# Customs Valuation Encyclopedia (1980 – 2003)

**An Informed Compliance Publication**

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U.S. CUSTOMS & Border Protection

## NOTICE:

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# PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "**informed compliance**" and "**shared responsibility**," which are premised on the idea that in order to maximize voluntary compliance with the laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under Customs regulations and related laws. In addition, both the trade and CBP share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. U.S. Customs and Border Protection is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

The Value Branch, International Trade Compliance Division of the Office of Regulations and Rulings has prepared this **Customs Valuation Encyclopedia (1980-2003)** to assist the trade community. We sincerely hope that this material, together with seminars and increased access to U.S. Customs and Border Protection rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws. For ease of reference, material added since the previous release is presented from within a text box.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs & Border Protection (CBP) Service, (Mint Annex), 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Michael T. Schmitz
Assistant Commissioner
Office of Regulations and Rulings

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# TABLE OF ABBREVIATIONS

| | |
|---|---|
| CCC | Customs Co-operation Council |
| CFR | Code of Federal Regulations |
| FTZ | Foreign Trade Zone |
| GAAP | Generally Accepted Accounting Principles |
| GATT | General Agreement on Tariffs and Trade |
| GSP | General System of Preferences |
| TAA | Trade Agreements Act |
| TD | Treasury Decision |
| U.S.C. | United States Code |

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# ASSISTS

## INTRODUCTION

19 U.S.C. 1401a(b)(1) states:

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to . . . the value, apportioned as appropriate, of any assist; . . .
The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in paragraphs (A) through (E) [assists paragraph (C)] only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise shall be treated, for purposes of this section, as one that cannot be determined. (emphasis added)

The definitional section of the TAA, 19 U.S.C. 1401a(h), defines assists as the following:

(1)(A) The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:
(i) Materials, components, parts, and similar items incorporated in the imported merchandise.
(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.
(iii) Merchandise consumed in the production of the imported merchandise.
(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.
(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work - (i) is performed by an individual who is domiciled within the United States; (ii) is performed by the individual while he is acting as an employee or agent of the buyer of the imported merchandise; and (iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.
(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv): (i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(Note: In the Customs Regulations, 19 CFR 152.102(a)(3), a third method of determining the value of "engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise" is provided, see 19 CFR 152.102(a)(3)(iii), infra.)

The same language regarding the addition of assists to the price actually paid or payable and the definition of assists may be found in the Customs regulations, 19 CFR 152.103(b) and 19 CFR 152.102(a), respectively. In addition, 19 CFR 152.103(c) regarding "sufficiency of information" states: "Additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and the extent to which they are not included in the price."

The regulations provide the following with respect to the valuation of assists [19 CFR 152.103(d)]:

Assist. If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the district director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:
(1) If the assist consists of materials, components, parts, or similar items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. In either case, the value of the assist would include transportation costs to the place of production.
(2) If the assist consists of tools, dies, molds, or similar items used in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be cost of its production. If the assist has been used previously by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would be adjusted downward to reflect its use before its value could be determined. If the assist were leased by the buyer from an unrelated seller, the value of the assist would be the cost of the lease. In either case, the value of the assist would include transportation costs to the place of production. Repairs or modifications to an assist may increase its value.

With respect to determining the value of assists described in 19 CFR 152.102(a)(1)(iv), i.e., "engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise", 19 CFR 152.102(a)(3) states:

The following apply in determining the value of assists described in paragraph (a)(i)(iv) of this section: (i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist. (ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value added outside the United States. (iii) If the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

The Customs regulations describe how assists may be apportioned. Section 152.103(e) provides for the following:

Apportionment. (1) The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer. If the entire anticipated production using the assist is for exportation to the United States, the total value may be apportioned over (i) the first shipment, if the imported wishes to pay duty on the entire value at once, (ii) the number of units produced up to the time of the first shipment, or (iii) the entire anticipated production. In addition to these three methods, the importer may request some other method of apportionment in accordance with generally accepted accounting principles. If the anticipated production is only partially for exportation to the United States, or if the assist is used in several countries, the method of apportionment will depend upon the documentation submitted by the importer.
(2) Interpretative note. An importer provides the producer with a mold to be used in the production of the imported merchandise and contracts to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request Customs to apportion the value of the mold over 1,000, 4,000, 10,000 units, or any other figure which is in accordance with generally accepted accounting principles.

## GATT Valuation Agreement:

In Article 8, paragraph I(b), the Agreement provides for an addition to the price actually paid or payable for the imported goods for the value of assists. (Similar language as statute and regulations).

Article 8, paragraph 3, states that "[a]dditions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data."

Regarding valuation and apportionment of the assist, Interpretative Notes, Note to Article 8, paragraph I(b)(ii), subparagraphs 1 through 4, correspond with the Customs regulations regarding valuation and apportionment of assists. [19 CFR 152.103(d) and (e)]

In addition, Interpretative Notes, Note to Article 8, paragraph l(b)(iv), provides the following:

1. Additions for the elements specified in Article 8.1(b)(iv) [engineering, development, artwork, design work, and plans and sketches . . . ] should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.
2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.
3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.
4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.
5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.
6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.
7. In cases where the production of the element in question involves a number of countries over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

**Judicial Precedent:**

Texas Apparel Co. v. United States, 698 F. Supp. 932 (1988), aff'd, 883 F.2d 66 (1989), cert. denied, 493 U.S. 1024, 110 S.Ct. 728 (1990).

The merchandise in question was appraised on the basis of computed value pursuant to 19 U.S.C. 1401a(e). The appraised value included an addition for the cost of sewing machines, including their repair parts and cost of repairs, as an assist under 19 U.S.C. 1401a(h) (1) (A) (ii).

The plaintiff contends that the inclusion of the cost of the sewing machines as an assist is in error. The plaintiff claims that the sewing machines are not "tools, dies, molds, and similar items used in the production of the imported merchandise" as provided for in the statute.

The court ruled that the Customs Service's interpretation of 19 U.S.C. 1401a(h)(1)(A)(ii) as including "items directly related to the production of merchandise, such as a sewing machine to the sewing of wearing apparel, cannot be said to be contrary to the goals and intent of the new valuation code. Including the value of the sewing machine, which is essential to the fabrication of the apparel, fairly and accurately reflects the cost of producing the imported merchandise." Customs' interpretation distinguishes between equipment which works on the merchandise contributing directly to its manufacture and machinery which is not used directly in the production of the merchandise itself, e.g., air conditioners.

The sewing machines in question are similar to "tools, dies, molds, and similar items used in the production of the merchandise," and the cost or value of the sewing machines, repair parts, and the cost of repairs were properly included in the computed value of the imported merchandise as an assist.

(Case affirmed by Aris Isotoner Gloves, Inc. v. United States, 14 Ct. Int'l Trade 693 (1990).)

Chrysler Corporation v. United States, 17 Ct. Int'l Trade 1049 (1993).

The importer purchased engines from a foreign seller. The agreement between the parties required a minimum number to be purchased, otherwise shortfall and application charges were to be paid to the seller. The Court stated that these fees were in the nature of a contractual "penalty", and the financial responsibility was triggered by the failure to purchase engines. The fees were not part of the price actually paid or payable for the engines. In addition, the importer made payments to the seller for tooling expenses and claimed these payments as assists. The Court agreed with Customs that the payments made for tooling expenses are not assists but rather, are part of the price actually paid or payable. The statutory requirements for an assist are not met because the seller is not supplied with the actual tooling. The tooling expense was allocated over the number of engines intended to be produced rather than the actual number of engines produced.

Merck, Sharp & Dohme Int'l v. United States, 20 Ct. Int'l Trade 137 (1996).

The merchandise at issue, Indocin, was manufactured by a company in Holland that is related to the importer. The manufacturer produced the Indocin using assists provided by the importer. The importer claims that Customs erred in appraising the merchandise because instead of determining the value of the assist based upon its cost of production, Customs used the value declared on the invoice. The importer claimed that the invoice price is not the assist's cost of production, but rather, the cost of production is found by examining the business records that the importer presented to the Court The government's position was the Merck did not prove the accuracy of its claimed cost of production figures because it did not provide source documentation (e.g., detailed cost records regarding the manufacture of the assist) to substantiate them. Absent

sufficient proof of its claimed cost of production, the government contended that the assist should be based on the value provided at entry. The Court held that the testimony of the importer's witnesses and the documentary evidence presented by the importer, were sufficient to prove the cost of production of the assist, and that Customs erred in using the price declared on the invoice to determine the value of the assist.

Salant Corp. v. United States, 24 Ct. Int'l Trade 24 (2000), Pl. mot. for relief from judgment denied, No. 01-24, slip op. (Ct. Int'l Trade Mar. 1, 2001).

The issue in this case involves the inclusion of waster or scrap material in the definition of assists. From 1984–1995, Customs position was the scrap or waste in a cut, make, and trim (CMT) operation was not considered an assist within the meaning of 19 USC 1401a(h)(1)(A). However, in 1995, Customs changed its position and maintained that fabric waste generated in a CMT was in fact part of an assist as "merchandise consumed in the production of imported merchandise." The plaintiff in this case challenged Customs' inclusion of the value of material supplied by the plaintiff to the manufacturer but scrapped or wasted during the manufacturing process, within the meaning of an assist pursuant to 19 USC 1401a(h)(1)(A). The plaintiff/importer supplied rolls of fabric, free of charge, to the manufacturers of men's shirts pursuant to contracts for the cut, make, and trim (CMT) of the shirts. During the manufacturing process, a portion of the fabric is scrapped as waste material. The Court determined that the plain meaning of the phrase "merchandise consumed" in the production accurately describes the waste or scrap material in this case, and that Customs' position to include the waste fabric within the definition of an assist was correct.

