

## REGULATION (EEC) No 803/68 OF THE COUNCIL

of 27 June 1968

on the valuation of goods for customs purposes

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament<sup>1</sup>;

Having regard to the Opinion of the Economic and Social Committee<sup>2</sup>;

Whereas the Community is based upon a customs union;

Whereas the establishment of the customs union is governed in the main by Title 1, Chapter 1 of the Treaty; whereas that Chapter of the Treaty contains a series of specific provisions, dealing in particular with the elimination of customs duties between Member States, the establishment and progressive introduction of the Common Customs Tariff and the autonomous alteration or suspension of the duties therein; whereas the words 'autonomous alteration or suspension of duties in the common customs tariff' in Article 28, do not make it possible to base the provisions relating to value for customs purposes on that Article; whereas, while Article 27 provides that Member States shall, before the end of the first stage and in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action in respect of customs matters, that Article does not empower the institutions of the Community to issue binding provisions in that field; whereas, however, a thorough examination, undertaken jointly with Member States, has shown the need in certain fields for decision, by binding acts of the Community, upon measures essential for the introduction of customs legislation which will ensure uniform application of the Common Customs Tariff;

Whereas, pursuant to the Council Decision of 26 July 1966,<sup>3</sup> Member States will from 1 July 1968 apply the Common Customs Tariff to products imported from third countries other than those listed in Annex II to the Treaty;

Whereas the Common Customs Tariff will also be applied from 1 July 1968 to imports from third countries of a certain number of the products listed in Annex II to the Treaty in respect of which *ad valorem* customs duties will be applicable;

Whereas the Common Customs Tariff comprises almost exclusively *ad valorem* duties;

Whereas the value for customs purposes must be determined in a uniform manner in Member States, so that the level of the protection given by the Common Customs Tariff is the same throughout the Community and any deflection of trade and activities and any distortion of competition which might arise from differences between national provisions is thereby prevented;

Whereas any deflection of customs receipts should be avoided and where appropriate eliminated;

Whereas it is necessary to ensure equal treatment of importers as regards the collection of Common Customs Tariff duties;

Whereas the Member States are Contracting Parties to the Convention on the Valuation of Goods for Customs Purposes, which was signed at Brussels on 15 December 1950 and entered into force on 28 July 1953; whereas this Convention takes into account the principles of valuation set out in the General Agreement on Tariffs and Trade (GATT); whereas a Definition of Value and Interpretative Notes are annexed to the Convention and whereas those annexes form an integral part of the Convention;

Whereas under Article II of the Convention on the Valuation of Goods for Customs Purposes it is obligatory for each Contracting Party to introduce that Definition into its domestic law; whereas, however, under Article IV, each Contracting Party may adapt the text of the Definition by inserting therein such provisions of the Interpretative Notes

<sup>1</sup> OJ No C 55, 5.6.1968, p. 34.

<sup>2</sup> OJ No C 58, 13.6.1968, p. 1.

<sup>3</sup> OJ No 165, 21.9.1966, p. 2971/66.

as it may consider necessary and by giving the text such legal form as may be essential to render it operative in its domestic law, if necessary by adding complementary provisions clarifying the purport of the Definition;

Whereas the possibilities of adaptation offered by that Article have led the Member States to embody the Definition and the Interpretative Notes thereto in their legislation in varying ways; whereas, moreover, the Interpretative Notes contain optional provisions which have not been adopted by all Member States or are being applied differently;

Whereas, because of the differences in the provisions which Member States have laid down by law, regulation and administrative action on the basis of the Definition and the Interpretative Notes, the required uniform application of the Common Customs Tariff cannot be ensured;

Whereas, moreover, the establishment of a customs union between Member States requires the adaptation of certain provisions of the Definition and of the Interpretative Notes thereto to the needs of that customs union;

Whereas the adoption of a Community Regulation is the only means of attaining these ends;

Whereas the uniform application of the provisions of this Regulation to imports of all goods must be ensured, and to this end a Community procedure must be introduced which will permit the adoption of implementing provisions within appropriate time limits; whereas it is necessary to set up a Committee to organise close and effective co-operation between the Member States and the Commission in this field;

Whereas the Treaty does not make provision for the requisite powers in this respect;

HAS ADOPTED THIS REGULATION:

## TITLE I

### Article 1

1. For the purpose of applying the Common Customs Tariff, the value for customs purposes of the goods imported shall be taken to be the normal price, that is to say, the price which they would fetch, at the time referred to in Article 5, on a sale in the open market between a buyer and a seller independent of each other.

