

ACI's 3rd U.S. Customs Compliance Boot Camp

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Getting Customs Valuation Right: How to apply core requirements and valuation methodologies

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Valuation guidelines... to apply to example scenarios



Valuation

- All merchandise imported into the U. S. is subject to appraisement (valuation) based on the trade Agreements Act of 1979
- There are six methods of valuation
- The preferred method of valuation is **Transaction Value**
- **Transaction Value is used for 98%+ of all imports**



Valuation

Imported merchandise will be appraised on the basis, and in the order, of the following:

- **Transaction Value**
- **Transaction Value of Identical Merchandise**
- **Transaction Value of Similar Merchandise**
- **Deductive Value**
- **Computed Value**
- **Values if Other Values Cannot be Determined**

The importer may request computed value before deductive value



Valuation

What is Transaction Value?

- **Transaction Value is the price actually paid or payable**
- **It may be the result of regular purchases, discounts, increases, or negotiations or may be arrived at by application of a formula, such as the price in effect on the date of export on the London Commodity Market**

“Payable” refers to where a price has been agreed on but actual payment has not been made at time of importation



Valuation

What is the Price Actually Paid or Payable?

- It is the Total Payment that the buyer makes to the seller, excluding international freight, insurance and other C. I. F. charges
- Payment may be direct or indirect
- Examples of indirect payment
 - settlement of a debt by reducing the price
 - credit for previously defective merchandise



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Valuation

Additions to Price Actually Paid or Payable

- **The packing costs incurred by the buyer**
- **Any selling commission incurred by the buyer**
- **The value of any assist**
- **Any royalty or license fee that the buyer pays, directly or indirectly, as a condition of sale**
- **The proceeds of any subsequent resale or use of the imported item**



Valuation

What are Packing Costs?

The total cost of all containers or coverings, whether for labor or materials, used in packing the material for shipment to the U. S.

- **Examples:**

- **Wooden Crates**
- **Pallets**
- **Canvas coverings**



Valuation

What are Selling Commissions?

Any commission paid to an agent:

- **works for or on the behalf of the manufacturer or seller . . . or**
- **who is related to or controlled by the seller**



Valuation

What is an Assist?

Means any of the following if supplied directly or indirectly, free of charge or at reduced cost, by the buyer of the imported merchandise, for use in connection with the production or sale for export of the merchandise:

1. Materials, components, parts and similar items incorporated into the imported merchandise
2. Tools, dies, molds and similar items used in the production of the imported item
3. Merchandise consumed in the production of the imported merchandise
4. Engineering, development, artwork, design work, and plans & sketches that are undertaken outside the U. S. and are necessary for the production of the imported item



Valuation



- **Assist: Engineering, Development, etc.,**

Work for engineering, artwork, etc., will not be treated as an assist if the service or work:

1. Is performed by a person domiciled in the U. S.
2. Is performed by that person while acting as an employee or agent of the buyer of the imported merchandise

and

3. Is incidental to other engineering, development, design work, etc., that is undertaken within the U. S.



Valuation

How is the value of an assist determined?

- The value is the cost of acquiring an assist from an unrelated seller
- The value is the cost of producing the assist if produced by the importer or a related party
- For a leased product, the value is the leased cost
- The value includes the cost of transporting the assist to the place of production
- The value is adjusted to reflect use, repairs, modifications or book value



Valuation



How is the value of an assist apportioned on a Customs Entry?

- **Any method according to G A A P**
- **Can be over the life of the assist**
- **Can be paid or declared in full on the first import of production**
- **Is apportioned based on what percentage is exported to the U. S.**



Valuation

What can be *excluded* from Transaction Value?

- The cost, charges or expenses for transportation, insurance and related services incident to the international shipment of the goods from the country of exportation to the U. S.
- If identified separately, any reasonable cost for:
 - Constructing, erecting, assembling, maintaining or providing technical assistance after import of the goods, or
 - Transporting the goods after importation
 - Any customs duties and other Federal taxes in the U. S.



Valuation

Limitations on the use of Transaction Value?

- Transaction Value **can't** be used if:
- There are restrictions on the disposition or use, other than geographical limits or other restrictions that do not affect the value
- There are conditions for which a value cannot be determined
- There are proceeds from subsequent resale which can't be determined
- Related party transactions where the transaction value cannot be determined



Valuation

When is transaction value acceptable in a related party transaction?

- Relationship between buyer and seller didn't influence the price
- If a transaction value closely approximates:
 - the price of identical or similar merchandise
 - deductive value or computed value of identical or similar merchandise exported to the US
 - Profit equals or approximates profit margin of importer



Valuation



Rebate

Any rebate or other decrease in price actually paid or payable after the date of importation of the merchandise will be disregarded in determining the transaction value



Valuation

Deductive Value

- **Basically, it is the retail price in the U. S. after import, with deductions for certain U. S. costs:**
- **Deductions**
 - **General expenses and profits or commissions**
 - **Costs for international and domestic transportation and insurance**
 - **Customs Duties and Federal Taxes**
 - **Further processing in the U. S. when the good is not sold in the condition as imported**



Valuation

Computed Value

- **Basically, it is the actual cost of producing the product**
 - **Materials and the fabrication or other processing employed (including labor) in producing the imported merchandise**
 - **An amount for profit and general expenses equal to that usually reflected for the producers in the country of export for this class of product**
 - **Any assist not included in other costs**
 - **Packing Costs**



