Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

9 July 2020 *

(Reference for a preliminary ruling — Customs union — Community Customs Code — Article 32(1)(c) — Regulation (EEC) No 2454/93 — Article 157(2), Article 158(3), and Article 160 — Determining the customs value — Adjustment — Royalties relating to the goods being valued — Royalties constituting a 'condition of sale' of the goods being valued — Royalties paid by the buyer to its parent company for the supply of the know-how required for the manufacture of the finished products — Goods purchased from third parties, which constitute components to be incorporated in the licensed products)

In Case C-76/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 25 October 2018, received at the Court on 31 January 2019, in the proceedings

Direktor na Teritorialna direktsiya Yugozapadna Agentsiya 'Mitnitsi', formerly Nachalnik na Mitnitsa Aerogara Sofia,

v

'Curtis Balkan' EOOD,

THE COURT (Seventh Chamber),

composed of P.G. Xuereb, President of the Chamber, T. von Danwitz and A. Kumin (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Direktor na Teritorialna direktsiya Yugozapadna Agentsiya 'Mitnitsi', formerly the Nachalnik na Mitnitsa Aerogara Sofia, by M. Metodiev, acting as Agent,

– the Bulgarian Government, by E. Petranova and L. Zaharieva, acting as Agents,

– the Spanish Government, by S. Jiménez García and M.J. García-Valdecasas Dorrego, acting as Agents,

* Language of the case: Bulgarian.

– the European Commission, by M. Kocjan, Y. Marinova and F. Clotuche-Duvieusart, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 157(2), Article 158(3) and Article 160 of 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 (OJ 1993 L 253, p. 1).

2 The request has been made in proceedings between the Direktor na Teritorialna direktsiya Yugozapadna Agentsiya 'Mitnitsi' (Director of the South-West Regional Directorate of the Customs Agency, Bulgaria), formerly the Nachalnik na Mitnitsa Aerogara Sofia (Director of Customs at Sofia Airport, Bulgaria), and 'Curtis Balkan' EOOD concerning the taking into account of fees paid by the latter to its parent company when determining the customs value of goods imported from third parties.

Legal context

The Customs Code

3 Article 29(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Customs Code') provides:

'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, where necessary, in accordance with Articles 32 and 33 …

…'

4 Article 32 of the Customs Code provides:

'1. In determining the customs value under Article 29, there shall be added to the price actually paid or payable for the imported goods:

…

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

…

2. Additions to the price actually paid or payable, pursuant to paragraph 1, shall be made only on the basis of objective and quantifiable data.

3. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

…'

Regulation No 2454/93

5 In accordance with Article 143(1)(e) of Regulation No 2454/93, persons are to be deemed to be related if one of them directly or indirectly controls the other.

6 Article 157 of that regulation provides:

'1. For the purposes of Article 32(1)(c) of the Code, 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 32(5) of the Code, when the customs value of imported goods is determined under the provisions of Article 29 of the Code, a royalty or licence fee shall be added to the price actually paid or payable only when this payment:

– is related to the goods being valued, and

and

– constitutes a condition of sale of those goods.'

7 Under Article 158 of that regulation:

'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.

…

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 basis of objective and quantifiable data, in accordance with the interpretative note to Article 32(2) of the Code in Annex 23.'

8 Article 160 of Regulation No 2454/93 provides:

'When the buyer pays royalties or licence fees to a third party, the conditions provided for in Article 157(2) shall not be considered as met unless the seller or a person related to him requires the buyer to make that payment.'

9 Article 161 of that regulation provides:

'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.'

10 The interpretative note on customs value, in Annex 23 to Regulation No 2454/93, provides, with regard to Article 32(2) of the Customs Code:

'Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 32, the transaction value cannot be determined under the provisions of Article 29. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.'

11 That interpretative note states, with regard to Article 143(1)(e) of Regulation No 2454/93:

'One person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.'

