

CHAPTER 8

VALUATION (1)

8.1 Introduction

We have already seen from the Classification chapter how important it is to correctly classify your goods. Remember the Classification Code determines, amongst other things, the **rate of duty** applicable to the goods. Therefore, if the rate is 3.7%, what do we apply this rate to?

Generally we apply it to the **CIF value** of the goods, which stands for **Cost, Insurance and Freight**.

8.2 Valuation methods - Method 1

However, what is included in the word "Cost" for instance? To find out more, open up the Code at Article 29. In order to arrive at the value of our goods we have to use **one of six methods**. Each method has to be looked at **in order** so we need to start with Method 1. If Method 1 applies we have to use it, and we don't need to consider the other Methods. There is one exception to following the methods in order. **Methods 4 and 5 can be reversed at the importer's request**.

[Art 29
2913/92](#)

Illustration 1

You import goods from America into the UK and pay for them in sterling. Article 29 of the Code says that the value of the goods is the **transaction value**, i.e. the price **paid for the goods when sold for export to the community**. There are some provisos before you can use this method. These are listed further down in the article.

[Art 29\(1\)\(d\) &
\(2\)\(a\)
2913/92](#)

For instance, look at Article 29(1)(d) and Article 29(2)(a).

These sub-sections tell us that you **cannot use the transaction value if the buyer and seller are related and the relationship has influenced the price**. What does a relationship in this situation mean? An example is where one of the parties, directly or indirectly, **controls the other**. Article 143 of the Implementing Regs provides more details.

[Art 143
2454/93](#)

Illustration 2

Company A is based in the UK and imports goods from its parent company, B Inc. based in America. They agree that the purchase price of the goods will be £10,000, which is £2,000 lower than the market value of the goods. If Company A was allowed to use Method 1, Customs would lose duty on £2,000. But **because the relationship between the parties has influenced the price charged, Method 1 cannot be used**. In this situation, therefore, we would have to move on to Method 2.

You will also note from Article 29 that Method 1 is **not available** for certain other imports, which include: **free of charge goods**, as there is no price paid, **imports by UK branches**, where there is no sale between two separate legal entities, and **leased goods**, as again there is no sale.

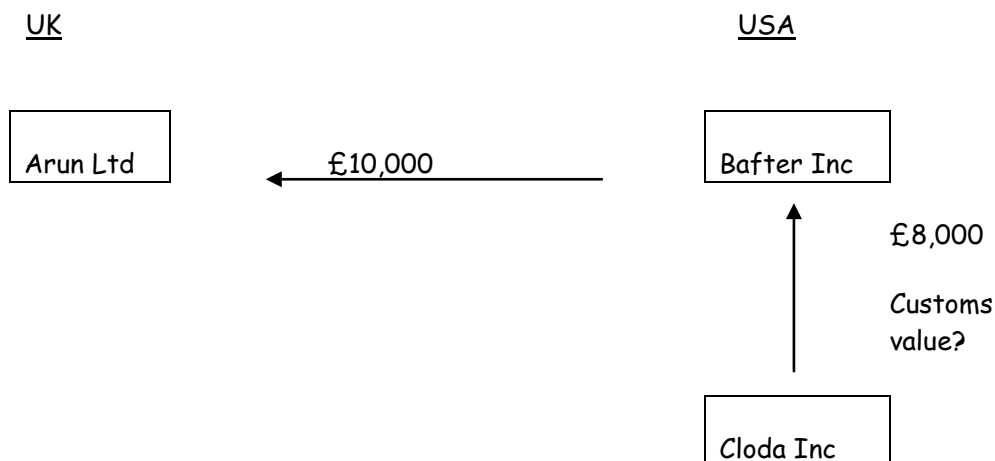
8.3 Sold for export to the Community

Before we go on to look at Method 2, there is something we need to look at in more detail, the phrase in Article 29(1), "**sold for export to the community**".

Article 29(1) says we use the "**price paid for the goods when sold for export to the community**".

Illustration 3

Arun Limited imports toys from its sister company, Bafter Inc. which is based in America. Bafter Inc. was the distributor company for the group and had purchased the goods itself from its subsidiary Cloda Inc. Cloda Inc. was the manufacturer of the toys. Cloda charges Bafter £8,000 for the toys and Bafter then adds on its own profit of £2,000 before selling the toys for £10,000 to Arun. Could we use the initial £8,000 sale between Cloda and Bafter as our Customs value?



To find out whether we can do this, turn to Article 147 of the Implementing Regs. This tells us that we can declare a price which relates to a sale taking place before the sale between Bafter and Arun, as long as we can **demonstrate that this sale took place for export to the EU**.