**Headquarters Rulings:**

## apportionment of assists

19 CFR 152.103(e)(1) and (2); GATT Valuation Agreement Interpretative Notes, Note to Article 8, paragraph I(b)(ii)

General purpose machinery may be apportioned on a yearly basis at the depreciated cost as reflected on the books of the importer, assuming the depreciation is determined in accordance with generally accepted accounting principles.
**542302 dated Feb. 27, 1981 (TAA No. 18).**

Assists may be depreciated and apportioned as desired if these determinations are in accordance with generally accepted accounting principles.
**542302 dated Feb. 27, 1981 (TAA No. 18).**

If the entire anticipated production using an assist is for exportation to the United States, the total value of the assist may be apportioned over the first dutiable shipment if the importer wishes to pay duty on the entire value at one time. The assist is not part of the transaction value of future shipments of articles produced from that particular assist.
**542361 dated July 14, 1981; <u>overruled</u> on other grounds by 544858 dated Dec. 13, 1991.**

The value of an assist must be apportioned reasonably in accordance with generally accepted accounting principles. The value of an assist may not be apportioned entirely to the first entry of merchandise where the entry is duty free.
**542519 dated July 21, 1981 (TAA No. 35).**

In a situation involving a patent, a proportionate share of the development cost added to the invoice price of each shipment until the entire development cost has been amortized is a reasonable method of apportioning the cost of development. The amount added to each entry is based upon the number of units expected to be produced for sale to the United States according to a reasonable forecast. This method is reasonable in light of the circumstances and is in accordance with generally accepted accounting principles.
**543806 dated Mar. 12, 1987.**

Apportioning the value of an assist on the first entry, in a series of entries, and subsequently claiming drawback on that first entry is not in accordance with generally accepted accounting principles and nor is it authorized by the TAA.
**544194 dated May 23, 1988 (Cust. B. & Dec. , Vol. 22, No. 25, June 22, 1988).**

The value of the assist in this case is equal to the cost of its acquisition, plus the transportation costs incurred in transporting the assist to the place of production. If the anticipated production is only partially for exportation to the United States, then the method of apportionment depends upon the documentation that is submitted by the importer with respect to the merchandise.
**544238 dated Oct. 24, 1988.**

If development, plans, sketches, etc., are used in the production of merchandise that is only partially for export to the United States, or if the assists are used in several countries, then the costs of these assists may be apportioned to the imported merchandise in accordance with generally accepted accounting principles.
**544337 dated Apr. 9, 1990.**

Tooling was supplied free of charge by the importer to the unrelated manufacturers in China for use in the production of the imported merchandise. Duty on the entire value of the tooling assist was paid. Subsequently, the importer seeks to have the method of apportionment changed, whereby the value of the tooling is apportioned over its useful life. At the time the payment was made, the importer had the option of selecting a different method of apportionment of the assist. Instead, the importer chose another acceptable method. The method of apportionment of the value of the assist cannot be amended retroactively after liquidation of the entry.

**544494 dated June 28, 1993.**

The importer proposes to apportion the value of assists according to a depreciation schedule that is approved by the Internal Revenue Service for income tax purposes. However, the proposed apportionment method is not reasonable or appropriate to the circumstances and is therefore unacceptable for appraisement purposes. There must be a connection between the apportionment method selected and the imported articles. The proposed apportionment method is unreasonable because it is based solely on the estimated useful life of the assist, and there is no link between the apportionment method and the imported merchandise.
**545031 dated June 30, 1993.**

The importer purchases lead crystal mini-vases from an unrelated seller. There is a mold cost associated with the purchase of the vases which is part of the price actually paid or payable for the imported merchandise. Two purchase orders submitted by the importer indicate the number of vases associated with the mold payment. Therefore, the mold payment should be apportioned over the entire amount of vases imported. The mold payment should not be apportioned to a single shipment because no evidence of the parties= intention to apportion to a single shipment has been presented. If there are additional purchase orders or agreements which indicate that additional vases are also involved, apportionment should be adjusted accordingly.
**546771 dated Mar. 27, 1998.**

The importer declares the cost of the cut, make, trim work, the cost of fabric, and the cost of the fabric used to produce the 2nd quality merchandise at the time the 1st quality merchandise is imported. As a result, the cost of the fabric associated with the second importation has already been declared as a dutiable assist on the first entry. The subject fabric is an assist within the meaning of 19 U.S.C. 1401a(h)(1)(A). The value of the fabric must be added to the price actually paid or payable for the imported merchandise pursuant to section 1401a(b)(1)(C). The value of the fabric may be apportioned over the first shipment of the 1st quality merchandise pursuant to 19 C.F.R. 152.103(e).
**547611 dated Mar. 22, 2001.**

When the value of an assist is not known at the time of the first entry in a series of entries, the entire value of the assist may not be apportioned to the first entry, either through reconciliation or a supplemental information letter. When the amount of the assist in not known at the time of entry, 19 CFR 152.103(e) does not allow the apportionment to one unliquidated entry while the related entries are liquidated. Without knowing the value of the assist, it is impossible to determine a method for apportioning the assists on the first entry.
**548242 dated Feb. 19, 2003.**

Design work that is indirectly supplied to the foreign manufacturer by the importer is supplied free of charge, is used in the production of the imported merchandise, and is necessary for the production of the merchandise. The "design work" is an assist, the value of which is to be added to the price actually paid or payable. The anticipated production is partially for exportation to the United States; however, the importer has submitted a "per garment design charge" apportionment that is reasonable and appropriate to the circumstances, and is in accordance with generally accepted accounting principles.
**548316 dated July 16, 2003.**

## assist definition

19 U.S.C. 1401a(h)(1)(A) and (B); 19 CFR 152.102(b); GATT Valuation Agreement, Article 8, paragraph I(b)

If a cost item is not specifically included within the assist definition, it will not be added as an assist.
**542106 dated May 15, 1980 (TAA No. 2); 542122 dated Sep. 4, 1980 (TAA No. 4); 542412 dated Mar. 27, 1983 (TAA No. 20); 543631 dated June 8, 1987; 544060 dated Jan. 30, 1988; 544315 dated May 30, 1989; 544353 dated Oct. 24, 1989.**

## components which are destroyed, scrapped, or lost

Components which are destroyed, scrapped, or lost, and which are not physically incorporated into the imported articles are not assists.
**543093 dated Apr. 30, 1984; clarified by 543398 dated Aug. 27, 1984; 543831 dated Jan. 25, 1988.**

Excess fabric that is not utilized or otherwise incorporated into the final imported merchandise is not considered to be an assist.
**543924 dated May 29, 1987.**

Even though waste or scrap (of a material, such as a bolt of fabric or sheet of plastic, or of discrete components, such as circuits, CPU chips, or semi-conductors) which results from, or during, the production of imported merchandise is not physically incorporated in that merchandise, such material or components are consumed in the production of the merchandise and may constitute assists. Accordingly, once it is determined that material or components meet the definition of an assist, then Customs considers, among other things, the accounting records of the supplier of the assists to determine the value of the assist. Information regarding where scrap or waste results from, or during, the production of the imported merchandise is considered.
**545908 dated Nov. 30, 1995; Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995; modifies or revokes 544662 dated Mar. 18, 1994, 544758 dated Feb. 21, 1992, 543831 dated Jan. 25, 1988, 543623 dated Nov. 4, 1985, and 543093 dated Apr. 30, 1984.**

Waste or scrap which results from, or during, the production of imported merchandise may constitute assists to be included in the Customs value of that imported merchandise. (General Notice of Customs Relating to Assists, Customs Bull., Vol. 29, no. 51, 12/20/95.) Determinations concerning the valuation of assists are to be based upon objective and quantifiable data, including the accounting records of the supplier of the assists. The importer's proposed "average efficiency" in this case does not reflect the fabric utilization and efficiency for all the imported merchandise at issue. Therefore, the "average efficiency" cannot be considered as objective and quantifiable data for purposes of determining the fabric waste.
**547018 dated Sep. 10, 1999.**

## consumed in the production

19 U.S.C. 1401a(h)(1)(A)(iii); 19 CFR 152.102(a)(1)(iii); GATT Valuation Agreement, Article 8, paragraph l(b)(iii)

A microorganism furnished to the seller, by the buyer, to produce a certain product is "consumed" in the production of the imported merchandise. The microorganism loses enzymatic activity and eventually must be replenished. This required replenishment implies consumption of the microorganism. Accordingly, the microorganism is to be treated as an assist. The value of the assist is the cost of its acquisition that, in this case, includes a fee paid in a sub-license agreement entered into in order to utilize the technology.
**543943 dated Dec. 8, 1987.**

Seeds, pesticides and herbicides are all materials that are consumed in the production of the merchandise and are assists under section 402(h)(1)(A)(iii).
**544655 dated June 13, 1991.**

The buyer supplies a cell culture to the foreign seller. The imported merchandise produced from the cell culture consists of monoclonal antibodies. The cell culture is "consumed" in the production of the antibodies and therefore, constitutes an assist. The value of the assist is the cost of producing the assist plus the cost of transporting it to the foreign producer.
**545135 dated Aug. 27, 1993.**

Even though waste or scrap (of a material, such as a bolt of fabric or sheet of plastic, or of discrete components, such as circuits, CPU chips, or semi-conductors) which results from, or during, the production of imported merchandise is not physically incorporated in that merchandise, such material or components are consumed in the production of the merchandise and may constitute assists. Accordingly, once it is determined that material or components meet the definition of an assist, then Customs considers, among other things, the accounting records of the supplier of the assists to determine the value of the assist. Information regarding where scrap or waste results from, or during, the production of the imported merchandise is considered.

