



# St Kitts ~ Nevis Customs & Excise Department

*"To Protect and Collect"*

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## ROYALTIES AND LICENCE FEES

This policy document outlines and explains the treatment, under the transaction value method, of payments for royalties and licence fees when determining value for duty.

### Legislation

The Second Schedule of the Customs Act, No. 19 of 2014 Paragraph 8 (1)

*In determining the customs value under paragraph 3, there shall be added to the price actually paid or payable for the imported goods;*

*(c) royalties and licence fees, which among other things, may include payments in respect of patents, trademarks and copyrights, related to the goods being valued that the buyer must pay, 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;*

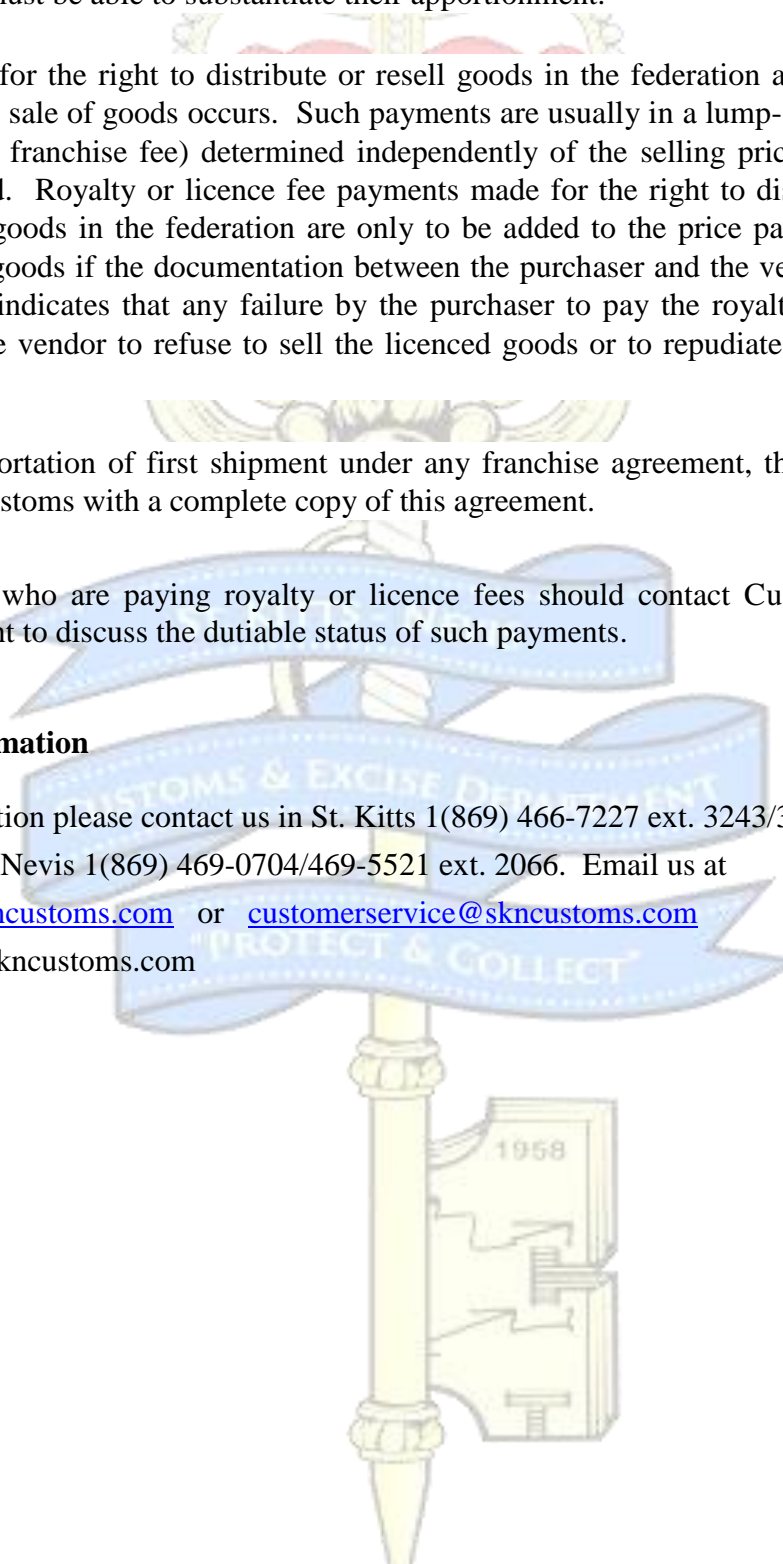
### Guidelines and General Information

1. Royalties and licence fees are regarded for customs purposes as payments made, or to be made, for acquiring or using a protected right. Examples of such payments include (but are not limited to):
  - (a) payments made to an author (copyright holder) to acquire the right to sell the author's book within a geographic region;
  - (b) payments to an inventor (patent holder) of a production process for the use of that process during a specified period of time; and
  - (c) Payments to a license holder of a trademarked name or brand for the right to market goods that are so marked.

2. Patents, trademarks, and copyrights are rights to intellectual property that are recognized by national law. Intellectual property may evolve from literary, artistic, or scientific work, which are the subject of proprietary rights and which may be sold and assigned, or licenced. When the intellectual property rights are licenced, the holder of the right usually requires that a royalty or licence fee agreement be signed. The agreement will specify the rights and obligations of both the licensor and the licensee.
3. Royalty or licence fee payments that are not already included in, or considered as being part of, the price paid or payable of imported goods may be included in the customs value calculated under the transaction value method if the requirements of the factors identified in 8(1)(c) of the Second Schedule of the Customs Act have been met.

### **Application of Royalties and Licence Fees**

4. 8(1)(c) of the Second Schedule of the Customs Act provides for the addition of royalty and licence fee payments to the price paid or payable of imported goods. Three factors must be considered, and met, before the payment of a royalty or licence fee is added to the price paid or payable. The payment:
  - (a) Must be a royalty or licence fee;
  - (b) Must be in respect of the goods; and
  - (c) Must be a condition of sale of the goods.
