Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

19 November 2020*

(Reference for a preliminary ruling – Customs union – Regulation (EEC) No 2913/92 – Community Customs Code – Article 29(1) and (3)(a) – Article 32(1)(c) and (5)(b) – Regulation (EEC) No 2454/93 – Article 157(2) – Customs valuation – Transaction value of imported goods – Concept of 'condition of sale' – Payment in return for the granting of an exclusive distribution right)

In Case C-775/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg, Germany), made by decision of 22 July 2019, received at the Court on 22 October 2019, in the proceedings

5th Avenue Products Trading GmbH

v

Hauptzollamt Singen,

THE COURT (Tenth Chamber),

composed of E. Regan (Rapporteur), President of the Fifth Chamber, acting as President of the Tenth Chamber, E. Juhász and I. Jarukaitis, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Hauptzollamt Singen, by B. Geyer, acting as Agent,

– the Czech Government, by M. Smolek, J. Vláčil, and L. Dvořáková, acting as Agents,

– the Spanish Government, by M.J. Ruiz Sánchez, acting as Agent,

– the European Commission, by C. Vollrath and M. Kocjan, acting as Agents,

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

gives the following

* Language of the case: German

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 32(1)(c) and (5)(b) 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') and of Article 157(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1; 'the Implementing Regulation').

2 The request has been made in proceedings between 5th Avenue Products Trading GmbH ('5th Avenue') and the Hauptzollamt Singen (Principal Customs Office, Singen, Germany) ('the Customs Office') concerning the taking into account of a payment in return for the granting of an exclusive distribution right for the customs valuation of goods imported from a third country with a view to their release for free circulation within the European Union.

Legal context

The Customs Code

3 The Customs Code was repealed and replaced by Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ 2008 L 145, p. 1), and by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1, and corrigendum, OJ 2013 L 287, p. 90). However, under Article 286(2) of that latter regulation, read in conjunction with Article 288(2) thereof, the Customs Code remained applicable until 30 April 2016.

4 Article 29 of the Customs Code, which appeared in Chapter 3, under the heading 'Value of goods for customs purposes', of Title II of that code, entitled 'Factors on the basis of which import duties or export duties and the other measures prescribed in respect of trade in goods are applied', provided:

'1. 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 …

…

3. (a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller. …

…'

5 Article 32 of that code, which also appeared in that chapter, provided:

'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;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

…

2. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

…

5. Notwithstanding paragraph 1(c):

…

(b) payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the Community of the goods.'

The Implementing Regulation

6 Article 157 of the Implementing Regulation, which appeared in Chapter 2, under the heading 'Provisions concerning royalties and licence fees', of Title V of that regulation, entitled 'Customs Value', provided:

'1. For the purposes of Article 32(1)(c) of the [Customs] 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 [Customs] Code, when the customs value of imported goods is determined under the provisions of Article 29 of the [Customs] 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

– constitutes a condition of sale of those goods.'

7 Article 158(3) of that regulation, which appeared in Chapter 2 thereof, provided:

'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 [Customs] Code in Annex 23.'

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

8 On 31 January 2012, 5th Avenue, a company established in Germany, the object of which is, inter alia, trade of manufactured tobacco and items for smokers, and Habanos SA, the Cuban state-owned export company for cigars, concluded an agreement called the 'Exclusive Distribution Agreement' ('the EDA'), according to which 5th Avenue has the sole right, as sole and exclusive distributor, to import, sell and distribute in Germany and Austria cigars produced by that state-owned company. In return for the granting of that exclusive distribution right in Austria, 5th Avenue undertook to make four annual payments, described as 'compensation', to Habanos of 25% of its annual revenues resulting from the sales of cigars in that Member State.

9 It is apparent from the order for reference that 5th Avenue ordered the cigars on the basis of a price list and that it used an authorised customs warehouse located in its headquarters in Germany to import those goods. When those products were admitted into the warehouse, 5th Avenue declared to the customs authorities the purchase price actually paid plus freight and insurance, but without consideration of the compensation due under the EDA for the part of the goods sold in Austria. At that time, it had not yet established what proportion of those goods was being sold in Austria and in Germany respectively. The release for free circulation of the cigars took place upon removal from that customs warehouse through the simplified discharge of the procedure, through entry in the accounting records and without further presentation to customs authorities.

