



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

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

- 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

- 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