[Art 147
2454/93](#)

If Cloda's toys are electronic and have plugs attached, and those plugs are designed for use in the UK only - i.e. they have 3 pins, then this would show that the goods must have been destined for export to the UK, as they could not be used elsewhere.

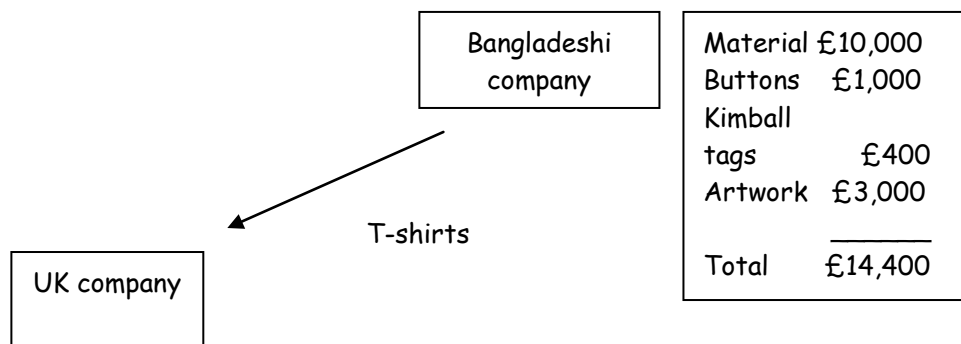
In addition, if the goods are **made to specifically conform to EU safety standards**, and have a **particular technical specification** that has been requested by Arun, this would increase our evidence that the goods were destined for the EU at the time of the sale between Cloda and Bafter. It's worth noting that Customs would look very carefully at the evidence you produce to decide if this earlier sale can be used.

8.4 Art 32 of the Code - Additions

Illustration 4

Look at the diagram below.

You work for a UK company that is going to import finished T-shirts from a company in Bangladesh. If the Bangladeshi company were to source the material, buttons, kimball tags and artwork itself, these costs would all be charged to your company as part of the price for the goods. (For the sake of simplicity all amounts are shown in sterling and the illustration ignores any profit the seller would charge for the goods.)



What if your company were to supply the buttons and kimball tags free of charge to the Bangladeshi company? Has it now successfully reduced the cost of the goods to £13,000? The Bangladeshi company now only has to pay for the material and artwork and will only need to charge this cost on to your company. Unfortunately you cannot do this by virtue of the last sentence of the first paragraph of Article 29(1), it says that the price paid has to be adjusted in accordance with Articles 32 and 33.

[Art 29\(1\) & 32 & 33 2913/92](#)

Article 32 gives a list of items that have to be **added to the price of the imported goods** - but only if they are not already included that is! The most important ones are:

- (a)(i) commissions paid to agents, except buying commissions.

Therefore, we need to add in **selling commissions**.

- (ii) the cost of **containers treated as one with the goods**.

For example, a violin case, housing a violin.

- (b) the cost of **goods and services supplied by the buyer free of charge or at a reduced cost**, for use in the production of the imported goods.

For example, the kimball tags and buttons that we talked about in the previous example would need to be added back in.

- (c) **royalties and licence fees** relating to the imported goods, for instance a trade mark logo on a t-shirt, **that the buyer must pay as a condition of sale of the goods**.

- (e)(i) the cost of **transport and insurance to the place of introduction into the Customs territory of the community**.

This is where we get the phrase CIF from - the cost of the goods, insurance and freight.

8.5 Royalties and licence fees

Royalties and licence fees can be a contentious area, so we'll look at these in a bit more detail.

Article 157 of the Implementing Regs provides us with what constitutes a royalty or licence fee. It says that royalties and licence fees include **patents, manufacturing know how, trademarks, and copyrights**.

[Art 157
2454/93](#)

But not in all cases do we have to add the cost of the royalty to the value of the goods in order to calculate our customs duty. Article 157(2) explains this further. It tells us that the fees are only added to the price paid for the goods if they **relate to the goods being valued and constitute a condition of the sale** of those goods.

Therefore, if we can make sure that the royalty payment is not a condition of the sale of the imported goods, we do not have to add it to the value for duty. But how can we do this? Take a look at Article 160. If the importer **pays the royalty or fee to a third party, this will not satisfy the condition** in Article 157 **unless the seller requires the buyer to make the payment**. So where the seller is not related to the royalty holder, it is unlikely to be a requirement of the sale. Therefore, in this case it does not have to be added to the value for duty.

[Art 160
2454/93](#)

8.6 Transport & Insurance

Now let's look back at another of the additions in Article 32(e)(i) - transport and insurance up to the place of introduction into the Customs territory of the community.