10 Following a customs inspection, the inspector expressed the opinion that the payment of the compensation under the EDA was a separate purchase price component of the imported goods which was to be taken into consideration in the customs valuation of those goods under Article 29(3)(a) of the Customs Code.

11 The Customs Office endorsed the inspector's opinion and issued several import duty notifications, including the notification of 28 August 2015, which is solely at issue in the main proceedings. Under that notification, that office imposed import duties by way of post-clearance recovery in respect of goods which 5th Avenue had placed under the customs warehousing procedure for the period from 21 February to 12 December 2013.

12 On 23 September 2015, 5th Avenue lodged an objection against that notification.

13 By decision of 22 November 2017, the Customs Office rejected that objection as unfounded in all essential aspects.

14 On 6 December 2017, 5th Avenue brought an action against that decision before the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg, Germany) on the ground that payments of the compensation for the granting of exclusive distribution rights are neither a condition of sale nor related to the goods to be valued for the purposes of Article 32(5)(b) of the Customs Code and Article 157(2) of the Implementing Regulation. According to the applicant, first, the payment of that compensation is not of such importance that the seller would have refused to sell if that compensation had not been paid. That compensation was to be paid only in return for the exclusive right to distribute in Austria and only for the period corresponding to the first four years. Secondly, the exclusive distribution right goes beyond the right to dispose of the goods for resale and does not influence the value of the goods on importation. The sale of the goods would not be precluded by law if the exclusive distribution right had not been granted.

15 The Customs Office contends that the compensation at issue in the main proceedings, whether considered as a separate purchase price component or as a royalty or licence fee, must be added to the customs value since it constitutes a condition of sale and it is related to the imported goods. According to the Customs Office, under Article 32(1)(c) of the Customs Code, the payment of royalties or licence fees is to be regarded as a condition of sale if the seller or a person related to him

or her requires the buyer to make such a payment. Where, as in this case, the seller of the goods and the holder of related rights thereto, to whom the buyer of those goods pays royalties for the granting of those rights, are the same person, it must be considered that the delivery of the licensed goods depends not only on the payment of the purchase price but also on the payment of the royalty, as would now be the case under Article 136(4)(a) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation No 952/2013 (OJ 2015 L 343, p. 558). 5th Avenue has indeed not provided any evidence that Habanos would deliver the goods even if those royalties were not paid. Moreover, the royalties and licence fees also relate to the imported goods. They are calculated on the basis of the turnover achieved from the sale of those goods. In addition, the request for territorial protection did not originate from the buyer.

16 According to the referring court, the compensation at issue in the main proceedings, provided for under the EDA, is not a separate component of the purchase price for the purposes of Article 29(3)(a) of the Customs Code but falls under royalties and licence fees for the purposes of Article 32(1)(c) and (5)(b) of that code, read in conjunction with the third indent of Article 157(1) and Article 157(2) of the Implementing Regulation. That compensation is to be paid for the use of rights relating to the use or resale of the imported goods. In accordance with the judgment of 9 March 2017, *GE Healthcare* (C-173/15, EU:C:2017:195), those royalties and licence fees should therefore be added to the purchase price where three cumulative conditions are satisfied, namely that, (i) they have not been included in the price actually paid or payable, (ii) they are related to the goods being valued and (iii) the buyer is required to pay them as a condition of sale of the goods being valued.

17 According to that court, the first and the third conditions are satisfied in this case. First, it is apparent from the provisions of the EDA and it is moreover common ground between the parties that the royalties and licence fees paid in return for the exclusive right to distribute the goods concerned in Austria were not included in the purchase price of the goods being valued. Secondly, the payment of the compensation at issue in the main proceedings also constitutes a condition of sale. Where the seller of the imported goods is also the licensor, it should be presumed that the licensor also requires the buyer, who is also the licensee, to pay royalties and licence fees in addition to the price. According to the referring court, it must therefore be held that Habanos would not have supplied the goods intended for distribution in Austria or, in any event, not under the contractual terms agreed without payment of that compensation. In that regard, the fact that that obligation would have expired after four years is irrelevant and does not mean that the buyer would have been granted an exclusive distribution right for that period without payment of that compensation. It is also irrelevant that the compensation at issue in the main proceedings was agreed in a framework agreement, such as the EDA, since it provides for the payment of that compensation in principle for all future single purchases.

