



# ***Basics of Customs Appraisalment***

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# Customs Appraisement Basics

- **World Trade Organization -**
  - Established by International Agreement
  - Sets rules for world trade
  - Successor to GATT, established after WWII
- **WTO Agreement on Customs Valuation**
  - Establishes the principles for customs appraisement
  - Adopted by most trading nations
  - In US – section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979
  - In Canada – section 44 et seq. of the Customs Act



# Customs Appraisement Basics

- Imported merchandise is appraised at entry according to the following methods, applied in the order listed:
  - Transaction value of imported merchandise
    - the preferred and most frequently utilized method
  - Transaction value of identical merchandise
  - Transaction value of similar merchandise
  - Deductive value
  - Computed value
  - Value reasonably derived from the above



# Transaction Value

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Defined as - the “price paid or payable” (PAPP) for the merchandise when sold for exportation to the United States

- PAPP defined as “the total payment made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.”
- Transaction value based on PAPP regardless of its method of derivation:
  - may be the result of discounts, increases or negotiations
  - may be arrived at by application of a pre-arranged formula



# Price Actually Paid or Payable

PAPP continued:

- Payment may be direct or indirect
  - Indirect payment includes the buyer's settlement of a debt owed by the seller
- PAPP excludes costs for transportation, insurance and related services incident to the international shipment of the merchandise from the country of exportation
  - CBP requires that ocean freight and insurance costs be "identified specifically," i.e., established by separate invoices
- Rebate or decrease in PAPP after importation is disregarded



# Exclusions from PAPP

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- Costs or charges incurred for transportation of merchandise after importation (domestic inland freight)
- Costs for construction, assembly, maintenance and technical assistance after importation
- Customs duties and taxes payable on the merchandise by reason of its importation



# Additions to PAPP

- Packing costs incurred by buyer
- Selling commissions incurred by buyer
- Apportioned value of assists (used in foreign country to produce or prepare merchandise for export to U.S.)
- Royalties or license fees paid by buyer
- Proceeds of subsequent resale, disposal or use of the imported merchandise that accrue to the seller
  
- Note – Above items added only if (i) not otherwise included in PAPP, and (ii) based on “sufficient information”



# Additions to PAPP - continued

- Assists – Any of the following if supplied by the buyer free or at reduced cost:
  - Materials, components or parts incorporated in the merchandise;
  - Tools, dies, molds used in production;
  - Merchandise consumed in production;
  - Engineering and design work undertaken other than in the US and necessary for production.
    - Exception for employee of buyer performing such work abroad incidental to other engineering or design work



# Acceptance of Transaction Value

- Transaction Value is Acceptable as the Appraised Value only if:
  - No restrictions exist on the disposition or use of the imported merchandise
    - Other than those imposed by law, limit area of resale or do not affect value
  - PAPP is not subject to a condition or consideration for which a value cannot be determined
  - None of the resale proceeds accrue to the Seller, unless PAPP is adjusted
  - Buyer and Seller are not related – or if related, see below



# Related Party Transactions

- Transaction value between a related buyer and seller acceptable only if:
  - 1. An examination of the circumstances of the sale indicates that the relationship did not influence the PAPP, or
  - 2. The calculated transaction value closely approximates listed “test values”
    - Transaction Value of Identical or Similar Merchandise
    - Deducted or Computed Value of Identical or Similar Merchandise

Any comparison transactions must relate to merchandise exported at about the same time as the imported merchandise



# Alternate Bases of Valuation

If Transaction Value Does Not Exist or is Not Acceptable use:

- **Transaction value of Identical Merchandise**
  - Merchandise identical in all respects, produced in the same country and by the same party as the imported merchandise
- **Transaction value of Similar Merchandise**
  - Merchandise of like characteristics and components, produced in the same country as the imported merchandise
- **Deducted value**
  - Resale price to unrelated purchaser less profit and general expenses, transportation costs, duties and taxes
- **Computed Value**
  - Costs of materials, fabrication, profit and general expenses
- **Derivative Value**
  - Value derived from above methods reasonably adjusted