Commentaries of the Customs Code Committee

12 Under Commentary No 3 (customs valuation section) on the incidence of royalties and licence fees in customs value, drawn up by the Customs Code Committee referred to in Article 247a of that code ('the Customs Code Committee'):

'…

8. The need to examine the incidence of royalties and licence fees in customs value is clear when the imported goods are themselves the subject of the licence agreement (i.e. they are the licensed product). The need also exists however where the imported goods are ingredients or components of the licensed product or where the imported goods (e.g. specialised production machinery or industrial plant) themselves produce or manufacture licensed products.

9. "Know-how" provided under a licence agreement will often involve the supply of designs, recipes, formulae and basic instructions as to the use of the licensed product. Where such know-how applies to the imported goods, any royalty or licence fee payment therefore will need to be considered for inclusion in the customs value. Some licence agreements however (for example in the area of "franchising") involve the supply of services such as the training of the licensee's staff in the manufacture of the licensed product or in the use of machinery/plant. Technical assistance in the areas of management, administration, marketing, accounting, etc. may also be involved. In such cases the royalty or licence fee payment for those services would not be eligible for inclusion in the customs value.

…'

Royalties and licence fees related to the goods to be valued

11. In determining whether a royalty relates to the goods to be valued, the key issue is not how the royalty is calculated but why it is paid i.e. what in fact the licensee receives in return for the payment … Thus in the case of an imported component or ingredient of the licensed product, or in the case of imported production machinery or plant, a royalty payment based on the realisation on sale of the licensed product may relate wholly, partially or not at all to the imported goods.*Royalties and licence fees paid as a condition of sale of the goods to be valued*

12. The question to be answered in this context is whether the seller would be prepared to sell the goods without the payment of a royalty or licence fee. The condition may be explicit or implicit. In the majority of cases it will be specified in the licence agreement whether the sale of the imported goods is conditional upon payment of a royalty or licence fee. It is not however essential that it should be so stipulated.

13. When goods are purchased from one person and a royalty or licence fee is paid to another person, the payment may nevertheless be regarded as a condition of sale of the goods under certain conditions (see Article 160 of [Regulation No 2454/93]. …'

13 Commentary No 11 of the Customs Code Committee (customs valuation section) on the application of Article 32(1)(c) of the Customs Code in relation to royalties and licence fees paid to a third party according to Article 160 of Regulation No 2454/93, drawn up by the Customs Code Committee, is worded as follows:

'…

Even if the actual sales contract between the buyer and the seller does not explicitly require the buyer to make the royalty payments, the payment could be an implicit condition of sale, if the buyer was not able to buy the goods from the seller and the seller would not be prepared to sell the goods to the buyer without the buyer paying the royalty fee to the licence holder.

…

In the context of Article 160 [of Regulation No 2454/93], when royalties are paid to a party which exercises direct or indirect control over the manufacturer (resulting in a conclusion that they are related under Article 143 [of that regulation]), then such payments are regarded as a condition of sale. According to Annex 23 [to that regulation], "one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter".

The following elements should be analysed to determine if there is control:

– the licensor selects the manufacturer and specifies it for the buyer;

– there is a direct contract of manufacture between the licensor and the seller;

– the licensor exercises actual control either directly or indirectly over the manufacture (as regards centres of production and /or methods of production);

– the licensor exercises actual direct or indirect control over the logistics and the dispatch of the goods to the buyer;

– the licensor nominates/restricts who the producer can sell their goods to;

– the licensor sets conditions relating to the price at which the manufacturer/seller should sell their goods or the price at which the importer/buyer should resell the goods;

– the licensor has the right to examine the manufacturer's or the buyer's accounting records;

– the licensor designates the methods of production to be used/provides designs etc.;

– the licensor designates/restricts the sourcing of materials/components;

– the licensor restricts the quantities that the manufacturer may produce;

– the licensor does not allow the buyer to buy directly from the manufacturer, but, through the trademark owner(licensor) who could as well act as the importer's buying agent;

– the manufacturer is not allowed to produce competitive products (non-licensed) without the consent of the licensor;

– the goods produced are specific to the licensor (i.e., in their conceptualisation/design and with regard to the trade mark);

– the characteristics of the goods and the technology employed are laid down by the licensor.