18 On the other hand, that court doubts whether the second condition has been satisfied. In that regard, according to that court, a distinction should be made between the distribution right, under which the distributor has the right to resell for the first time the goods imported into a given territory, and territorial exclusivity, under which that distributor secures the exclusive right to distribute the goods concerned in that territory, enjoying territorial protection. While both of those components were, under the EDA, covered without distinction by the compensation at issue in the main proceedings, only the right of distribution has a clear relationship with the imported goods, since the right to resell or distribute those goods falls within the power to dispose of them and is therefore embodied therein. By contrast, the exclusive distribution right is an additional right going beyond the entitlement to procurement of the power of disposal in respect of the goods. It follows that the royalty or licence fee claimed for the granting of an exclusive distribution right is not paid as consideration for the imported goods, but so that the seller does not supply other persons in the territory covered by the agreement.

19 In the event that the granting of territorial protection is not regarded as related to the imported goods, the referring court asks, in addition, whether that compensation should be added overall to the purchase price of those goods for the purposes of customs valuation, or whether only the part

corresponding to the value of that compensation related to the goods is to be included therein. In paragraph 52 of the judgment of 9 March 2017, *GE Healthcare* (C-173/15, EU:C:2017:195), the Court ruled, with regard to Article 158(3) of the Implementing Regulation, that, even if royalties or licence fees are related partly to the imported goods and partly to services supplied after their importation, the adjustment under Article 32(1)(c) of the Customs Code may be made on the basis of objective and quantifiable data capable of estimating the amount of the royalties or licence fees related to those goods. It is therefore appropriate to determine whether those principles are capable of being applied to the main proceedings. If that is the case, the question arises as to the criteria on the basis of which that allocation should be made with regard to the compensation at issue in the main proceedings, in the absence of any objective and quantifiable data for the purposes of those provisions.

20 In those circumstances, the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are payments which the purchaser of a product makes in addition to the purchase price, depending on his or her sales revenues, once a year for four years, in order to be able to sell the product

– in a particular territory,

– for the very first time,

– exclusively and

– permanently,

royalties and licence fees within the meaning of Article 32(1)(c) of [the Customs Code] which are to be added to the price actually paid or payable for the imported goods under Article 32(5)(b) [of the Customs Code] in conjunction with Article 157(2) of [the Implementing Regulation]?

(2) Are such payments, where appropriate, to be added to the price paid or payable for the imported goods only on a proportional basis and, if so, on the basis of which criterion?’

Consideration of the questions referred

The first question

21 By its first question, the referring court asks, in essence, whether Article 32(1)(c) and (5)(b) of the Customs Code, read in conjunction with Article 157(2) of the Implementing Regulation, must be interpreted as meaning that a payment made for a limited period of time by the buyer of imported goods to the seller of those goods, in return for the granting by the seller of an exclusive right to distribute those goods in a given territory, calculated on the basis of the turnover achieved in that territory, must be included in the customs value of those goods.

22 It should be borne in mind that EU law on customs valuation seeks to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values. The customs value must thus reflect the real economic value of an imported good and, therefore, take into account all of the elements of that good that have economic value (see, inter alia, judgments of 16 November 2006, *Compaq Computer International Corporation*, C-306/04, EU:C:2006:716, paragraph 30; of 20 December 2017, *Hamamatsu Photonics Deutschland*, C-529/16, EU:C:2017:984, paragraph 24; and of 20 June 2019, *Oribalt Rīga*, C-1/18, EU:C:2019:519, paragraph 22).

23 In particular, by virtue of Article 29 of the Customs Code, the customs value of imported goods is 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, inter alia, judgments of 16 June 2016, *EURO 2004. Hungary*, C-291/15, EU:C:2016:455, paragraph 24; of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraph 31; and of 20 December 2017, *Hamamatsu Photonics Deutschland*, C-529/16, EU:C:2017:984, paragraph 25).

24 As the Court has already stated, the customs value must be determined primarily according to the 'transaction value' method of the imported goods (judgments of 16 June 2016, *EURO 2004. Hungary*, C-291/15, EU:C:2016:455, paragraph 30, and of 20 December 2017, *Hamamatsu Photonics Deutschland*, C-529/16, EU:C:2017:984, paragraph 26). That method of determining the customs value is thus assumed to be the most appropriate and the most frequently used (judgments of 12 December 2013, *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 44, and of 16 June 2016, *EURO 2004. Hungary*, C-291/15, EU:C:2016:455, paragraph 30).

