

CJEU clarifies requirement to include royalties / licence fees in the customs value of goods imported by affiliated parties

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In brief

The Court of Justice of the European Union (CJEU) Decision was recently published in the Case C-173/15 GE Healthcare GmbH v. Hauptzollamt Düsseldorf regarding the conditions under which the royalties / licence fees paid should be included in the customs value of imported goods, according to the customs provisions applicable prior to 1 May 2016.

In detail

The ECJ decision in the Case C-173/15 GE Healthcare GmbH v. Hauptzollamt Düsseldorf has been published. It analyses the issue of including the royalties / licence fees in the customs value of imported goods.

Background

In the case analysed by the Court, the royalties were calculated as a percentage of the beneficiary's turnover and were due to an affiliated entity. The goods were imported from another entity in the same group. According to the terms of the contract, certain goods were not subject to the payment of royalties.

According to the Community Customs Code, the conditions to be fulfilled simultaneously for including royalties / licence fees in the customs value are as follows:

- The royalties / licence fees are related to the goods imported;
- The buyer has to pay these royalties / licence fees either directly or indirectly to the seller, as a condition of sale of the goods being valued;
- The royalties / licence fees are not already included in the price actually paid or payable for the imported goods.

Court Decision

The CJEU decided the following:

- The customs provisions do not require that the amount of the royalties / licence fees be determined at the time when the licence agreement is concluded or when the customs debt incurred, in order for those royalties or licence fees to

be regarded as related to the goods being valued. As such, the royalties paid annually based on the turnover established after the goods are released for free circulation may also be included in the customs value;

- The customs legislation allows that royalties / licence fees be "related to the valuated goods", even if they relate only partly to those goods;
- The royalties / licence fees represent a "condition of sale" when, within the same group, the payment is requested by an entity affiliated both to the seller and the buyer, and it is paid for the benefit of the same entity.

[Source: ECJ decision in the Case C-173/15 GE Healthcare GmbH v. Hauptzollamt Düsseldorf dated 9 March 2017]

The takeaway

Companies paying royalties / licence fees to related parties should consider analysing the correctness of the customs valuation for imported goods.

The ECJ decision is based on the interpretation of the legislation applicable before the entry into

force of the provisions of the new Union Customs Code.

As such, as of 1 May 2016, the situations in which such costs must be included in the customs value have been expanded.

In order to establish the necessity of the customs value adjustments, the circumstances of the sale have

to be analysed, especially when the buyer and the seller are affiliated parties. The circumstances should also be analysed in relation to the transfer pricing policies and the transfer pricing documentation available or in development.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:



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