A combination of such indicators, which go beyond purely quality control checks by the licensor, demonstrates that a relationship in the sense of Article 143(1)(e) [of Regulation No 2454/93] exists and hence the payment of the royalty would be a condition of sale in accordance with Article 160 [of that regulation].'

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 Curtis Balkan, a company established in Bulgaria, is wholly owned by Curtis Instruments Inc., a company established in the United States ('Curtis USA'). The legal relations between those companies are governed, inter alia, by two contracts, the first, concluded on 1 February 1996, relating to the right to use a patent, the second, concluded on 26 November 2002, relating to the supply of management services.

15 Under the patent use agreement, Curtis USA allocates at a standard price to Curtis Balkan kits for the manufacture of fuel supply indicators and high-frequency speed regulators based on its own patented technology. Curtis Balkan is entitled to produce, using those components, and to sell engine speed regulators and components for electric vehicles for which it pays a fee for the right to use the patent. That payment is paid quarterly on the basis of the quarterly sales reports for the products. Under an amendment to the contract, signed on 1 September 2010, Curtis USA receives royalties in the amount of 10% of the net sale price of the goods covered by the contract and sold by Curtis Balkan.

16 Under a contract for the supply of services, Curtis USA undertakes, inter alia, to carry out the operational activity for Curtis Balkan, namely management, including marketing, advertising, preparing budgets, financial reports, information systems and human resources for an agreed monthly fee.

17 During an inspection of the customs declarations made by Curtis Balkan relating to the import of goods from third countries between 1 January 2012 and 31 May 2015, the Bulgarian customs authorities found that the 'parts and components' imported goods had been used by Curtis Balkan for the manufacture of products in respect of which Curtis Balkan USA pays royalties to Curtis USA, pursuant to the agreement of 1 February 1996. It was also found that the declared customs value of the imported goods did not include those royalties.

18 In that context, explanations were provided both by Curtis USA and by Curtis Balkan, from which it is apparent, inter alia, that Curtis USA controls the entire production line, from the negotiation and centralised purchase of the components required for production up to the sale of the finished products. The components incorporated in the products are manufactured in accordance with specifications imposed by Curtis USA and are designed specifically for those products. In addition, the selection of another supplier must be approved by Curtis USA. However, for any order of a value not exceeding USD 100 000 (approximately EUR 85 000), Curtis USA does not need to be notified or give its approval.

19 By decision of 28 April 2016, the Director of Customs at Sofia Airport revised the declared customs value for all the customs declarations examined, including in that review the royalties which he considered were due under Article 32(1)(c) of the Customs Code and Article 157 of Regulation No 2454/93, read in conjunction with Article 158(1) and (3) and Article 160 of that regulation.

20 Curtis Balkan challenged that decision by an administrative appeal. In support of its appeal, that company submitted letters from suppliers seeking to show that the prices of the goods ordered by Curtis Balkan from those suppliers did not depend on the royalties which it paid to Curtis USA and that Curtis USA was not in a position to direct or restrict the activities of those suppliers.

21 By decision of 21 June 2016, the competent customs authority dismissed the administrative appeal lodged by Curtis Balkan.

22 Curtis Balkan challenged the decision of 28 April 2016, as confirmed by the decision of 21 June 2016, before the Administrativen sad — Sofia grad (Sofia City Administrative Court, Bulgaria). In those proceedings, an expert's report was ordered at the request of that company, from which it is apparent that the value of the customs declarations at issue in the main proceedings did not exceed the threshold of USD 100 000, under which that company enjoys operational independence when ordering goods.

23 By judgment of 8 February 2018, the Administrativen sad — Sofia grad (Sofia City Administrative Court) annulled the decision of 28 April 2016, as confirmed by the decision of 21 June 2016, on the ground that the conditions laid down in Article 157(2) of Regulation No 2454/93 for increasing the contractual value of the imported goods by the value of the royalties paid were not satisfied.