**545908 dated Nov. 30, 1995; Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995; modifies or revokes 544662 dated Mar. 18, 1994, 544758 dated Feb. 21, 1992, 543831 dated Jan. 25, 1988, 543623 dated Nov. 4, 1985, and 543093 dated Apr. 30, 1984.**

## costs of acquiring assists

Costs incurred by the buyer in selecting financing and warehousing fabric which is furnished without charge to the foreign sellers are not to be included as part of the cost of acquiring the fabric.
**542367 dated June 18, 1981.**

The cost of acquiring an assist is limited to its purchase price plus actual transportation costs. The cost of procuring an assist, i.e., receiving inspection, and warehouse costs are not part of the value of an assist.
**542144 dated Feb. 4, 1981 (TAA No. 16); see 542412 dated Mar. 27, 1983 (TAA No. 20); modified by 544323 dated Mar. 8, 1990.**

Costs associated with purchasing, receiving, inspection, warehousing, production control, design engineering, accounting, and sales functions are not assists. The cost of acquiring an assist is limited to the purchase plus transportation costs. The cost of procuring an assist is not part of the value of an assist.
**542412 dated Mar. 27, 1983 (TAA No. 20, modification of TAA No. 16; see TAA No. 46).**

The term "procurement assists", i.e., costs associated in procuring an assist, is not a term defined in the TAA. The TAA simply defines what materials or services are considered assists. Therefore, costs incurred for activities such as warehousing and packing items which are subsequently sent to the seller for use in production for the merchandise are either to be considered as assists or as a part of the value of an assist.
**544323 dated Mar. 8, 1990; modifies TAA No. 20 dated Mar. 27, 1983.**

Commissions paid to an alleged buying agent for obtaining various piece goods/assists are part of the costs of acquiring the materials, components, and parts incorporated in the imported merchandise. Therefore, the payments made by the importer for acquiring piece goods are considered part of the costs of the assist.
**544423 dated June 3, 1991, aff'd by 544843 dated Oct. 31, 1994.**

Through its agent, the importer intends to provide materials and parts, specifically piece goods, to the manufacturers of the apparel it imports. The piece goods constitute assists. The commissions paid by the importer as payment to the agent for services rendered in sourcing piece goods (assists) on behalf of the manufacturers of imported merchandise are considered as part of the cost of acquiring the assists. Therefore, the commissions are added to the price actually paid or payable for the imported merchandise.
**544976 dated Mar. 17, 1993.**

Commissions paid by a buyer of imported merchandise to an agent for acquiring assists are part of the cost of acquisition of the assist and are to be added to the price actually paid or payable.
**545266 dated June 30, 1993.**

Buying commissions paid to a bona fide buying agent for acquiring merchandise to be imported are not dutiable. Where the agent has the dual role under an agency agreement of procuring assists as well as the finished merchandise, any commissions paid to the agent arising out of such an agreement are not dutiable. However, commissions paid to an agent whose sole obligation is to acquire assists for the buyer, are part of the cost of acquiring the assist and are added to the price actually paid or payable. In this case, the agent performs no services other than supplying trim, piece goods, accessories and production supplies to the manufacturers of the finished articles. Consequently, "commissions" paid to the agent are dutiable, either as part of the price to an independent seller, or, as part of the cost of acquiring the assists.
**544843 dated Oct. 31, 1994; aff'g 544423 dated June 3, 1991.**

The cost or value of an assist is the buyer's cost of acquisition. In this case, the buyer is required to make progress payments and continuing royalty payments for coding services and the code itself. The creation of the code or program constitutes an assist with regard to imported video game cartridges. The progress payments and the continuing royalty payments for the coding services represent the cost of acquisition of the assists provided to the manufacturer.
**545279 dated Nov. 30, 1994.**

In addition to the traditional duties of the buying agent, the agent also procures and furnishes assists to the manufacturer on behalf of the purchaser. When requested to do so by the purchaser, the agent procures components, materials, tooling, and design work for use in the production of the goods. If the parties follow the proposed buying agency agreement, then the agent is considered to be a bona fide buying agent. Under the agency agreement, the agent has the dual role of procuring both finished goods and the assists used to make the goods. No portion of the agency commissions it receives from purchasers arising out of the agency agreement is considered dutiable.
**545851 dated May 8, 1995.**

The importer imports lamps and lighting fixtures, of Chinese manufacture, into the United States, and sells the merchandise to U.S. retail stores. The importer contracts with a third party to provide the manufacturer with component parts for use in the manufacture of the lamps and fixtures. At the time of entry, the importer has not rendered payment for the component parts. The component parts constitute assists and the value of the assists is the cost of their acquisition including transportation costs. It is inconsequential whether, at the time of entry of the merchandise, the importer has yet to actually pay the third party producer for the amount owed for providing the component parts. The parts constitute assists regardless of whether their cost of acquisition has been paid at the time of entry.
**547070 dated Dec. 21, 1998.**

## depreciation of assists

19 CFR 152.103(d)(2); GATT Valuation Agreement, Interpretative Notes, Note to Article 8, paragraph I(b)(ii)

In determining the value of fabric furnished without charge to an unrelated assembler, the cost of acquisition to the importer (from an unrelated party) must be used, and not the depreciated cost as reflected on the importer's books.
**542356 dated Apr. 13, 1981 (TAA No. 24); 542477 dated July 27, 1981.**

General purpose machinery may be apportioned for Customs valuation purposes on a yearly basis at the depreciated cost as reflected on the books of the importer, assuming the depreciation is determined in accordance with generally accepted accounting principles.
**542302 dated Feb. 27, 1981 (TAA No. 18).**

If a mold that is supplied free of charge to the foreign manufacturer is depreciated to zero on the books of the importer in a manner consistent with generally accepted accounting principles, then the value of the assist will be limited to the cost incurred in transporting the assist to the place of production.
**543233 dated Aug. 9, 1984.**

Assets having a useful life of more than 1 year are capital assets subject to depreciation over their useful lives. While generally accepted accounting principles allow expensing the cost of an asset in the year of acquisition when its cost is insignificant and the asset is held for over one year, this should not be construed to mean that the asset has a zero book value. While the value of fully depreciated assists is limited to transportation costs to the foreign plant, capital assets (assists) which are permitted to be expensed by GAAP are not necessarily assets with a zero book value for Customs valuation purposes. Such assets require the determination as to what, if any, book value remains if being depreciated over their useful lives.
**543450 dated June 25, 1985.**

If in accordance with generally accepted accounting principles, the value of an assist provided to the seller is fully depreciated according to the importer's records, then the value of the assist is limited to the cost of transporting the assist to the place of production.
**544243 dated Oct. 24, 1988; 544256 dated Nov. 15, 1988.**

## directly or indirectly

19 U.S.C. 1401a(h)(1)(A); 19 CFR 152.102(a)(1); GATT Valuation Agreement, Article 8, paragraph l(b)

Interest free loans and other financial assistance are not considered to be assists within the meaning of the term under the Trade Agreements Act of 1979.
**542166 dated Feb. 12, 1981 (TAA No. 17).**

A master disc which is developed by the foreign manufacturer for use in production of video discs for subsequent sale to the importer is not supplied by the buyer of the imported merchandise and does not constitute an assist.
**542361 dated July 14, 1981; <u>overruled</u> <u>by</u> 544858 dated Dec. 13, 1991.**

Money paid by the related party buyer to the foreign manufacturer to cover the cost of developing a master disc for use in production of video discs which are then sold to the related party buyer is not part of the price actually paid or payable for the imported merchandise and is not included in transaction value.
**542361 dated July 14, 1981; <u>overruled</u> <u>by</u> 544858 dated Dec. 13, 1991.**

Additional amounts paid by the buyer of specific merchandise to the manufacturer to produce tools necessary to produce the merchandise constitute part of the price paid or payable.
**542812 dated July 19, 1982.**

Payments made by the ultimate purchaser in the United States, through the importer, to the manufacturer are not considered assists. However, these payments are part of the price actually paid or payable as indirect payments.
**543324 dated Aug. 8, 1984.**

A payment made to a Japanese manufacturer whereby the manufacturer designs and develops a prototype industrial robot is not an assist. However, the payment is dutiable as part of the part actually paid or payable to the seller as a direct payment.
**543376 dated Nov. 13, 1984.**

Monies paid directly or indirectly by the buyer to the manufacturer of the imported merchandise for the purpose of defraying the manufacturer's tooling expenses are not included in any of the assist categories. Therefore, the tooling payments are not dutiable as assists. Moreover, in this case, the amount paid to the seller for tooling is not paid by the buyer but rather, it is paid by the ultimate purchaser. This amount is not

part of the price actually paid or payable by the buyer to the seller for the imported merchandise.
**543293 dated Jan. 15, 1985; overruled by 543574 dated Mar. 24, 1986.**

Materials that are incorporated into the final imported products and are supplied by the ultimate U.S. purchaser are dutiable as assists. The assists are supplied "directly or indirectly" at a reduced cost to the seller and are dutiable as an addition to the price actually paid or payable.
**543439 dated May 6, 1985.**

Payments made by the ultimate purchaser in the United States, through the importer, to the manufacturer are not considered assists. However, these payments are part of the price actually paid or payable as indirect payments.
**543574 dated Mar. 24, 1986; overrules 543293 dated Jan. 15, 1985.**

Payments made by the ultimate U.S. purchaser, through the U.S. subsidiary/importer, to the foreign manufacturer/seller for use in the production of tooling necessary to produce the imported merchandise are indirect payments and part of the price actually paid or payable.
**543882 dated Mar. 13, 1987; aff'd by 554999 dated Jan. 5, 1989.**