Valuation

Identical Merchandise

- **Means merchandise identical in all respects to, and produced in the same country and by the same person as, the merchandise being appraised**
- **Merchandise identical in all respects and produced in the same country as, but not produced by the same person may be treated as identical merchandise**



Valuation

Similar Merchandise

- **Means merchandise produced in the same country and by the same person as, the merchandise being appraised and is commercially interchangeable**
- **Merchandise produced in the same country which is commercially interchangeable, but not produced by the same person as the merchandise being appraised, may be treated as similar merchandise**



Valuation

Unit Price in Greatest Aggregate Quantity

- **Means the unit price at which the merchandise concerned is sold to an unrelated party at the 1st commercial level after importation where the sales are at a total volume greater than the total volume sold at any other unit price and at a volume sufficient to establish unit price**



Valuation

Unacceptable bases of appraisal

- **Selling price in the U. S. of U. S. merchandise**
- **System that provides appraisal at the higher of two alternative prices**
- **The price of the merchandise in the domestic market of the importing country**
- **Cost of production of identical or similar merchandise**
- **The price of merchandise for export to a country other than the U. S.**
- **Minimum values for appraisal**
- **Arbitrary or fictitious values**



International Freight



- **The price actually paid or payable does not include costs, charges, or expenses incurred for transportation, insurance, and related services incident to the **international shipment** of the merchandise from the country of exportation to the place of importation in the United States.**

Trade Agreements Act



International Freight

- On Ex-factory or FCA factory sales, if the price does not include a charge for foreign inland freight or international freight, those charges are not to be added to the price

Trade Agreements Act



International Freight

- **Foreign inland freight charges are considered to be incident to the international shipment of merchandise, and are not added to the price actually paid or payable by the buyer to the seller for imported merchandise, when the sale was based on an ex- factory or FCA factory price.**



International Freight

- **An ex-factory price is the cost of the goods at the seller's loading dock and usually includes export packing, but no other costs.**
- **It does not include foreign inland freight costs.**
- **The existence of an ex-factory sale must be established for the importer to be able to exclude, under this provision, foreign inland freight charges from the price actually paid or payable.**



International Freight

- **An ex-factory price is the cost of the goods at the seller's loading dock and usually includes export packing, but no other costs.**
- **It does not include foreign inland freight costs.**
- **The existence of an ex-factory sale must be established for the importer to be able to exclude, under this provision, foreign inland freight charges from the price actually paid or payable.**



International Freight

- **A sale on F.O.B. terms means that the price includes all costs of bringing the merchandise alongside, and lading it on board, the exporting carrier.**
- **Foreign inland freight charges will be one of those costs, in instances where foreign inland freight charges are incurred.**
- **By regulation, when the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, as it does here in this F.O.B. sale, then that charge will be part of the transaction value to the extent it is included in the price. It is immaterial that the freight charges were itemized separately on the invoice.**



International Freight

- **Charges for foreign inland freight may be considered incident to the international shipment of that merchandise, and thus excludable, if they are identified separately and they occur after the merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States.**
- **ie. A sale for export and placement for through shipment to the United States is established by means of a through bill of lading.**



International Freight

- **What documentation is required to deduct freight from CIF, DDU, etc. type of shipments?**
 - **Freight invoice**
 - **Written contract separately listing freight/insurance costs**
 - **A freight/insurance bill**
 - **A through bill of lading**
 - **Proof of payment of freight/insurance charges**
 - **Other types of evidence at the discretion of Customs**



International Freight

Deductions may be made for costs incurred for transportation of the merchandise after importation, if such costs are identified separately from the price actually paid or payable on the invoice.



Transportation on assists

- **Freight and related transportation charges paid by a buyer in connection with shipments to a foreign assembler are assists.**
- **The value of an assist should include the transportation costs to the place of production.**



Assist-used machinery

If the machinery is an assist and used previously by the buyer, regardless of whether it had been acquired or produced by them, the original cost of acquisition or production would be adjusted downward to reflect the value under GAAP.



Used machinery

The appraised value should be adjusted to reflect reasonable depreciation, but the value must approximate the actual market value of the article at the time of exportation to the U. S.



Transfer Pricing

Transaction value is acceptable if the circumstances of sale indicate that the relationship did not influence the price



Transfer Pricing

Transaction value is acceptable if the price closely approximates transaction value of similar or identical merchandise in sales to unrelated buyers in the U. S.



Transfer Pricing

Transaction value is acceptable if the price closely approximates the deductive or computed value of identical or similar merchandise exported to the U. S. at or about the same time as the subject merchandise.



Transfer Pricing

If it is shown that the buyer and seller, although related, buy from and sell to each other as if they are not related, the transaction value will be accepted.



Transfer Pricing

If the price has been settled in a manner consistent with the normal pricing practices of the industry, or the way the seller settles prices to unrelated buyers, this will demonstrate that the price was not influenced by the relationship.



Transfer Pricing

If the price is adequate to ensure recovery of all costs plus a profit equivalent to the firm's overall profit for a representative time period, in sales of merchandise of the same class and kind, this would demonstrate the price has not been influenced.



Thank you!

