

Royalties and License Fees

(Paragraph 8.1C of the Schedule to S.19 the Customs Act)

Guidelines and General Information

Definition:

A royalties or a license fee is described as the cost incurred for the right to use, produce or sell a given product. Royalties and license fees include payments for patents, copyrights, trademarks or any protected right associated with an imported item.

Requirements for Customs Valuation Purposes:

Paragraph 8.1(c) of the Schedule to S.19 requires that the royalty must *relate to the imported goods and be paid as a condition of the sale* in order for the royalty or license fee to be included in the customs value.

A royalty or license fee payment is *related to the goods* when the imported good is the subject of a trademark (meaning they bear the trademark or brand name), copyright or produced using a protected process (patent, know-how or formula etc.). Related to the goods can also be demonstrated in the way in which the royalty is calculated, for example, when the royalty is charged as a percentage of the price at which the imported good is sold or resold.

Paid as a condition of sale means that the payment for royalty or license fee must be made in order for the buyer to obtain the goods. In cases where title to the goods are

transfer to the buyer before payment of royalty is made, then if the royalty holder have some recourse, whether operationally or under provisions of an agreed contract, would be an indication of the existence of condition of sale.

In cases where the royalty relates to the imported goods but is paid on the value of the imported goods after further processing, the addition to the customs value will be the amount actually paid or incurred and no apportionment will be necessary.

Procedure for value determination:

1. Where, at the time of importation the actual amount for royalty or license fee is known, the importer should declare this amount on the value declaration form (line 16) where it will be included in the value for duty .
2. In cases where the royalty or license fee is not known, then the importer should is required to make returns of duty on royalties or license fees when it is calculated for payment to the royalty holder or licensor. Payment should be made via manager's cheque payable to the Collector of Customs and it should be sent to the Valuation Audit Unit. A statement giving details on the calculated amount including the period to which the payment relates should accompany the cheque. The Valuation Division will also need to establish the importer's terms of payment obligation to the royalty holder or licensor. Therefore, the importer is required to submit this information with the Valuation Audit Unit.

The Valuation Post Audit Unit will follow up with a reconciliation audit within six months after receipt of the payment. Where the audit reveals overpayment of duty, the duty will be refunded. In cases of underpayment, the additional assessment will be raised by the audit.