2. The normal price of any imported goods shall be determined on the following assumptions:

- (a) that the goods are delivered to the buyer at the place of introduction into the customs territory of the Community;
- (b) that the seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods at the place of introduction, which are hence included in the normal price;
- (c) that the buyer bears any duties or taxes applicable in the customs territory of the Community, which are hence not included in the normal price.

### Article 2

1. A sale in the open market between a buyer and seller independent of each other presupposes:

- (a) that the price is the sole consideration; by consideration is meant not only the fulfilment of a legal or contractual obligation, but also any other form of consideration;
- (b) that the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any natural or legal person associated in business with him and the buyer or any natural or legal person associated in business with him (other than the relationship created by the sale itself);
- (c) that no part of the proceeds of any subsequent resale, other disposal or use of the goods will accrue, either directly or indirectly, to the seller or any natural or legal person associated in business with him.

2. Two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest in the business or property of the other or both have a common interest in any business or property or some third person has an interest in the business or property of both of them.

### Article 3

1. When the goods to be valued

- (a) are manufactured in accordance with any patented invention or are goods to which any protected design has been applied; or
- (b) are imported under a trade mark; or
- (c) are imported for sale, other disposal or use under a foreign trade mark,

the normal price shall be determined on the assumption that it includes the value of the right to use the patent, design or trade mark in respect of the goods. This provision shall also apply in the case of copyright of any other intellectual or industrial property right.

2. Exceptions to the provisions of paragraph 1 may be determined in accordance with the procedure laid down in Article 17, where the rights referred to in that paragraph are held by a person established in a Member State.
3. Where goods are imported for sale, other disposal or use, after further manufacture, under a foreign trade mark, the provisions of paragraphs 4 to 6 shall apply.
4. The value of the right to use a foreign trade mark shall be wholly included in the normal price of the goods to be valued when they are to undergo after their importation one or more of the following operations:
- (a) simple operations, such as application of the mark, breaking bulk, sorting or packing;
  - (b) operations which do not contribute in any way or contribute only slightly to the essential characteristics or properties of the goods to which the trade mark is to be applied.
5. The value of the right to use a foreign trade mark shall be wholly excluded from the normal price of the goods to be valued, if the provisions of paragraph 4 (a) do not apply, and
- (a) the goods are of a kind in general supply and are freely available in the open market; or
  - (b) the right to apply the trade mark to the finished product depends on operations carried out after importation, and not on the use of the goods to be valued; or
  - (c) in accordance with the procedure laid down in Article 17, criteria are established in respect of goods the value of which is relatively low as compared with that of the finished product.
6. Where the provisions of paragraphs 4 and 5 do not apply, part of the value of the right to use the foreign trade mark shall be included in the normal price of the goods to be valued, the part of such value attributable to further manufacture after importation being excluded from the normal price of the goods to be valued.
7. A trade mark shall be treated as a foreign trade mark for the purposes of this Article if it is the mark of;
- (a) any person by whom the goods to be valued have been grown, produced, manufactured, offered for sale or otherwise dealt with, outside the customs territory of the Community; or
  - (b) any person associated in business with any person referred to in subparagraph (a); or
  - (c) any person whose rights in the trade mark are restricted by an agreement with any person referred to in subparagraph (a) or (b).

#### Article 4

1. The normal price shall be determined on the assumption that the sale is a sale of the quantity to be valued.
2. Exceptions to the provisions of paragraph 1 may be determined in accordance with the procedure laid down in Article 17 in respect of goods imported in split consignments.

#### Article 5

The material time for valuation for customs purposes shall be:

- (a) for goods declared for direct home use, the date of acceptance by the customs authorities of the declarant's statement of his intention that the goods should enter into home use;
- (b) for goods which, after another customs procedure has been applied, enter into home use, the time fixed by acts of the Council or the Commission pertaining to that customs procedure or by Member States in accordance with such acts.

#### Article 6

1. For the purposes of Article 1 (2) (b), the place of introduction into the customs territory of the Community shall be:

- (a) for goods carried by sea, the port of unloading, or the port of transshipment, subject to transshipment being certified by the customs authorities of that port;
- (b) for goods carried by sea and then, without transshipment, by inland waterway, the first port where unloading can take place either at the mouth of the river or canal or further inland, subject to proof being furnished to the customs authorities that the freight to the port of unloading is higher than that to the first port;
- (c) for goods carried by rail, inland waterway, or road, the place where the first customs office is situated;
- (d) for goods carried by other means, the place where the frontier of the customs territory of the Community is crossed.

2. For goods introduced into the territory of a Member State and then carried to a destination in another Member State, through the territory of a third country, the place of introduction into the Community to be taken into consideration shall be determined in accordance with the procedure laid down in Article 17.