In situations where the U.S. buyer pays the foreign seller to provide a mold necessary for the seller to produce the imported merchandise, the buyer is not supplying the seller with the actual mold. The additional amount that is paid to the seller for producing the mold is dutiable as part of the price actually paid or payable.
**543983 dated Dec. 2, 1987.**

The foreign seller has agreed with the ultimate purchaser in the United States to be reimbursed for all tooling expenses that are incurred. The importer will not receive or transmit to the related party foreign seller any of the funds that are used to pay for the tooling expenses. This payment is furnished indirectly by the buyer and it is part of the price actually paid or payable for the imported merchandise.
**543967 dated Dec. 17, 1987.**

The buyer of the imported merchandise does not supply the designs, either directly or indirectly. Therefore, the designs cannot be considered assists. In addition, because there is no indication that the buyer makes any additional payment to the seller concerning the design work, the price actually paid or payable for the imported merchandise embodies the total payment made to the seller for the merchandise.
**545462 dated Aug. 9, 1994.**

## drawback on assists

Apportioning the value of an assist on the first entry, in a series of entries, and subsequently claiming drawback on that first entry is not in accordance with generally accepted accounting principles and not authorized by the TAA.
**544194 dated May 23, 1988; Cust. B. & Dec., Vol. 22, No. 25, June 22, 1988.**

## engineering, development, artwork, design work necessary for the production

19 U.S.C. 1401a(h) (1) (A) (iv); 19 CFR 152.102(a)(1)(iv); GATT Valuation Agreement, Article 8, paragraph I(b)(iv) and Interpretative Notes, Note to Article 8, paragraph I(b)(iv)

Design work undertaken in the U.S. is not an assist. Design work undertaken in the United States and furnished free to a U.S. manufacturer of bare printed circuit boards that are later assembled abroad into finished printed circuit boards is not an assist.
**542146 dated Nov. 25, 1980 (TAA No. 12); aff=d by 542419 dated June 2, 1981.**

Canadian drawing and working model and royalty payments to either a Canadian patent holder or U.S. patent holder are assists, the royalty payments being part of the cost of the drawing and model.
**542152 dated Dec. 4, 1980 (TAA No. 13).**

A prototype developed entirely in the United States by the U.S. buyer or by his employees and used as a pattern or template is not treated as an assist.
**542220 dated Dec. 24, 1980 (TAA No. 15).**

Design department costs incurred in the United States are not assists under either transaction or computed value.
**542325 dated Apr. 3, 1981 (TAA No. 23).**

The following costs are not considered to be assists: (1) technical data, blueprints, drawings, etc., originating in the United States; (2) U.S.-domiciled manufacturing specialists assisting foreign contractors; (3) employees described in (2) above who also perform incidental labor; (4) assistance performed in the United States on foreign-produced prototypes; and (5) engineering models produced in the United States.
**542377 dated June 16, 1981 (TAA No. 32).**

Engineering costs that are incurred for establishing specifications that are used solely to obtain quotations and issue purchase orders and are not necessary for the actual production of the imported material are not assists. However, engineering costs that involve the preparation of detailed drawing and specification to be used directly by the vendor in manufacturing the equipment or material are considered to be assists.
**542498 dated June 16, 1981.**

Costs for patterns that are produced by the buyer's design department in the United States and provided free of charge to the sellers are not to be treated as assists.
**542367 dated June 18, 1981.**

Interim U.S. analysis of merchandise is not considered to be an assist. If performed outside the United States, such work may constitute an assist.
**542324 dated June 22, 1981 (TAA No. 33).**

Engineering and development performed within the United States are not assists. Engineering and development performed outside the United States, which are assists, may be valued according to an estimate based on a percentage-type formula.
**542324 dated June 22, 1981 (TAA No. 33).**

U.S.-produced pattern generator tapes are not tools within the meaning of section 402(h)(1)(A)(ii). Rather, they are in the nature of design work, and therefore, not dutiable as assists.
**542324 dated June 22, 1981 (TAA No. 33).**

U.S.-manufactured magnetic reel tapes furnished to a foreign manufacturer for use in the production of phonographic discs are design work or product development necessary for the production of imported merchandise, and are not assists.
**542446 dated July 23, 1981 (TAA No. 37).**

A duplicate working film furnished to the foreign manufacturer, which is developed exclusively in the United States by the U.S. buyer, is not an assist.
**542521 dated Oct. 7, 1981.**

Photographic negatives used in the foreign manufacture of greeting cards are not assists when they are developed exclusively in the United States.
**542625 dated Jan. 18, 1982.**

The value of a pattern supplied to the manufacturer is not included in the dutiable value of the imported merchandise produced because the engineering and development was undertaken in the United States.
**542774 dated June 14, 1982.**

Color and pattern development work accomplished entirely within the United States is not an assist within the meaning of section 402(h)(1)(A)(iv).
**542769 dated June 30, 1982.**

Research and development costs incurred outside of the United States should be included as direct costs of processing for purposes of determining the eligibility of an article for duty-free treatment under GSP.
**542891 dated Sep. 14, 1982.**

"Mothers" used in the production of phonograph records are in the nature of design work and therefore, if produced in the United States, then they are not assists.
**542936 dated Nov. 12, 1982 (TAA No. 54).**

An integrated circuit (chip) which is supplied by the buyer at a reduced cost to the seller is deemed to be a component that is included in the imported merchandise and it is therefore, an assist. The value of the assist is the full cost of acquisition, which includes any research and development costs incurred in producing the chip, whether it is fabricated in the United States or elsewhere.
**542948 dated Nov. 29, 1982 (TAA No. 55).**

Patterns and related pattern-making activities undertaken in Hong Kong instruct the manufacturer on what to produce rather than how to produce the imported merchandise. Therefore, the functions performed in Hong Kong are not necessary for the production of the imported merchandise and therefore, are not dutiable as assists.
**543064 dated June 1, 1983.**

Payments made to the seller for expenses that are incurred for research and development are part of the price actually paid or payable for the merchandise rather than assists, i.e., separate additions to the price actually paid or payable. However, the dutiable amount of the research and development is limited to that paid for products actually exported to the United States.
**543324 dated Aug. 8, 1984.**

A payment made to a Japanese manufacturer whereby the manufacturer designs and develops a prototype industrial robot is not an assist. However, the payment is dutiable as part of the price actually paid or payable to the seller as a direct payment.
**543376 dated Nov. 13, 1984.**

Costs incurred in retaining a firm of management consultants to increase the rate and quality of future production of merchandise is not "necessary" to the production of any particular merchandise and, accordingly, it is not an assist. The present production is proceeding and can continue without the work the consultants have undertaken.
**543436 dated Dec. 14, 1984.**

Pursuant to section 402(h)(1)(A)(iv) of the TAA, only research and development that is performed outside of the United States is dutiable as an assist. In this case, all such development is performed in the United States and therefore, its cost is not added to the price actually paid or payable as an assist.
**543272 dated Apr. 26, 1985.**

Engineering work is obtained from either U.S. or Canadian vendors in order to manufacture tools for export to the United States. The manufacturer does not obtain the engineering work at a reduced cost. The cost of design and engineering work purchased by the manufacturer from vendors in the United States or Canada is dutiable

only to the extent that such cost is included in the price actually paid or payable for the imported tools by the importer to the manufacturer.
**543584 dated Aug. 30, 1985.**

The design and production of photographs are both undertaken in the United States. Therefore, costs incurred by the importer in the design and production of the photographs are not assists.
**543851 dated Apr. 13, 1987.**

The importer enters into an agreement with a Hong Kong company for the purpose of obtaining design and consulting services. This company provides the services of furnishing engineering, development, artwork, plans and sketches for the importer. The commissions are assists and should be included in the transaction value of the imported merchandise.
**544088 dated Mar. 25, 1988.**

If the importer provides design work to an unrelated U.S. manufacturer who produces the mold, then the value of the mold is based upon the cost of its acquisition. This is the price paid by the buyer to the manufacturer without the additional cost of the design work because it is the service of manufacturing the mold that is purchased and not the design work. This is similarly the outcome if the importer provides the design work to a foreign manufacturer who constructs the mold.
**544192 dated June 16, 1989.**

Research and development costs undertaken outside of the United States for new models of firearms and improvements of existing firearms must be added to the price actually paid or payable for the imported merchandise.
**544337 dated Apr. 9, 1990.**

Colorways produced by foreign artists outside of the United States that instruct the foreign manufacturer on how to color textile designs constitute assists within the meaning of section 402(h)(1)(A)(iv) of the TAA.
**544621 dated Apr. 22, 1991.**

Certain technical documentation and assistance provided by the U.S. buyer to the seller, free of charge, constitutes an assist pursuant to section 402(h)(1)(A)(iv) of the TAA. In addition, the buyer is required to pay a royalty in order to acquire the design and development work. This royalty payment is part of the value of the assist because it is part of the U.S. buyer's cost of acquisition.
**544459 dated May 30, 1991.**

The standard used to determine whether foreign engineering costs are to be added to the price actually paid or payable as an assist is whether such is "necessary" for the production rather than "used" in the production. In this case, the engineering that produced the initial layout for blueprints was necessary for the production of the

imported article. These engineering costs are to be added to the price actually paid or payable.
**544609 dated Aug. 12, 1991.**

A portion of the design work that is supplied to the seller is performed in the United States and other portions are performed in Mexico. The portion of the work performed in the United States is not dutiable as long as the importer is able to provide a cost breakdown of the design work performed in each country. Accordingly, the only dutiable portion of the assist is the amount of the payment attributable to the work performed in Mexico.
**545341 dated Aug. 3, 1994.**

The buyer is an importer of video game cartridges for use in home entertainment systems. The imported cartridges consist of read-only memory (ROM) integrated circuits soldered to printed circuit boards. The buyer who engages an independent contractor to provide coding services develops the game concept. The buyer then transfers the code to an erasable programmable read-only memory chip (EPROM). After reviewing the program, a completed EPROM is sent to the manufacturer at no charge. The manufacturer uses the EPROM to create a photomask that reproduces the programming pattern. The pattern is then transferred to silicon wafers, and the wafers are used to make the ROM, which is a component of the video game cartridge. The creation of the code is necessary for the production of the imported merchandise, and is an assist within the meaning of section 402(h)(1)(A)(iv) of the TAA.
**545279 dated Nov. 30, 1994**.