24 As regards the first condition laid down in that provision, according to which the payment of royalties must relate to the goods being valued, that court held that the goods at issue in the main proceedings were not covered by the contract concerning the right to use a patent. In particular, no evidence was provided that specific manufacturing processes or know-how for which the rights are held by Curtis USA had been inseparably incorporated into those goods.

25 As regards the second condition, namely that the payment of royalties must be a condition of sale of the imported goods, it had also not been established, according to that court, that the suppliers had required Curtis Balkan to pay royalties to Curtis USA. More specifically, it has not been shown that there is any link between the latter company and the suppliers which could give grounds for assuming that the former exercises indirect control over the latter. Moreover, those suppliers categorically deny the existence of such a link.

26 The Director of Customs at Sofia Airport brought an appeal against the judgment of the Administrativen sad — Sofia grad (Sofia City Administrative Court) before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria).

27 The Director of Customs at Sofia Airport claims that there is a link between the royalties and the goods being valued, in so far as the latter are components used for the manufacture of licensed products and in so far as those components are certified in connection with the quality requirements

of the finished products. Furthermore, the royalties constitute a condition of sale of the imported goods since, when selecting suppliers, account is taken of the technical requirements which the imported goods must satisfy, requirements which are issued by the engineering departments of Curtis USA's design centre.

28 As regards the fact that the goods being valued had been purchased from suppliers separate from the company to which the royalties were paid, the Director of Customs at Sofia Airport considers that Article 160 of Regulation No 2454/93, which covers such a situation, is applicable, since Curtis USA exercises indirect control over the manufacturers. The licensor selects the manufacturers and imposes specifications on them, with the result that it exercises actual direct or indirect control over the manufacturing process.

29 Furthermore, in so far as the imported goods are merely component parts in the composition of the finished products and the royalties relate, in part, to the imported goods and, in part, to other components added to the goods after their importation, as well as to post-importation activities and services, the Director of Customs at Sofia Airport submits that the royalties were apportioned on a pro rata basis in accordance with Article 158(1) and (3) of Regulation No 2454/93.

30 Curtis Balkan contests the position of the Director of Customs at Sofia Airport.

31 The referring court notes that it has held, in cases comparable to that in the main proceedings, between the same parties, that the customs authority had made the adjustment correctly, on the basis of Article 158(3) of Regulation No 2454/93. In particular, it considered that, in the scenario referred to in that provision, the conditions of Article 157(2) of that regulation did not need to be confirmed and Article 160 of that regulation was also irrelevant.

32 However, since it has doubts as to the correct interpretation of Regulation No 2454/93, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it provides an independent basis for the adjustment of the customs value via the addition of royalties or licence fees to the price actually paid or payable for the imported goods, irrespective of the rule in Article 157 of Regulation No 2454/93?

(2) Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it makes provision for two alternative scenarios for the adjustment of the customs value: firstly, the scenario in which the royalties or licence fees, such as those at issue here, relate partly to the imported goods and partly to other component parts added to the goods after their importation, and, secondly, the scenario in which the royalties or licence fees relate to post-importation activities or services?

(3) Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it makes provision for three scenarios for the adjustment of the customs value: firstly, the scenario in which the royalties or licence fees relate partly to the imported goods and partly to other component parts added to the goods after their importation; secondly, the scenario in which the royalties or licence fees relate partly to the imported goods and partly to post-importation activities or services; thirdly, the scenario in which the royalties or licence fees relate partly to the imported goods and partly to other component parts added to the goods after their importation, or to post-importation activities or services?

(4) Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it always allows an adjustment of the customs value if it is established that the royalties or licence fees paid relate to activities or services following the importation of the goods being valued, which, in this specific

case, are services that are provided to the Bulgarian company by the American company (and are connected with manufacturing and management), irrespective of whether the requirements for the adjustment pursuant to Article 157 of Regulation No 2454/93 have been met?

(5) Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it constitutes a special case of customs value adjustment under the arrangements and conditions of Article 157 of Regulation No 2454/93, whereby the special nature resides solely in the fact that the royalties or licence fees relate only partly to the goods being valued, meaning that they are to be apportioned appropriately?