25 As a general rule, the price actually paid or payable for the goods therefore forms the basis for calculating the customs value, even if that price is a factor that potentially must be adjusted where necessary in order to avoid the setting of an arbitrary or fictitious customs value (see, inter alia, judgments of 16 June 2016, *EURO 2004. Hungary*, C-291/15, EU:C:2016:455, paragraph 25; of 20 December 2017, *Hamamatsu Photonics Deutschland*, C-529/16, EU:C:2017:984, paragraph 27; and of 20 June 2019, *Oribalt Rīga*, C-1/18, EU:C:2019:519, paragraph 23).

26 According to the objective pursued by the rules of the Customs Code relating to customs valuation, which was recalled in paragraph 22 above, the transaction value must reflect the real economic value of imported goods (judgments of 12 December 2013, *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 40; of 16 June 2016, *EURO 2004. Hungary*, C-291/15, EU:C:2016:455, paragraph 26; and of 20 December 2017, *Hamamatsu Photonics Deutschland*, C-529/16, EU:C:2017:984, paragraph 28).

27 In this respect, the components to be added to the price actually paid or payable for the imported goods, for the purposes of customs valuation, are laid down in Article 32 of the Customs Code. Thus, according to Article 32(1)(c), royalties and licence fees related to the goods being valued that the buyer must pay, as a condition of sale of the goods being valued, must be added to that price to the extent that those royalties and licence fees have not been included in the price actually paid or payable.

28 Article 157(2) of the Implementing Regulation specifies, in that regard, that royalties or licence fees must be added to the price actually paid or payable where that payment (i) is related to the goods being valued and (ii) constitutes a condition of sale of those goods.

29 However, as the European Commission rightly observed in its written observations, it should be noted that the concepts of 'royalties' and 'licence fees' which appear in those provisions relate solely to payments made by a buyer to a seller for the use of intellectual property rights.

30 As is apparent from the actual wording of Article 157(1) of the Implementing Regulation, those concepts refer to payments for the use of rights relating to the manufacture of goods, such as, in particular, 'patents, designs, models and manufacturing know-how', the sale for exportation of goods, such as, in particular, 'trade marks, registered designs', and the use or resale of those goods, such as, in particular, 'copyright, manufacturing processes inseparably embodied in those goods' (see, to that effect, judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraph 33).

31 In this case, it is apparent from the documents before the Court that the payments at issue in the main proceedings are made, under the contractual provisions binding the parties in the main proceedings, in return for the granting, not of intellectual property rights, but of an exclusive distribution right. In

particular, there is nothing in the order for reference to suggest that those payments would be due on the basis of the granting by the seller of a possible licence in respect of intellectual property rights of which it is the holder.

32 Accordingly, Article 32(1)(c) and (5)(b) of the Customs Code as well as Article 157(2) of the Implementing Regulation are not applicable in the main proceedings.

33 That being said, according to settled case-law of the Court, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court by those courts (judgment of 12 March 2020, *Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle*, C-769/18, EU:C:2020:203, paragraph 39).

34 Consequently, even if, formally, the referring court has limited its first question to the interpretation of Article 32(1)(c) and (5)(b) of the Customs Code, as well as Article 157(2) of the Implementing Regulation, that does not prevent this Court from providing the referring court with all the elements of interpretation of EU law that may be of assistance in adjudicating in the case before it, whether or not the referring court has referred to them in the wording of its questions. It is, in that regard, for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings (judgment of 12 March 2020, *Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle*, C-769/18, EU:C:2020:203, paragraph 40).

35 In this case, since, as is apparent from paragraphs 23 to 25 above, the adjustments provided for in Article 32 of the Customs Code must be made to the transaction value of the imported goods for the purposes of Article 29 of the Customs Code only where such adjustments are necessary to ensure that that value reflects the real economic value of those goods, it is necessary to examine whether, as the Commission claims, a payment such as that at issue in the main proceedings already forms part of the customs value of those goods, as a component of the price actually paid or payable under Article 29, in particular paragraph 1 and paragraph 3(a) thereof.

36 Accordingly, it must be held that the first question put by the referring court asks whether Article 29(1) and (3)(a) of the Customs Code must be interpreted as meaning that a payment made for a limited period of time by the buyer of imported goods to the seller of those goods, in return for the granting by the seller of an exclusive right to distribute those goods in a given territory, calculated on the basis of the turnover achieved in that territory, must be included in the customs value of those goods.