The importer develops certain software at its U.S. facility. The software is copied onto a master set of erasable programmable read-only memory chips (EPROMS). The EPROMS are then supplied free of charge to a foreign manufacturer for use in the production of the imported merchandise, i.e., Delivery Information Acquisition Devices (DIADS). The master EPROMS are electronic means of transferring design work and do not confer final shape and form to the imported merchandise and, therefore, are not similar to tools, dies or molds. The master EPROMS are not assists within the meaning of section 402(h)(1)(A) of the TAA because they represent engineering and design work undertaken in the United States. Their value is not included in the transaction value of the final imported merchandise.
**545256 dated Jan. 10, 1995.**

The buyer purchases telephones from various foreign sellers. In connection with these transactions, the buyer supplies the seller, free of charge, with software used to produce the telephones. The buyer in the United States develops the software and it is necessary for the production of the imported telephones. The software supplied by the buyer does not constitute an assist within the meaning of section 402(h)(1)(A) of the TAA because it represents engineering and design work undertaken in the United States. The value of the software should not be included in the transaction value of the imported telephones.
**545987 dated Aug. 28, 1995.**

A U.S. subsidiary of a Japanese corporation imports televisions and other electronic products from its related manufacturing division in Mexico. The manufacturing division in Mexico hired, through the importer, Japanese engineers that generally reside in the U.S. for 1 - 3 months yet their services are performed in Mexico. The importer makes the payments for their services to the Japanese employer. Although the importer pays for the services, they are recorded as an expense attributable to the Mexican operation. The expenses are described as payments made to the Japanese parent's employees for engineering assistance. The expenses are not incidental to other engineering undertaken within the United States, but instead pertain to engineering or development undertaken in Mexico in its own right. The costs for the engineering services constitute assists to be included as part of the computed value of the merchandise.
**545626 dated Feb. 28, 1996.**

The importer purchases and imports various consumer products through various manufacturers. In addition, the importer enters into a Aservices agreement@ with its parent company in Japan. The parent agrees to perform certain services affecting the production of the imported merchandise that is produced by the third-party manufacturers. The services rendered by the parent are described as follows: review development issues and technical problems that the manufacturers have in complying with design and development requests; confirm specifications agreed to between the importer and manufacturers; evaluate trial samples and work with the manufacturers and the importer; evaluate the final sample of the merchandise; coordinate the importer=s service part composition list and provide a list of stock numbers; attend the manufacturers= trial mass production runs; provide other service and assistance upon the request of the importer. The services provided by the related party parent are part of the development of the imported merchandise and are necessary for the production of the imported merchandise. Accordingly, these services are assists within the meaning of section 402(h)(1)(A)(iv) of the TAA. The payment for the services is added to the price actually paid or payable.
**546054 dated Oct. 23, 1996.**

The design work performed by the importer's fashion consultants and employees of its subsidiary that is supplied free of charge by the importer to the suppliers of the imported merchandise constitutes an assist. Although counsel claims that the "design work" performed includes marketing, quality control services and product development, no documentation has been provided to substantiate the claim. Therefore, the value of the assists, as reflected by the payments to the importer's independent consultants and the employees of its related party, should be included in transaction value.
**546511 dated Apr. 15, 1999.**

The importer intends to purchase a computer aided device (CAD) that will communicate color specifications from U.S.-based buyers to the overseas manufacturers that produce the wearing apparel. Pursuant to section 402(h)(1)(A)(iv) of the TAA, "design work" involved in determining the color combinations and patters of the garment by the CAD system does not constitute an assist, since it is undertaken within the United States by the U.S. buyer. The input of information and creation of the CAD-generated prints in Hong Kong is neither artwork nor design work that is necessary for the production of the imported merchandise. There is no discretion in creating or arranging the color schemes and the activity is clerical in nature. The CAD-generated prints are not assists within the meaning of section 402(b)(1)(A)(iv).
**546720 dated July 21, 1999.**

The importer provides its buying agent with a computer disk containing U.S.-produced artwork, including packaging graphics such as UPC bar codes. The buying agent gives the disk to the product manufacturer, who then provides the disk to their printing vendor for production of the packaging. The manufacturer pays the printing vendor directly for its work and the cost of the printing is included in the price that the importer pays the manufacturer for the product. The laser scanner/verifiers constitute assists as defined in section 402(h)(1)(A)(ii) of the TAA, in that they will be used in the production of the imported merchandise. The costs of the laser scanner/verifiers are additions to the price actually paid or payable for the imported merchandise. Thus, the laser scanner/verifiers constitute assists as set forth in section 402(h)(1)(A) of the TAA.
**547451 dated Oct. 22, 1999.**

Under the terms of a license agreement the importer agreed to pay the licensor a quarterly payment of the royalty equal to four percent of the net sales of the trademark products in the United States and Canada. The licensor is involved in the production of the imported merchandise to the degree that it provides general styling information and conceptual designs, in the form of sketches and paper patterns to the importer, both of which are used by the importer/buyer and the seller. The various inter-company design activities undertaken pursuant to the license agreement were used in designing the apparel for the ready-to-wear collection that the importer ultimately purchased from the seller. Accordingly, in the circumstances of this related party transaction, and based on the information submitted, we find that the technical information used in the production of the imported merchandise constitutes an assist under section 402(b)(1)(B) of the TAA. The royalty payments are included in transaction value as either part of the price actually paid or payable, or as an addition thereto under section 402(b)(1)(D) of the TAA. In addition, the technical information supplied by the licensor to the importer constitutes an assist within the meaning of section 402(h)(1)(A)(iv).
**546782 dated Dec. 2, 1999.**

The U.S. buyer uses the foreign and domestic designs/artwork to create new design work and artwork in the United States. The original design work and artwork are transformed to the extent that they no longer exist in the original form. The product sent to the foreign manufacturer is U.S. artwork and design work. Because the U.S. design

work is not by definition an assist, it is not an addition to the price actually paid or payable in determining the transaction value of the imported merchandise. Neither design work created in the United States from foreign nor domestic artwork and design work purchased for use as inspiration pieces constitute assists within the meaning of 19 U.S.C. section 402(h)(1)(A)(iv) and, therefore, they are not included within the transaction value of the imported merchandise.
**547578 dated Jan. 18, 2000.**

Designs are submitted to foreign manufacturers for production under the importer's name. The design and development activities of the foreign parent of the importer, as set out in the "Tech Package" of specifications, technical drawings and design instructions, constitute assists within the meaning of section 402(a)(h)(1)(A)(iv). To the extent that transaction value is used, the value of the assist, apportioned as appropriate, is to be added to the price actually paid or payable for the merchandise. If transaction value is not the basis of appraisement, then the apportioned value or cost of the assist is to be applied as appropriate under section 402.
**547487 dated June 23, 2000.**

To produce new and/or improved products, the importer conducts worldwide basic research and specific development. The research and development work is undertaken overseas and in the United States by corporate technical centers established specifically for that purpose and by various corporate affiliates assigned responsibility for discrete, product-focused development. The importer is capable of segregating the research and development expenses attributed to each affiliate. Thus, the price between the parties represents an acceptable transaction value only where it includes all of the costs attributed to the selling affiliate. Where the price between related parties excludes those costs and an appropriate adjustment is not made to the declared value, we conclude that the relationship between the parties influences the price such that the use of transaction value is unacceptable.
**546471 dated Sep. 28, 2001.**

Based on the reconsideration of the facts of this case, the importer provided design work that constituted an assist and the value of that assist is represented by the payments to the importer's independent consultants and employees of its subsidiary. Therefore, the value of the assists, as reflected by the payments to the importer's independent consultants and the employees of its related party, should be included in transaction value as an addition to the price actually paid or payable of the imported merchandise. The determination in HRL 546511 is affirmed.
**547419 dated Oct. 31, 2001; clarification of 546511 dated Apr. 15, 1999 (546511 affirmed).**

The portion of the design work performed by the importer in the United States is not considered an assist. Also, the work performed by the company abroad does not constitute an assist because it is not design work. However, the artwork performed by the artist in Denmark is part of the design work necessary for the production of the imported merchandise. Accordingly, that portion of the design work supplied by the importer free of charge to the manufacturer, therefore, constitutes an assist. The value of the artwork must be added to the price actually paid or payable for the imported merchandise.
**547808 dated Dec. 19, 2001; modified by 548097 dated Jan. 28, 2003.**

Product development services include: designing; developing fashion trends and color palettes; arranging for the production of samples; providing specifications regarding fabric, style, flat sketches and sizing; and determining the best manufacturer for production. Given the extensive nature of these services, it is our conclusion that these services are necessary for the production of the imported merchandise. However, since these services are performed in the United States, they are not considered to be assists.
**547645 dated Feb. 13, 2002.**

A U.S. company is interested in allowing its unrelated foreign customers to purchase and use its designs in making footwear for importation into the United States. The importer intends to prepare and submit design kits to the customers. Under an agreement, the customers would pay the U.S. company a negotiated design fee based upon the invoice value of the articles produced using the designs. The customers who purchase the design kit would be permitted to use the design in connection with the manufacture, importation, distribution, and sale of the footwear within the United States. The design kits would be prepared entirely in the United States by U.S. designers. The design work undertaken within the United States is not dutiable as an assist. Thus any design work done in the United States to produce the design kits would not be added to the price actually paid or payable.
**547880 dated Aug. 21, 2002.**