[Art 32\(e\)\(i\)
2913/92](#)

Illustration 5

Imagine you have purchased your goods from the seller and included on the invoice is the cost of the goods, plus insurance and freight. The specific wording of (e)(i) tells you that you only need transport and insurance to the point of introduction into the community. This would be the point at which the goods crossed the border of the EU.

[Art 163-166
2454/93](#)

Imagine our goods have arrived by sea, and have then been unloaded onto a lorry to continue the rest of their journey by road to our premises. If we have been charged inland freight then these costs do not need to be included in the value for duty. You can deduct them from the invoice price provided that the **freight is itemised separately from the cost of the goods**. You will see where this rule comes from in a minute.

For goods consigned by air, we have a trickier problem. If you think about it the freight charges will cover not only the time that the plane was flying outside the EU but also the miles that it has covered since it crossed the EU border. There is, at present, a schedule in Annex 25 of the Implementing Regs. which allows us to **apply a certain percentage to the air transport costs**. We then only include this amount in the value for duty. The percentages depend on where the plane took off from and which airport in the UK it landed at.

8.7 Article 33 of the Code - deductions

We now need to consider what can be deducted from the invoice price. Take a look at Article 33 of the Code. One proviso given by Article 33 is that the items **must be shown separately from the price of the goods** if you want to deduct them, so it is advisable to get an itemised invoice.

[Art 33
2913/92](#)

However, the landmark ECJ case of **Overland Footwear** has shown that even if the items are not shown separately at the time the declaration is initially completed, the importer can request for the declaration to be amended and the deduction made if he has evidence that shows the breakdown of the invoice total.

[Overland
Footwear v CCE
Case C-468/03](#)

They include:

- **Charges for transport after the arrival of the goods** in the customs territory of the community. We've already looked at this.
- **Charges for construction, erection, assembly, maintenance or technical assistance undertaken after the importation of the goods**. This one is logical - we only want to pay customs duty on the value that relates to non-EU production. What happens after the goods arrive in the EU is good for the European Union generally and should not be added to the value for duty.

- **Interest under a financing arrangement.** However, you cannot manipulate this by charging more for the interest than the goods themselves! If you read further down, it says that the rate of interest cannot exceed the level that would be expected for the particular country that the goods are being shipped from.
- **Charges for the right to reproduce the imported goods in the community.** This is different to what we have seen already with respect to royalties or licence fees that enable you to import the goods in the first instance. Charging someone for the right to reproduce the goods in the community is so that you can manufacture those goods in the EU. Again, this is good news for EU producers and relates to the goods after they have been imported, so this figure will not be included in the value for duty.
- **Buying commission.** Again, we have seen this before; and
- **Import duties.** Sometimes importers buy their goods on what we call **DDP** terms. This stands for "**Delivered duty paid**". Part of the total invoice price includes the customs duty that is due on the imported goods. The duty itself would need to be removed so that you arrive back to a **CIF** value. Look back at the chapter on "Types of duties" to see how you find the **CIF** value.

Look at the invoice below.

Invoice to A Ltd	
Date xx/xx/xx	
Terms: CIF	
<u>Description of goods:</u>	
5 cartons of t-shirts assorted colours	
	£10,000
less: 2% settlement discount (£200) if paid within 7 days	
Royalty to reproduce the goods	<u>300</u>
Total	£10,300

Looking at the list in Article 33 the royalty is itemised separately, so £300 can be deducted. The settlement discount is itemised, so the importer can use 98% of the £10,000, i.e. £9,800 as the value for duty (provided he does take up the discount). We also need to check that the £9,800 includes insurance and freight to the point of introduction into the community. As the invoice terms are CIF, insurance and freight are included. We also need to be careful as to whether any of that freight includes transport after the goods have arrived in the community. If so, we need to apportion the freight cost.

The next chapter contains methods 2-6.

Example 1

	Include in value for duty	Exclude from value for duty
Buying Commissions		
Selling Commissions		
Coat hangers provided free of charge or at a reduced rate		
Royalties		
Maintenance		
Interest		
Import duties		
Transport from Liverpool to Birmingham		
Seller's profit and packaging		

Answer 1

	Include in value for duty.	Exclude from value for duty.
Buying Commissions		X Provided shown separately
Selling Commissions	X	
Coat hangers provided free of charge or at a reduced rate	X	
Royalties	X If a condition of sale and relate to the imported goods	X If paid for reproducing goods in the EU
Maintenance		Provided shown separately X
Interest		X
Import duties		X
Transport from Liverpool to Birmingham		Provided shown separately X
Seller's profit and packaging	X	