(6) Is Article 158(3) of Regulation No 2454/93 to be interpreted as meaning that it is also applicable if the buyer pays a fee or royalties or licence fees to a third party?

(7) If both of the preceding questions are answered in the affirmative, must the court assess, for the appropriate apportionment of the royalty or licence fee pursuant to Article 158(3) of Regulation No 2454/93, whether both conditions of Article 157(2) have been met, namely that the royalty or licence fee relates, even if only partly, to the imported goods and that it constitutes a condition of sale of those goods, and, if so, does the rule under Article 160, pursuant to which the conditions of Article 157(2) are met if the seller or a person related to him requires the buyer to make that payment, have to be taken into account in that assessment?

(8) Is Article 160 of Regulation No 2454/93 applicable only to the fundamental rule of Article 157 of Regulation No 2454/93 in the case where the royalties or licence fees are payable to a third party and relate wholly to the product being valued, or is it also applicable in cases in which the royalties or licence fees relate only partly to the imported goods?

(9) Is Article 160 of Regulation No 2454/93 to be interpreted as meaning that the term 'relationship' between licensor and seller should be understood to refer to cases in which the licensor is related to the buyer, because he exerts direct control over the buyer that goes beyond quality control, or is it to be interpreted as meaning that the relationship between licensor and buyer described above is not sufficient to assume an (indirect) relationship between licensor and seller, in particular if the latter disputes the view that the prices for the buyer's orders for the imported goods were dependent on the payment of royalties or licence fees and likewise disputes the view that the licensor was in a position to direct or restrict its actions operationally?

(10) Is Article 160 of Regulation No 2454/93 to be interpreted as meaning that it allows an adjustment of the customs value only if both of the conditions set out in Article 157 of Regulation No 2454/93 are met, namely that the royalty or licence fee that is paid to a third party is related to the goods being valued and constitutes a condition of sale of those goods, and the condition that the seller or a person related to him requires the buyer to pay the royalty or licence fee is also met?

(11) Is the requirement under the first indent of Article 157(2) of Regulation No 2454/93 — that the royalty or licence fee be related to the goods being valued — to be regarded as having been fulfilled in the case where there is an indirect connection between the royalty or licence fee and the imported goods, such as that in the present case, if the goods being valued are component parts of the licensed end product?'

Consideration of the questions referred

33 By its 11 questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 157(2), Article 158(3) and Article 160 of Regulation No 2454/93 must be interpreted as meaning that a proportion of the royalties paid by a company to its parent company in

consideration for the supply of know-how for the manufacture of finished products must be added to the price actually paid or payable for imported goods in circumstances where those goods are intended to be included, along with other component parts, in the composition of those finished products and are purchased by the former company from sellers separate from the parent company.

34 At the outset, it should be borne in mind that, according to settled case-law of the Court, the objective of EU law on customs valuation is to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values. The customs value must therefore reflect the real economic value of an imported product and take into account all of the elements of that product that have economic value (judgment of 20 June 2019, *Oribalt Rīga*, C-1/18, EU:C:2019:519, paragraph 22 and the case-law cited).

35 By virtue of Article 29 of the Customs Code, the customs value of imported goods is, in principle, the transaction value, that is to say, the price actually paid or payable for the goods when they are sold for export to the customs territory of the European Union, adjusted, where necessary, in accordance, in particular, with Article 32 of that code (see, to that effect, judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraph 31 and the case-law cited).

36 Among the elements to be added to the price actually paid or payable for the imported goods, in order to determine the customs value, Article 32 refers, in paragraph 1(c), to royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable.

37 Furthermore, according to Article 157(1) of Regulation No 2454/93, the concept of 'royalties and licence fees', for the purposes of Article 32(1)(c) of the Customs Code, refers, inter alia, to payment for the use of rights relating to the sale for exportation of imported goods or to the use or resale of imported goods.

38 Article 157(2) of Regulation No 2454/93 states that, when the customs value of imported goods is determined under the provisions of Article 29 of the Code, a royalty or licence fee is to be added to the price actually paid or payable only when this payment, first, is related to the goods being valued and, second, constitutes a condition of sale of those goods.