Transparencies and films constitute assists as they are design work supplied by the buyer free of charge for use in connection with the production or sale for export of imported merchandise. To the extent that part of the production of the transparencies and films occurs in the Netherlands, the design work is "undertaken elsewhere than in the United States" within the meaning of 19 U.S.C. 1401a(h)(1)(A)(iv). Additionally, because the transparencies and films impart the essence of the product design to the imported merchandise, without which the manufacturers could not produce the imported merchandise, the design work is "necessary for the production of the imported merchandise." Having made the determination that an assist exists, it is not relevant whether each stage in the production of an assist constitutes design work or something other than design work. Instead, Customs looks at *where* each stage of the assist's

production is performed, i.e., either inside the United States or outside the United States. Because one step in the production of the assist occurred in the Netherlands, the payments made to the Dutch designer by the buyer represent the value of the assist.
**548097 dated Jan. 28, 2003, modifies 547808 dated Dec. 19, 2001.**

Activities described in a design and consulting agreement between the parties are undertaken outside the United States and are necessary for the production of the imported garments. The design and consulting agreement indicates that the licensor provides assistance and consulting services in connection with the development of a collection of products to be created, designed or approved by the licensor and developed, produced, marketed, distributed and sold by the importer. These services are supplied indirectly by the buyer and free of charge or at a reduced cost. They are activities that concern research, selection or approval of the imported goods' component materials; creation or design of styles and designs of the imported products, review and approval of any changes to be made to the products and review and approval or disapproval of samples of the imported products. These actions all offered significant assistance to the overall production of the garments. Accordingly, the design services are used in the production of the merchandise such that they constitute assist pursuant to section 402(b)(1)(C) of the TAA.
**548368 dated Dec. 24, 2003.**

## equipment

General purpose equipment supplied by a buyer free or at a reduced charge is an assist.
**542122 dated Sep. 4, 1980 (TAA No. 4).**

General purpose equipment is treated as an assist under computed value. Only the items listed in section 402(h)(i)(A) are assists, consistent with generally accepted accounting principles.
**542139 dated Oct. 15, 1980 (TAA No. 9).**

Air conditioning equipment, power transformers, telephone switching equipment, emergency generators, and other equipment not used in the production of imported goods, are not assists under either transaction or computed value. Sewing machines used in the production of imported goods are assists.
**542302 dated Feb. 27, 1981 (TAA No. 18); 542762 dated Jan. 14, 1983; 544261 dated Feb. 28, 1989; 544421 dated Apr. 3, 1990; 544480 dated Sep. 21, 1990.**

The equipment in question is not used in the production of the imported merchandise but is used to operate other areas of the assembly plant. Therefore, the equipment is not an assist within the meaning of section 402(h)(1)(A).
**544126 dated Aug. 17, 1988; 544083 dated Aug. 16, 1988; 544261 dated Feb. 28, 1989.**

A U.S. company provides test equipment free of charge to foreign manufacturers to check the integrity of the finished instruments prior to shipment to the United States. The testing equipment is not used in the production of the imported merchandise. The testing equipment is not an assist within the meaning of section 402(h)(1)(A).
**544315 dated May 30, 1989.**

Testing equipment provided free of charge to the foreign manufacturer by the U.S. importer may constitute an assist within the meaning of section 402(h)(1)(A) of the TAA if it can be shown that the equipment was used for testing performed during the production process and that such testing, due to the nature of the finished product, was essential to production of the product.
**544508 dated June 19, 1990.**

In order to determine whether the testing equipment in question is an assist, Customs must find that the equipment is "used in the production of the imported merchandise." The final testing equipment is used for testing assembled products. Although the testing is performed on fully assembled products, the nature of the products require such testing, as the integrity of the printed circuit boards cannot otherwise be determined. The fact that the circuit boards frequently do not pass testing and are returned to the assembly line is evidence that production of the merchandise is not complete until the circuit boards are determined to be functional. Because the testing equipment is used during the production process and it is essential to the production of the imported merchandise, the testing equipment is considered to be an assist.
**545170 dated Oct. 27, 1994.**

The importer supplies the foreign vendor with a machine that consists of a compressing unit and a conveyor system to aid in the loading of tires into containers. The machine presses down on stacks of tires allowing for 2 – 3 extra layers of tires to be loaded. The importer provides the machine to the seller free of charge. The machine is not incorporated, used or consumed in the production of the tires, nor is it engineering or design work. Therefore, the machine does not fall within the any of the enumerated definitions of an assist. However, the machines are used in the packing of the tires for exportation to the United States. The tires are not ready for shipment to the United States until placed in a container, and the machine is used to pack the merchandise in a certain condition for its shipment to the United States. The cost of the machine should be added to the price actually paid or payable of the imported tires as it is considered part of the packing costs for the imported merchandise within the meaning of section 402(h)(3) of the TAA.
**548286 dated Mar. 17, 2003.**

## free of charge or at a reduced cost

19 U.S.C. 1401a(h)(1)(A); 19 CFR 152.102(a)(1); GATT Valuation Agreement, Article 8, paragraph l(b)

Freight paid by a U.S. buyer in sending components to its related overseas assembler is not an assist and it does not form part of transaction value.
**543003 dated Feb. 25, 1983 (TAA No. 58); rev'd. by 543096 dated June 21, 1983 (TAA No. 63).**

Freight and related transportation charges paid by a buyer in connection with shipments of material to a foreign assembler are assists.
**543096 dated June 21, 1983 (TAA No. 63); rev'g 543003 dated Feb. 25, 1983 (TAA No. 58), 544201 dated Dec. 12, 1988.**

Because the transfer price between the importer and Taiwanese assembler does not reflect the special tooling costs, the parts are provided at a reduced cost and, therefore, the tooling constitutes dutiable assists. The value of the assists is equal to the extent of the reduction in cost, which, in turn, equals that portion of the tooling costs relating to the production of the parts which are sent abroad for assembly.
**543405 dated June 21, 1985.**

Where imported merchandise consists of components that are sold by the importer to the foreign assembler at a price that does not include the cost of tooling used in the production of the components, the components are considered assists since they are provided at a reduced cost.
**543405 dated June 21, 1985.**

The importer pays a Canadian manufacturer to have a third party produce tools for the importer. The importer at all times retains title and ownership of the tools. The Canadian manufacturer then uses the tools free of charge to produce parts for the importer. The tools belong to the importer, are given free of charge to the manufacturer, and are considered to be assists. Their costs can be amortized pursuant to generally accepted accounting principles.
**543556 dated Aug. 23, 1985.**

Engineering work is obtained from either U.S. or Canadian vendors in order to manufacture tools for export to the United States. The manufacturer does not obtain the engineering work at a reduced cost. The cost of design and engineering work purchased by the manufacturer from vendors in the United States or Canada is dutiable only to the extent that such cost is included in the price actually paid or payable for the imported tools by the importer to the manufacturer.
**543584 dated Aug. 30, 1985.**

The importer solicits offers from domestic firms for the purchase of old fabric and then sells the fabric to the foreign manufacturer for a price equal to the highest domestic bid. Jackets are subsequently produced by the manufacturer and are then sold to the importer at a price negotiated at arm's length. The fabric initially sold to the manufacturer by the importer does not constitute an assist.
**543619 dated Oct. 23, 1985.**

Sewing machines and related equipment purchased by the importer and subsequently sold to the seller for use in production of the imported merchandise do not constitute assists.
**543877 dated Mar. 17, 1987.**

The sketches and samples in question are not considered to be assists. The costs of these items are included in the price actually paid or payable to the buyer of the imported merchandise. Therefore, they are not provided free of charge or at a reduced cost.
**544815 dated May 8, 1997.**

The imported merchandise is a food supplement consisting of gelatin capsules filled with a variety of materials. The seller's customers purchase some of the fill materials from outside sources, and provide them to the seller free of charge. After filling the capsule, the seller prepares an invoice for the U.S. customer indicating their charge for the encapsulating process, and a separate line item for the value of the fill material. The fill material provided free of charge to the seller by its customers represents an assist and accordingly, the value of the assist must be added to the price actually paid or payable for the imported merchandise.
**546679 dated Aug. 11, 1997.**

## inspection services

Fees incurred in hiring an on-site inspection agent to verify quantities of components and of assembled garments returning to the United Sates are not paid to or for the benefit of the seller but rather, the fees are paid to an independent company acting as the buyer's agent. These inspection fees are neither part of the price actually paid or payable nor do they constitute assists.
**543365 dated Nov. 1, 1984.**

Inspection fees, to the extent they are paid for services generally performed by buying agents are not added to the price actually paid or payable. However, where the inspection services entail quality control along the lines of production-related design or development and intimate involvement in the nature of the goods produced, the inspection fees may be dutiable either as part of the price actually paid or payable or as an addition to the price actually paid or payable, i.e., an assist. In this case, the inspection agent's activities appear to be of the kind typically performed by a buying agent and the activities do not amount to quality production quality control that is intimately involved with the nature of the merchandise produced. In addition, the inspection services are relatively limited with respect to involvement in the production process. There is no indication that the agent supplies the seller with "development," in any manner. Therefore, the inspection fees are not added to the price actually paid or payable as assists.
**547006 dated Apr. 28, 1998.**