# Appraisement – Summary – Key Points

- First – determine whether Transaction Value exists
  - Transaction Value exists only where there is a price paid or payable on a sale for export
  - Consignment shipments, inter-company transfers, “sales” between company divisions do not qualify
- Next determine whether the Transaction Value is subject to additions or deductions
  - Packing costs, selling commissions, assists, royalties, resale proceeds
- Next determine whether Transaction value is Acceptable as the Basis of Appraisement
  - Review for restrictions, non-value considerations, resale proceeds
- Price between related parties must be examined to qualify
  - Review to determine if “relationship influenced the price” or
  - If price is acceptable under “test values”



# Summary - Key Points - continued

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- Do not simply accept the price listed on an invoice.
- Ask questions to make the above determinations.



# First Sale Rule

Transaction Value is defined as ... “the price paid or payable for the merchandise when sold for export to the United States”

- Single sale for exportation
  - Simple analysis
  - One seller, one buyer in the U.S., one transaction and one PAPP
- Multiple parties and multiple sales
  - Complex analysis
  - Which price and which transaction determines PAPP?
  - Statute is silent
- Petroleum products are frequently the subject of multiple sales



# First Sale Rule

- Multiple parties and multiple sales
  - E.C. McAfee v. U.S. (Fed Cir. 1988)
    - Imports of made to measure clothing. US purchaser ordered suits from a Hong Kong distributor who contracted with a tailor in Hong Kong to assemble the clothing.
    - Finished suits were shipped directly to the US
    - All parties were unrelated
    - What price is “the price paid or payable for the merchandise when sold for export to the United States”
    - CAFC ruled that the **first sale** price paid by the distributor to the tailor controlled.
  - Nissho Iwai American Corp. V. U.S. (Fed. Cir. 1992)
    - Subway cars for New York MTA –
    - MTA ordered and purchased from Nissho Iwai; Nissho Iwai contracted with Kawasaki to manufacture the cars; Kawasaki sold to Nissho Iwai, which resold to the MTA; cars shipped from Kawasaki to the MTA
    - Appraise value based on **first sale** price from Kawasaki to the MTA
    - CAFC established a two-prong test:
      - The sale must be at arms-length under the statute; and
      - The goods must be destined to the US



# First Sale Rule

- CBP Notice of Proposed Rulemaking - January 2008
  - CBP proposed a new interpretation of the phrase, “sold for export to the United States”
  - In a transaction involving a series of sales, the price actually paid or payable for the imported goods when sold for exportation to the United States would be the price paid in the **last sale** occurring prior to introduction of the goods into the United States.
  - Rationale – to apply the US appraisement statute in a manner consistent with the interpretation made by the Technical Committee on Customs Valuation established under the WTO Valuation Agreement



# First Sale Rule

- Industry Response

- Strong objection - CBP seeking to overturn judicial precedent by administrative action;
- The Food, Conservation and Energy Act of 2008 required CBP to collect a declaration as to whether the appraised value of imported merchandise was determined based on a first sale of the goods;
- CBP required importers to include an “F” before the declared value;
- CBP collected statistics for one year – Aug 20, 2008 – Aug 19, 2009
- CBP to provide the statistics to the International Trade Commission which was instructed to prepare a report;
- ITC Report 332-505 issued Dec23, 2009



# First Sale Rule

- Resolution –
  - Food, Conservation and Energy Act of 2008
  - Included a “sense of Congress” provision that CBP not amend its interpretation of “sold for exportation to the United States” before January 1, 2011
  - Beginning Jan 1, 2011, CBP may propose to change this interpretation only if:
    - CBP consults with Senate Finance and House Ways and Means Committees not less than 180 days prior to proposing a change;
    - CBP consults with Commercial Operations Advisory Committee not less than 120 days prior to proposing a change; and
    - CBP obtains the approval of the Secretary of Treasury prior to publishing a change.
  - STAY TUNED