3. For goods introduced into the customs territory of the Community and carried directly from one of the French overseas departments to another part of the customs territory of the Community or vice versa, the place of introduction to be taken into consideration shall be the place referred to in paragraphs 1 and 2 situated in that part of the customs territory of the Community from which the goods came, if they were unloaded or transhipped there and this was certified by the customs authorities.

When those conditions are not fulfilled, the place of introduction to be taken into consideration shall be the place specified in paragraphs 1 and 2 situated in that part of the customs territory of the Community to which the goods are consigned.

#### Article 7

The 'costs, charges and expenses' mentioned in Article 1 (2) (b) include, *inter alia*, any of the following:

- carriage and freight;
- insurance;
- loading charges;
- unloading charges, in so far as these are included in the freight for goods delivered to the place of introduction;
- commission;
- brokerage;
- costs, charges and expenses outside the customs territory of the Community of drawing up documents incidental to the introduction of the goods into that territory, including consular fees;
- duties and taxes applicable outside the customs territory of the Community except those from which the goods have been exempted or have been or will be relieved by means of refund;
- cost of containers, excluding those which are treated as separate articles for the purpose of levying customs duties;
- cost of packing (whether for labour, materials or otherwise).

#### Article 8

1. Where goods are carried by the same means of transport to a point beyond the place of introduction into the customs territory of the Community, transport costs shall be assessed in proportion to the distance covered outside and inside the customs territory of the Community, unless evidence is produced to the customs authorities to show the costs that would have been incurred under a general compulsory schedule of freight rates for the carriage of the goods to the place of introduction into the customs territory of the Community.

The provisions of the preceding paragraph shall not apply to goods sent by post. Special provisions may be adopted for such goods in accordance with the procedure laid down in Article 17, in view of the special nature of charges in international postal services.

2. Where goods are invoiced at a uniform free domicile price which corresponds to the price at the place of introduction, transport costs within the Community shall not be deducted from that price. However, such deduction shall be allowed if evidence is produced to the customs authorities that the free-frontier price would be lower than the uniform free domicile price.

3. Where transport is free or provided by the buyer, transport costs to the place of introduction, calculated in accordance with the schedule of freight rates normally applied for the same modes of transport, shall be included in the value for customs purposes.

4. Where goods from third countries are introduced into the customs territory of the Community through German territories where the Basic Law for the Federal Republic of Germany does not apply but which come under German internal trade regulations, delivery costs for such transit shall not be included in the value for customs purposes of the goods.

#### Article 9

1. The price paid or payable may be accepted as the value for customs purposes if:

- (a) the contract of sale is executed within the period specified in Article 10,
- (b) the price corresponds, at the time it is agreed upon, to prices on a sale in the open market between a buyer and a seller independent of each other, and
- (c) that price is adjusted, if necessary, to take account of circumstances of the sale which differ from those on which the normal price is based.

2. Adjustments under paragraph 1 (c) may in particular be required with reference to:

- (a) the costs, charges and expenses mentioned in Article 1 (2),
- (b) reductions in price granted in favour of sole agents or sole concessionaires or any other person operating in comparable circumstances,
- (c) abnormal rebates and any other reduction from the ordinary competitive price.

#### Article 10

1. For the purposes of Article 9, the price paid or payable may be accepted if the date of the contract

precedes the date referred to in Article 5 (a) or (b) by not more than six months.

2. Where goods are usually sold with a delivery period of between six months and twelve months, the six months' grace referred to in paragraph 1 may be extended to twelve months.

3. Where goods are usually sold with a delivery period of more than twelve months, the period of grace may be correspondingly increased, but shall however not exceed twenty-four months.

4. The goods for which the periods of grace referred to in paragraphs 2 and 3 can be allowed and the length of the period of grace admissible under paragraph 3 shall be determined in accordance with the procedure laid down in Article 17.

5. Where the goods are manufactured to order, the price paid or payable may be accepted for the purposes of Article 9 when delivery has been made within the agreed period.

6. If it is proved that reasons of *force majeure* or exceptional circumstances have caused the delivery period to exceed the period of grace admissible under paragraphs 1 to 5, the latter period may be correspondingly extended.

7. The application of the periods of grace referred to in paragraphs 1 to 5 may be suspended in a period of abnormal price fluctuations, in accordance with the procedure laid down in Article 17.

#### Article 11

1. The price to be taken into account in determining the value for customs purposes of goods declared for direct home use shall be the cash price payable on the date specified in Article 5 (a).

2. The following shall, however, also be taken to be cash prices:

(a) a price which, under the terms stipulated in the invoice or the contract, must be paid between the date of dispatch of the goods and the date specified in Article 5 (a);

(b) a price payable later than the date specified in Article 5 (a), if there is no provision for a discount for cash payment, or if proof of the existence of a different price for cash payment has not been furnished to the customs authorities.