The importer purchases garments from various manufacturers and engages the services of a consultant who acts in the capacity of a fabric consultant on behalf of the importer. The consultant's primary duties include acting as mill liaison for the importer and assisting the importer in ensuring that woven fabric purchased by the manufacturers for use in the production of garments to be purchased by the importer conform to the importer=s stringent quality specifications. The consultant's services appear to be limited in nature with respect to involvement in production. All fabric at issue is purchased directly by the manufacturers. The consultant fees are for services to be performed akin to those provided by a bona fide buying agent on behalf of the importer. Therefore, the consulting fees are not to be included in the price actually paid or payable, nor do the services performed constitute an assist to be added to the price actually paid or payable.
**547033 dated June 25, 1998.**

## management services, salaries

19 U.S.C. 1401a(h)(1)(B); 19 CFR 152.102(a)(2)

Management services, accounting services, legal services, and other administrative services performed by U.S. buyers are not assists. General purpose equipment supplied by a buyer free or at a reduced charge is an assist.
**542122 dated Sep. 4, 1980 (TAA No. 4); 544323 dated Mar. 8, 1990; 544421 dated Apr. 3, 1990.**

Salaries of U.S. personnel working abroad are dutiable only to the extent that their work involves an assist activity. The cost of acquiring an assist is limited to its purchase price plus transportation costs. The cost of procuring an assist, i.e., receiving, inspection, and warehouse costs are not part of the value of the assist.
**542144 dated Feb. 4, 1981 (TAA No. 16).**

Salaries of an importer's U.S. employees, paid by the importer through its related foreign exporter, are not assists.
**542696 dated Feb. 22, 1982 (TAA No. 46).**

Management services provided by the buyer of merchandise to the seller do not constitute assists.
**543820 dated Dec. 22, 1986; 543877 dated Mar. 17, 1987; 543631 dated June 8, 1987; 543992 dated Sep. 10, 1987; 544098 dated June 10, 1988; 544126 dated Aug. 17, 1988; 544261 dated Feb. 28, 1989; 544323 dated Mar. 8, 1990; 544421 dated Apr. 3, 1990.**

General administrative services, including but not limited to management services, accounting services, legal services, and other services indirectly related to imported merchandise, which are rendered abroad or in the United States by individuals who are paid by the U.S. importer, are not added to the price actually paid or payable.
**544353 dated Oct. 24, 1989.**

The importer provides raw materials and components for electrical connectors to an assembly facility in Mexico. Several U.S. employees are assigned to the Mexican facility. The importer purchases three homes in Mexico for the U.S. employees to occupy along with their families. The price paid for the homes in Mexico purchased by the importer does not constitute an assist. In addition, the salaries paid by the importer to the employees who direct and manage the overall operation of the assembly plant are not assists.
**545117 dated Oct. 30, 1992.**

The importer has entered into an "administrative services agreement" with a foreign related party through which the importer will receive supervision and assistance with its business operations. In addition, the importer reimburses the related party for "reasonable expenses" incurred pursuant to the "administrative services agreement." In exchange, the importer agrees to pay a "management fee" equal to a percentage of its gross sales volume anywhere throughout the world. The importer does not purchase the imported merchandise from the related party providing the administrative services, but rather, purchases the merchandise from unrelated foreign manufacturers. The "management fee" and reimbursement for "reasonable expenses" should not be added to the price actually paid or payable in determining the transaction value of the imported merchandise.
**548316 dated July 16, 2003.**

## materials, components, parts, and similar items incorporated in the imported merchandise

19 U.S.C. 1401a(h)(1)(A)(i); 19 CFR 152.102(a)(1)(i); GATT Valuation Agreement, Article 8, paragraph I(b)(i)

An integrated circuit (chip) which is supplied by the buyer at a reduced cost to the seller is deemed to be a component that is included in the imported merchandise and is, therefore, an assist. The value of the assist is the full cost of acquisition, including any research and development costs incurred in producing the chip, whether it is fabricated in the United States or elsewhere.
**542948 dated Nov. 29, 1982 (TAA No. 55).**

Components which are destroyed, scrapped, or lost, and which are not physically incorporated into the imported articles are not assists.
**543093 dated Apr. 30, 1984; clarified by 543398 dated Aug. 27, 1984, 543623 dated Nov. 4, 1985; overruled by 545908 dated Nov. 30, 1995, Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995.**

The value of assists to be included in the transaction value of imported integrated circuits is limited to the cost or value of the components which are actually incorporated into the imported circuits, plus the transportation costs incurred in transporting the assist to the place of production.
**543407 dated Dec. 14, 1984; 543831 dated Jan. 25, 1988, modified by 545908 dated Nov. 30, 1995, Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995.**

The importer solicits offers from domestic firms for the purchase of old fabric and then sells the fabric to the foreign manufacturer for a price equal to the highest domestic bid. Jackets are subsequently produced by the foreign manufacturer and are then sold to the importer at a price negotiated at arm's length. The fabric sold to the foreign manufacturer by the seller does not constitute an assist.
**543619 dated Oct. 23, 1985.**

A U.S. importer purchases oil well tubing from an unrelated manufacturer in Japan. The tubing is shipped to Canada where another unrelated party applies a plastic protective coating to the tubing. The importer makes separate payments to the Japanese manufacturer and to the Canadian company which performs the further processing. The transaction between the importer and the Canadian processor represents a "sale for exportation to the United States." The transaction value is represented by the price paid by the importer to the Canadian processor, plus the value, as an assist, of the tubing furnished without charge by the importer to the Canadian processor. The value of the assist equals the sum of the price paid to the Japanese manufacturer and the transportation and related costs incurred in shipping the merchandise from Japan to the processing site in Canada.
**543737 dated July 21, 1986; modifies 542516 dated Oct. 7, 1981 (TAA No. 39).**

The proper method of appraisement in this case is transaction value, as represented by the price paid by the importer to the foreign refinery, plus the value, as an assist, of the copper concentrate furnished to the foreign refinery free of charge. The transaction between the importer and the refinery represents a sale for exportation to the United States even though the price actually paid or payable to the refinery relates solely to the processing of the merchandise.
**543971 dated July 22, 1987.**

The importer supplies the foreign manufacturer with fabric and trim to use in producing the final imported product sold to the importer. During the manufacturing process, it is discovered that a portion of the fabric is defective and this portion is not used to produce the finished garments. Rather than claim an allowance with respect to the discarded fabric in determining the value of the assist, the manufacturer adds an amount

(approximately five or ten percent of the actual fabric cost) to the price paid by the buyer. There is no authority to exclude that additional amount from the price actually paid or payable for the imported merchandise.
**544082 dated Sep. 19, 1988.**

The buyer purchases materials in Japan and resells them to the related party seller in Brazil for use in the manufacture of electronic components subsequently sold to the buyer. Due to certain governmental regulations in Brazil and currency fluctuations, the transfer price of the materials is lower than the actual cost. Even though the transfer price is determined in accordance with generally accepted accounting principles, the transfer of these materials at a price lower then their actual cost constitutes an assist and is included in determining computed value.
**544481 dated May 8, 1991.**

In the instant case, no evidence has been submitted to suggest that the additional components supplied by the importer to the manufacturer were not incorporated into the imported merchandise. Therefore, the components incorporated into the final imported product are assists.
**544493 dated June 3, 1991.**

The importer purchases fabric and subsequently gives the fabric, free of charge, to a foreign cut, make and trim vendor. The importer receives a cut scale along with the commercial invoice which indicates the quality of the fabric used and also the number of pieces cut as compared to the number of pieces ultimately sent to the importer. The reason for a discrepancy between pieces cut and pieces sent is defective fabric. The excess fabric that is not incorporated into the final imported product does not constitute part of the value of the assist.
**544758 dated Feb. 21, 1992; <u>modified</u> <u>by</u> 545908 dated Nov. 30, 1995, Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995.**

The importer supplied buttons to the seller through its buying agent. It was the agent's responsibility to seek reimbursement from the seller for the buttons and remit the reimbursement to the importer. The agent failed to recoup and/or remit the monies to the importer for several years. The seller subsequently refused to reimburse the importer for the cost of the buttons, and the importer is presently holding the agent responsible for the unremitted monies. The agent is paying the importer through a series of monthly credits. The buttons, supplied free of charge to the seller, through the buying agent are considered to be assists.
**544876 dated Sep. 3, 1993.**

The importer supplies belts of foreign origin, procured from a third party, free of charge to the manufacturer of trousers. The belts are placed through loops on the trousers sized to accommodate the width of the belt and are imported and sold with the trousers. The belts are incorporated into the imported merchandise within the meaning of section 402(h)(1)(A)(i) of the TAA. Accordingly, the belts supplied by the buyer to the seller

constitute an assist. The value of the assist may be apportioned over the first shipment of a given style.
**544874 dated Oct. 22, 1993.**

The buyer of imported merchandise supplies U.S.-made labels and hang tags which are affixed to imported merchandise. In their condition as imported, the labels have a self-stick backing, while the hang tags are hung onto the merchandise. The labels are considered to be assists. The value of the labels is included as part of the transaction value of the imported merchandise. However, the labels, while part of the appraised value of the imported merchandise, are entitled to the 9802.00.80, HTSUS, partial duty exemption. Customs has considered hang tags as packing material which is returned to the United States without having been advanced in value or improved in condition while abroad and is, therefore, classifiable under subheading 9801.00.10, HTSUS. Accordingly, the hang tags are not part of the appraised value of the imported merchandise and are eligible for duty-free treatment.
**545970 dated Aug. 30, 1995.**

Even though waste or scrap (of a material, such as a bolt of fabric or sheet of plastic, or of discrete components, such as circuits, CPU chips, or semi-conductors) which results from, or during, the production of imported merchandise is not physically incorporated in that imported merchandise, such material or components are in fact consumed in the production of the imported merchandise and may constitute assists. Accordingly, once it has been determined that material or components meet the definition of an assist, then Customs considers, among other things, the accounting records of the supplier of the assists to determine the value of that assist. Information regarding where scrap or waste results from, or during, the production of the imported merchandise is considered in determining the value of the assist.
**545908 dated Nov. 30, 1995; Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995, <u>modifies</u> <u>or</u> <u>revokes</u> 544662 dated Mar. 18, 1994, 544758 dated Feb. 21, 1992, 543831 dated Jan. 25, 1988, 543623 dated Nov. 4, 1985, and 543093 dated Apr. 30, 1984.**