37 In that regard, it should be noted that the 'price actually paid or payable' within the meaning of Article 29(1) of the Customs Code corresponds, under Article 29(3)(a), to the total payment made or to be made by the buyer to the seller for the imported goods and includes all payments made between them as a 'condition of sale' of those goods.

38 It follows from this that a payment made by the buyer to the seller must be included in the transaction value of the goods concerned where that payment forms part of the 'conditions of sale' of that product, within the meaning of Article 29(3)(a) of the Customs Code.

39 That conclusion is, moreover, supported by Article 32(5)(b) of that code, which provides, conversely, precisely in the case of payments made by the buyer in return for the right to distribute or resell imported goods, that those payments are not added to the price actually paid or payable where they are not such a condition of the sale of those goods.

40 Although no provision of the Customs Code or of the Implementing Regulation provides a definition of the concept of 'condition of sale' within the meaning of Article 29(3)(a) of that code, it follows from the case-law of the Court that, in order to maintain the priority of the transaction value method, the concepts which appear in Article 29 must be interpreted broadly (see, to that effect, judgment of 12 December 2013, *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 45).

41 Thus, the Court has already held, with regard to the concept of 'condition of sale' which appears in Article 32(1)(c) of the Customs Code, that a payment is such a 'condition of sale' of the goods being valued where, in the course of the contractual relations between the seller, or the person related to the seller, and the buyer, that payment is so important to the seller that, without such a payment, the seller would not have concluded the sales contract (judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraph 60).

42 Since Article 32 of that code is intended to specify the transaction value of imported goods for the purposes of Article 29 of that code, and thus pursues the same objective as that set out in Article 29, that interpretation of the concept of 'condition of sale' also applies in the context of Article 29. Given the requirements of unity and consistency in the EU legal order, the terms used by the measures adopted in the same sector must be given the same meaning, unless the EU legislature has expressed a different intention (see, inter alia, judgment of 15 September 2016, *Landkreis Potsdam-Mittelmark*, C-400/15, EU:C:2016:687, paragraph 37 and the case-law cited).

43 It follows that a payment, such as that at issue in the main proceedings, must be regarded as a 'condition of sale' of imported goods for the purposes of Article 29(3)(a) of the Customs Code, where that payment was required by the seller as a condition for the exclusive distribution of those goods in the territory concerned.

44 It is apparent from the information available to the Court that, according to the assessment made by the referring court, this is precisely the case, since that court has already come to the conclusion in the order for reference that the seller of the goods, given that it is also the recipient of the payment at issue, would not have supplied those goods for exclusive distribution in Austria without that payment, so that that payment must be regarded as forming part of the conditions of sale of those goods.

45 In that regard, it is irrelevant, as the referring court has moreover found, that such payment is imposed in the framework agreement for exclusive distribution rather than in each individual contract for the subsequent sale of the goods concerned, since the conditions laid down in that framework agreement determine the conditions under which each individual sale must be made (see, to that effect, judgments of 4 February 1986, *Van Houten International*, 65/85, EU:C:1986:53, paragraph 13, and of 23 February 2006, *Dollond & Aitchison*, C-491/04, EU:C:2006:144, paragraph 26).

46 Likewise, it is immaterial that, as that court also stated, that payment must be made only for a limited period, in this case four years, since the dispute in the main proceedings relates precisely to the customs valuation of the goods concerned during that initial period, during which the seller actually required such payment for the exclusive distribution of its goods.

47 In light of all of the foregoing considerations, the answer to the first question is that Article 29(1) and (3)(a) of the Customs Code must be interpreted as meaning that a payment made for a limited period of time by the buyer of imported goods to the seller of those goods, in return for the granting by the seller of an exclusive right to distribute those goods in a given territory, calculated on the basis of the turnover achieved in that territory, must be included in the customs value of those goods.

The second question

48 Given the answer to the first question, there is no need to answer the second question.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

Article 29(1) and (3)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that a payment made for a limited period of time by the buyer of imported goods to the seller of those goods, in return for the granting by the seller of an exclusive right to distribute those goods in a given territory, calculated on the basis of the turnover achieved in that territory, must be included in the customs value of those goods.

[Signatures]