5. Amounts for acquiring or using a protected right that are included in the invoice price of imported goods are considered part of the price paid or payable of the goods. If, subsequent to importation, a downward adjustment to the amount of a royalty or licence fee payment already included in the price paid or payable is made, no adjustment to the value for duty would be permitted.
6. Royalty or licence fee payments that are not already included in, or considered as being part of, the price paid or payable of imported goods may be included in the value for duty calculated under the transaction value method if royalties and licence fees, including payments for patents, trade-marks and copyrights, in respect of the goods have been or are to be paid, as a condition of the sale of the goods for importation into the federation, exclusive of charges for the right to reproduce the goods in St. Kitts and Nevis.
7. A purchaser may enter into an agreement to pay an amount for more than the acquisition or use of a protected right. If charges or amounts other than royalties or licence fees are identified together with royalties or licence fees in a single agreement, and the charges or amounts are itemized separately, then the individual charges or amounts shall not be considered as additions to price paid or payable.

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8. Where charges or amounts other than royalties or licence fees are identified together with royalties or licence fees in a single agreement but are not itemized separately, the importer must be able to substantiate their apportionment.
  9. Payments for the right to distribute or resell goods in the federation are usually made before any sale of goods occurs. Such payments are usually in a lump-sum amount (for example a franchise fee) determined independently of the selling price or quantity of goods sold. Royalty or licence fee payments made for the right to distribute or resell imported goods in the federation are only to be added to the price paid or payable of imported goods if the documentation between the purchaser and the vendor or licensor explicitly indicates that any failure by the purchaser to pay the royalty or licence fee entitles the vendor to refuse to sell the licenced goods or to repudiate the contract for their sale.
  10. Upon importation of first shipment under any franchise agreement, the importer is to furnish Customs with a complete copy of this agreement.
  11. Importers who are paying royalty or licence fees should contact Customs and Excise Department to discuss the dutiable status of such payments.

### **Additional Information**

For more information please contact us in St. Kitts 1(869) 466-7227 ext. 3243/3239/3225 or 1(869) 467-1077; Nevis 1(869) 469-0704/469-5521 ext. 2066. Email us at [enquiry@skncustoms.com](mailto:enquiry@skncustoms.com) or [customerservice@skncustoms.com](mailto:customerservice@skncustoms.com)  
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*This document is issued under the authority of the Comptroller of Customs*