretation of Article 8 of Regulation No 1224/80.

10. In the light of the foregoing, therefore, I propose that the Court should reply as follows to the questions submitted by the Finanzgericht München:

(1) Article 13(1) of Regulation No 2473/86 is to be interpreted as meaning that for the purpose of determining import duty the customs value of the compensating products must be calculated on the basis of the transaction value defined in Article 3(1) and in the other applicable provisions of Regulation No 1224/80.

(2) The value of the temporary export products must be determined in accordance with the second subparagraph of Article 13(2) of Regulation No 2473/86.

(3) The first alternative contemplated in the second subparagraph of Article 13(2) of Regulation No 2473/86 is to be interpreted as meaning that the value of the temporary export products must be determined in accordance with that provision only if the holder of the outward processing authorization has temporarily exported the goods free of charge or at reduced cost within the meaning of Article 8(1)(b)(i) of Regulation No 1224/80.