39 Thus, the adjustment laid down in Article 32(1)(c) of the Customs Code is to be applied where three cumulative conditions are satisfied, namely that, first, the royalties or licence fees have not been included in the price actually paid or payable, second, they are related to the goods being valued and, third, the buyer is required to pay those royalties or licence fees as a condition of sale of the goods being valued (judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraph 35).

40 In the present case, it is apparent from the order for reference that the royalties at issue in the main proceedings were paid by Curtis Balkan to its parent company, Curtis USA, in return for the supply by Curtis USA of know-how for the purpose of the manufacture of the products in which the imported goods were incorporated. Accordingly, those royalties must be regarded as a payment for the use of the rights relating to the use of the imported goods, within the meaning of the third indent of Article 157(1) of Regulation No 2454/93, and, consequently, as falling within the concept of 'royalties and licence fees' within the meaning of Article 32(1)(c) of the Customs Code.

41 Furthermore, since it is common ground that Curtis Balkan did not include those royalties in the price actually paid or payable for the imported goods at issue in the main proceedings, the first condition required for the adjustment of the customs value, as referred to in paragraph 39 of the present judgment, is satisfied.

42 As regards the second condition, to the effect that the royalties must be related to the goods being valued, within the meaning of Article 32(1)(c) of the Customs Code, it must be recalled that, under Article 158(1) of Regulation No 2454/93, where the imported goods are merely a component of goods manufactured in the European Union, an adjustment to the price actually paid or payable for the imported goods is only to be made when the royalty relates to those goods.

43 In addition, in accordance with the first paragraph of Article 161, 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. By contrast, under the second paragraph of Article 161 of Regulation No 2454/93, 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.

44 It must also be noted that the conclusions of the Customs Code Committee, although they do not have legally binding force, nevertheless constitute an important means of ensuring the uniform application of the Customs Code by the customs authorities of the Member States and as such may be regarded as a valid aid to the interpretation of the Code (judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraph 45 and the case-law cited).

45 In that regard, it is apparent from paragraph 8 of Commentary No 3 (Customs Value Section) on the incidence of royalties and licence fees in the customs value, drawn up by the Customs Code Committee, that it is necessary to analyse the effect of the payment of royalties and licence fees on the customs value not only where the imported goods are themselves the subject of the licence agreement, but also where the imported goods are components of the product covered by the licence.

46 Furthermore, according to paragraph 9 of that commentary, where know-how provided under a licence agreement applies to the imported goods, any royalty or licence fee payment therefore will need to be considered for inclusion in the customs value. By contrast, royalties and licence fees paid for the supply of services such as the training of the licensee's staff in the manufacture of the licensed product or technical assistance in areas such as management, administration, marketing or accounting must not be included in the customs value.

47 Finally, point 11 of that commentary provides that in determining whether a royalty relates to the goods to be valued, the key issue is not how the royalty is calculated but why it is paid, that is to say, what in fact the licensee receives in return for the payment. Thus in the case of an imported component of the licensed product, a royalty payment based on the realisation on sale of the licensed product may relate wholly, partially or not at all to the imported goods.

48 Accordingly, the fact that the method of calculating a royalty or licence fee relates not to the price of the imported goods, but to the price of the finished product in which those goods are incorporated does not preclude that royalty or licence fee from being capable of being regarded as relating to those goods.

49 By contrast, the mere fact that goods are incorporated in a finished product does not permit the conclusion that the royalties or licence fees paid in consideration for the supply, on the basis of a licensing agreement, of know-how for the manufacture of that finished product relate to those goods. In that regard, there must be a sufficiently close link between those royalties or licence fees, on the one hand, and the goods concerned, on the other.

50 Such a link exists where the know-how supplied under the licensing agreement is necessary for the manufacture of the imported goods. That is indicative of the fact that the goods were specifically designed for incorporation into the licensed product without any other reasonable use being envisaged. By contrast, the fact that know-how is necessary only for the completion of the licensed goods leads to the conclusion that there is no sufficiently close link.