3. The amount of the discount granted for cash payment shall not be included in the value for customs purposes if the rate of such discount is not higher than the normal rate in the branch of trade in question. Where the rate is higher, only the

amount corresponding to the normal rate shall not be included in the value for customs purposes.

4. Subject to the provisions of paragraph 2 (a), the amount of discount granted for payment in advance shall be included in the value for customs purposes.

5. Subject to the provisions of paragraph 2 (a), if there is no provision for a discount for payment in advance, the price paid in advance must be adjusted to determine the cash price, on the assumption that in consideration of advance payment the buyer was granted a price reduction at least equal to the interest which he would have had to pay for a loan of the amount paid in advance. However, such adjustment shall not be made if the customs authorities are furnished with evidence that the price paid corresponds to the cash price.

6. Where goods enter into home use after another customs procedure has been applied, the provisions of paragraphs 1 to 5 may be correspondingly adapted in accordance with the procedure laid down in Article 17.

#### Article 12

1. Where factors used to determine the value for customs purposes of goods are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used shall be that which corresponds to the parity declared to and recognised by the International Monetary Fund, unless variations in the value of such currency exceed the limits fixed by the rules of the Fund.

2. As regards the currency of countries which have not declared a parity to the International Monetary Fund, or where such declared parity is not recognised by the Fund, but the currency is quoted on the official exchange markets of the Member State where valuation is made, the rate of exchange to be used shall be the latest selling rate recorded on the most representative exchange market or markets of the Member State.

3. For currencies not covered by the provisions of paragraphs 1 or 2, and for the currency of a country which uses abnormal exchange techniques, such as fluctuating rates or multiple rates of exchange, the rate of exchange to be used shall be ascertained in accordance with the procedure laid down in Article 17.

#### Article 13

1. Standard average values may be established for the determination of the value for customs purposes of certain goods.

2. Such goods shall be specified, and the rules and criteria for the establishment of standard average values and their application shall be determined in accordance with the procedure laid down in Article 17.

#### *Article 14*

The particulars and documents to be furnished to the customs authorities for purposes of application of this Regulation shall where necessary be determined in accordance with the procedure laid down in Article 17.

### TITLE II

#### *Article 15*

1. A Customs Valuation Committee (hereinafter called the 'Committee') shall be set up and shall consist of representatives of the Member States with a representative of the Commission as Chairman.

2. The Committee shall draw up its own rules of procedure.

#### *Article 16*

The Committee may examine all questions relating to the application of this Regulation referred to it by its Chairman, either on his own initiative or at the request of a representative of a Member State.

#### *Article 17*

1. The provisions required for applying Articles 1 to 3 and 6 to 11 shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3 of this Article.

2. The representative of the Commission shall submit to the Committee a draft of the provisions to be adopted. The Committee shall deliver an Opinion on the draft within a time limit set by the Chairman having regard to the urgency of the matter. Decisions shall be taken by a majority of twelve votes, the votes of Member States being weighted as provided in Article 148 (2) of the Treaty. The Chairman shall not vote.

3. (a) The Commission shall adopt the provisions envisaged if they are in accordance with the Opinion of the Committee.

(b) If the provisions envisaged are not in accordance with the Opinion of the Committee, or if no Opinion is delivered, the Commission shall without delay submit to the Council a proposal with regard to the provisions to be adopted. The Council shall act by a qualified majority.

(c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed provisions shall be adopted by the Commission.

### TITLE III

#### *Article 18*

Member States shall consult one another within the Committee with a view to co-ordinating their attitude as regards the work of the Customs Co-operation Council, and its Valuation Committee, in connection with the Convention on the Valuation of Goods for Customs Purposes.

#### *Article 19*

The provisions of this Regulation shall not affect the provisions contained in acts of the Council or of the Commission, or laid down by Member States in accordance with such instruments, regarding the determination of the value for customs purposes of goods which enter into home use after a customs procedure other than that relating to direct home use has been applied.

#### *Article 20*

In so far as the provisions to be adopted pursuant to Articles 3 (2) and (5) (c), 4 (2), 6 (2), 8 (1), 10 (4), 11 (6), 12 (3), 13 (2) and 14 have not yet entered into force, the relevant provisions laid down by law, regulation or administrative action of Member States shall remain applicable, unless repealed by them.

#### *Article 21*

Each Member State shall inform the Commission of the provisions it adopts for the application of this Regulation. The Commission shall communicate this information to the other Member States.

#### *Article 22*

This Regulation shall enter into force on 1 July 1968.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 27 June 1968.

*For the Council*

*The President*

E. FAURE