51 In the present case, it is for the referring court, which alone has jurisdiction to assess the facts of the dispute before it, to determine whether there is a sufficiently close link between the know-how provided under the licence agreement concluded between Curtis Balkan and Curtis USA and the imported goods, and thus to determine whether the royalties paid by the latter to Curtis Balkan USA may be regarded as relating to those goods, in accordance with Article 32(1)(c) of the Customs Code. It is necessary, in that context, to take account of all the relevant factors, in particular the relationships of law and of fact between the persons involved.

52 It must be added that royalties may be related to the goods being valued, within the meaning of Article 32(1)(c), even if those royalties relate only partly to those goods (see, to that effect, judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraph 53 and the operative part). However, as is apparent from Article 32(2) of the Customs Code, additions to the price actually paid or payable are to be made only on the basis of objective and quantifiable data.

53 As regards the referring court's questions concerning the interpretation of Article 158(3) of Regulation No 2454/93, it must be recalled that, under that provision, 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 is to be made only on the basis of objective and quantifiable data, in accordance with the interpretative note on Article 32(2) of the Customs Code in Annex 23.

54 First, it must be held that Article 158(3) of Regulation No 2454/93 cannot be regarded as an independent legal basis for adjusting the customs value by adding royalties or licence fees to the price actually paid or payable for imported goods.

55 Under Article 32(3) of the Customs Code, in order to determine the customs value, no additions are to be made to the price actually paid or payable, except those provided for in that article.

56 Thus, as regards royalties and licence fees, Article 32(1)(c) of the Customs Code, the conditions for application of which are set out in Articles 157 to 162 of Regulation No 2454/93, constitutes the only legal basis for adjusting the customs value by adding royalties or licence fees.

57 In stating that, where royalties or licence fees relate only partly to the imported goods, an appropriate apportionment is to be made only on the basis of objective and quantifiable data, Article 158(3) of Regulation No 2454/93 thus merely clarifies a requirement arising from Article 32(3) of the Customs Code.

58 Secondly, Article 158(3) of Regulation No 2454/93 must be interpreted as applying not only 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, and if royalties or licence fees relate partly to the imported goods and partly to post-importation activities or services, but also if royalties or licence fees relate in part to the imported goods and partly to other ingredients or components which are added to the goods after their importation as well as to post-importation activities or services.

59 As has been pointed out in paragraph 57 of this judgment, Article 158(3) of Regulation No 2454/93 states that, where royalties or licence fees relate only partly to the imported goods, an appropriate apportionment is to be made only on the basis of objective and quantifiable data.

60 However, an interpretation of that provision whereby it could not apply to the third scenario referred to in paragraph 58 of the present judgment would have the effect that, if the 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 could be made in the absence of objective and quantifiable data, which would be contrary to the requirement deriving from Article 32(3) of the Customs Code, recalled in paragraph 52 of the present judgment, according to which any addition to the price actually paid or payable must be made only on the basis of objective and quantifiable data.

61 Thirdly, as regards the question whether Article 158(3) of Regulation No 2454/93 also applies when the buyer pays royalties or licence fees to a third party, separate from the seller, it is sufficient to note that that provision merely refers to the payment of 'royalties or licence fees', without specifying to whom those royalties or licence fees are to be paid.

62 As regards the third condition set out in paragraph 39 of the present judgment, according to which the payment of the royalty or licence fee must constitute a condition of the sale of the goods being valued, it is clear from the case-law of the Court that that requirement is satisfied where, in the course of the contractual relations between the seller, or a person related to the seller, and the buyer, the payment of the royalty or of the licence fee is so important to the seller that, without such payment, the seller would not have concluded the sales contract (see, to that effect, judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraph 60).

63 In the present case, the company to which Curtis Balkan paid fees, namely Curtis USA, was a priori different from those from which it purchased the goods at issue in the main proceedings.

64 In that regard, Article 160 of Regulation No 2454/93 provides that, when the buyer pays royalties or licence fees to a third party, the conditions provided for in Article 157(2) of the regulation are not to be considered as met unless the seller or a person related to the seller requires the buyer to make that payment.

65 It follows from the Court's case-law that Article 160 of Regulation No 2454/93 may apply in a situation in which the 'third party' to whom the royalty or licence fee must be paid and the 'person related' to the seller are the same person (see, to that effect, judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraphs 63 to 66).

66 The Court has also held that, in order to determine whether the payment of a royalty or licence fee constitutes a condition of the sale of the goods being valued, within the meaning of Article 32(1)(c) of the Customs Code, in circumstances in which the seller of the goods being valued is separate from the licensor, it is ultimately necessary to know whether the person related to the seller is capable of ensuring that imports of the goods are subject to the payment to him or her of the royalties or licence fees in question (see, to that effect, judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraphs 67 and 68).

67 Under Article 143(1)(e) of Regulation No 2454/93, persons are to be deemed to be related if one of them directly or indirectly controls the other. The interpretative note on customs value concerning that provision, set out in Annex 23 to that regulation, states, in that regard, that one person is to be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

68 It is for the referring court to determine whether that was the case as regards the relationship between Curtis USA and the sellers of the goods at issue in the main proceedings. For that purpose, it is necessary to take into account the indicators in Commentary No 11 of the Customs Code Committee

(customs valuation section) on the application of Article 32(1)(c) of the Customs Code in relation to royalties and licence fees paid to a third party according to Article 160 of Regulation No 2454/93, referred to in paragraph 13 of the present judgment.

69 As regards the circumstances, mentioned by the referring court, that, according to the statements of the sellers, the price of the imported goods did not depend on payment of the royalties at issue in the main proceedings and that the licensor was not in a position to direct or restrict their activities on an operational level, such circumstances cannot, in themselves, be such as to rule out the possibility that the payment of those royalties constituted a condition of sale, the decisive question being merely whether, in the light of all the relevant factors, had that payment not been made, the conclusion of the sales contracts in the form selected and, consequently, the supply of the goods would have taken place or not.

70 In the light of the foregoing considerations, the answer to the questions referred is that Article 32(1)(c) of the Customs Code, read in conjunction with Article 157(2), Article 158(3) and Article 160 of Regulation No 2454/93, must be interpreted as meaning that a proportion of the royalties paid by a company to its parent company in consideration for the supply of know-how for the manufacture of finished products must be added to the price actually paid or payable for imported goods in circumstances where those goods are intended to be included, along with other component parts, in the composition of those finished products and are purchased by the former company from sellers separate from the parent company, where

– the royalties were not included in the price actually paid or payable for those goods;

– they relate to the imported goods, which presupposes that there is a sufficiently close link between the royalties and those goods;

– the payment of the royalties is a condition of the sale of those goods, so that, had it not been for that payment, the contract of sale relating to the imported goods would not have been concluded and, consequently, they would not have been delivered; and

– it is possible to make an appropriate apportionment of the royalties based on objective and quantifiable data,

which is for the referring court to ascertain, taking into account all the relevant facts, in particular the relationships of law and of fact between the buyer, the respective sellers and the licensor.

Costs

71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Article 32(1)(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, read in conjunction with Article 157(2), Article 158(3) and Article 160 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, must be interpreted as meaning that a proportion of the royalties paid by a company to its parent company in consideration for the supply of know-how for the manufacture of finished products must be added to the price actually paid or payable for imported goods in circumstances where those

goods are intended to be included, along with other component parts, in the composition of those finished products and are purchased by the former company from sellers separate from the parent company, where

– **the royalties were not included in the price actually paid or payable for those goods;**

– **they relate to the imported goods, which presupposes that there is a sufficiently close link between the royalties and those goods;**

– **the payment of royalties is a condition of the sale of those goods, so that, had it not been for that payment, the contract of sale relating to the imported goods would not have been concluded and, consequently, they would not have been delivered; and**

– **it is possible to make an appropriate apportionment of the royalties based on objective and quantifiable data,**

which is for the referring court to ascertain, taking into account all the relevant facts, in particular the relationships of law and of fact between the buyer, the respective sellers and the licensor.

[Signatures]