The U. S. manufacturer pays a fee to the foreign manufacturer for the preparation of bid specifications and blueprints for the design and development of imported tools and gauges. The fee paid for the preparation of the items is not related to the imported tools and gauges and the fee is not related to the design and development of the tools and gauges. Also, the U.S. manufacturer does not provide any item for use in connection with the production or the sale for exportation to the United States of imported gauges and tools. Therefore, based on the information provided, the fee paid for the preparation of bid specifications and blueprints is not part of the price actually paid or payable for the imported tools and gauges nor does it constitute an assist to be added to the price actually paid or payable.
**547175 dated Apr. 21, 2000.**

## offsetting overpayment of duties

An importer may not offset a current duty obligation based on a claim that excess duties were paid for mold charges attributable to prior shipments of past entries which all have been liquidated.
**545417 dated May 27, 1994.**

## payment to seller

Payments made to the seller of merchandise to produce tooling in manufacturing the imported goods constitute indirect payments. If the terms of the original contract between the parties indicate how many units of the merchandise are being purchased, then it is possible to prorate the price actually paid or payable. Accordingly, it is possible to prorate the value of the payments that constitute part of the price actually paid or payable for each entry.
**544525 dated Jan. 31, 1991; 544484 dated Jan. 31, 1991.**

Payments made by the buyer of imported merchandise to the seller to produce or buy items such as tools and molds (which, if provided by the buyer, would constitute assists) necessary to produce the subject merchandise, constitute part of the price actually paid or payable for the imported merchandise.
**544516 dated Jan. 9, 1991; aff=d by 544642 dated June 24, 1991.**

The payment of money from the buyer to the foreign seller/manufacturer for tooling and research and development testing does not constitute an assist. It is part of the price actually paid or payable for the imported merchandise. Consequently, no authority exists to "apportion" these payments over the anticipated number of units produced as would be available if the expenditures were assists.
**544381 dated Nov. 25, 1991.**

The importer is paying a fee to the seller to cover the cost of research and development for future products. To cover the charge of future research and development, the seller imposes a charge of four percent of the invoice value on current purchases by the importer. The research and development costs become part of the importer's total payment to the seller. The payment is directly tied to the invoice purchase price. The payments made by the importer to the seller are part of the price actually paid or payable for the merchandise currently imported.
**544972 dated Oct. 20, 1993.**

The importer advances a stated amount to the seller and the manufacturer holds that amount as security for the cost of a mold to produce imported merchandise. It is agreed between the parties that the mold charges are fully refundable if a certain number of pieces are ordered. The importer's payment, characterized as a refundable mold deposit, is part of the price actually paid or payable. The payment does not meet the statutory definition of an assist and cannot be treated as such. In addition, the refund of the mold deposit from the seller to the importer after importation shall not be taken into account in determining the transaction value of the merchandise.
**544867 dated Dec. 15, 1993.**

## proration of assists

The importer failed to declare certain assists to Customs at the time of the entry for the goods in question. However, this fact does not preclude the importer from subsequently prorating the value of the assists upon disclosure to Customs. The importer retains the option to prorate the value of the assists after the fact.
**544525 dated Jan. 31, 1991; 544484 dated Jan. 31, 1991.**

## supplied by the buyer

Although fabric is supplied free of charge to the seller of merchandise, neither the buyer nor a party related to the buyer supplies the fabric and, therefore, the fabric is not an assist.
**545172 dated May 6, 1993.**

The imported merchandise will incorporate heavy industrial robots purchased by the final U.S. customer and provided to the foreign seller. Th4e importer supplies the robots directly or indirectly and their value is included in the appraised value of the imported merchandise. The value of the assist is its cost of acquisition, plus the cost of transportation to the place of production, i.e., the foreign seller=s plant.
**545753 dated Mar. 8, 1996.**

## testing costs

At the importer's option, steel units are tested to ensure that the design is accurate and that the structure is capable of carrying specified loads. The importer pays the exporter for testing costs separate from the payments for the steel units. The testing cost payment is not an assist; however, the testing cost payments are included as part of the price actually paid or payable for the imported merchandise, regardless of the fact that the costs are invoiced separately.
**542187 dated Nov. 7, 1980 (TAA No. 11).**

Testing costs are not assists, but are dutiable as part of the price actually paid or payable when paid by the buyer to the seller of the imported merchandise.
**542187 dated Nov. 7, 1980 (TAA No. 11); 543645 dated Feb. 17, 1987.**

Testing costs paid to an independent agent of the buyer, unrelated to the seller, are neither assists nor part of the price actually paid or payable.
**542774 dated June 14, 1982.**

Payments made by the buyer to an independent tester of merchandise are not made to, or for benefit of, the seller. These payments are not part of the price actually paid or payable.
**542946 dated Jan. 27, 1983.**

If an amount for testing merchandise is included in the price actually paid or payable, there is no authority to deduct the cost from the transaction value of the imported product, regardless of whether the expense is priced or invoiced separately.
**544035 dated Nov. 23, 1987.**

A U.S. company provides test equipment free of charge to foreign manufacturers to check the integrity of the finished instruments prior to shipment to the United States. The testing equipment is not used in the production of the imported merchandise. Consequently, the testing equipment is not an assist within the meaning of section 402(h)(1)(A) of the TAA.
**544315 dated May 30, 1989.**

Testing equipment provided free of charge to the foreign manufacturer by the U.S. importer may constitute an assist within the meaning of section 402(h)(1)(A) of the TAA if it can be shown that the equipment was used for testing performed during the production process and that such testing, due to the nature of the finished product, was essential to production of the product.
**544508 dated June 19, 1990.**

In order to determine whether the testing equipment in question is an assist, Customs must find that the equipment is "used in the production of the imported merchandise". The final testing equipment is used for testing assembled products. Although the testing is performed on fully assembled products, the nature of the products require such testing, as the integrity of the printed circuit boards cannot otherwise be determined. The fact that the circuit boards frequently do not pass testing and are returned to the assembly line is evidence that production of the merchandise is not complete until the circuit boards are determined to be functional. As a result, the testing equipment is used during the production process and is essential to the production of the imported merchandise. The testing equipment is considered to be an assist.
**545170 dated Oct. 27, 1994.**

A related party seller is supplied with certain assists, the value of which is included in the transaction value. The seller performs testing on these assists before incorporating the assists into the imported merchandise. The cost of the testing, i.e., whether it is included as part of the price of the imported merchandise or if the importer is separately billed for the testing costs, is included in transaction value as part of the price actually paid or payable.
**545753 dated Mar. 8, 1996.**

## tools, dies, molds, and similar items used in the production

19 U.S.C. 1401a(h)(1)(A)(ii); 19 CFR 152.102(a)(1)(ii); GATT Valuation Agreement, Article 8, paragraph l(b)(ii) and Interpretative Notes, Note to Article 8, paragraph 1(b)(ii)

A metal stamper used in the production of phonograph records is an assist, the value of which includes the cost of musicians and arrangements, rehearsal pay, rehearsal hall rent, agency fee, studio cost, digital recorder, engineer, cartage, mastering, plating and producer.
**542355 dated Apr. 3, 1981 (TAA No. 21).**

U.S.-produced pattern generator tapes are not tools within the meaning of section 402(h)(1)(A)(ii) of the TAA. Rather, they are more in the nature of design work, and therefore, they are not dutiable as assists.
**542324 dated June 22, 1981 (TAA No. 33).**

Additional amounts paid by the buyer of specific merchandise to the manufacturer to produce tools necessary to produce that merchandise constitute part of the price actually paid or payable.
**542812 dated July 19, 1982.**

A mold is furnished to two foreign manufacturers, without charge, located either in the same or in two different countries. Once duty has been assessed on the full value of the mold assist, then no additional duty is owed once the mold is transferred to a second foreign manufacturer located either in the same country as the first manufacturer or in a second country.
**543278 dated Oct. 31, 1984; <u>overruled</u> <u>by</u> 544857 dated Dec. 13, 1991.**

Because the transfer price between the importer and Taiwanese assembler does not reflect the special tooling costs, the parts are provided at a reduced cost and, therefore, constitute dutiable assists. The value of the assists is equal to the extent of the reduction in cost, which, in turn, equals that portion of the tooling costs relating to the production of the parts which are sent abroad for assembly.
**543405 dated June 21, 1985.**

The importer pays a Canadian manufacturer to have a third party produce tools for the importer. The importer at all times retains title and ownership of the tools. The Canadian manufacturer then uses the tools free of charge to produce parts for the importer. The

tools belong to the importer, are given free of charge to the manufacturer, and are considered to be assists. Their costs can be amortized pursuant to generally accepted accounting principles.
**543556 dated Aug. 23, 1985.**

Photomasks, which are used in the transfer of integrated circuitry onto silicon wafers, are analogous to a mold and thus dutiable as an assist.
**543889 dated May 12, 1987; aff'd by 544147 dated July 5, 1988.**

The importer provided video-duplicating services to owners of the program content of videotapes. The program content owner provided one duplicated master videotape to the importer free of charge. The importer then furnished the duplicated master videotapes free of charge to a foreign manufacturer of pre-recorded videotapes. The duplicated master videotapes are in the nature of tools, dies, molds or similar items, i.e., the videotapes give final shape or form to the completed manufactured article and are therefore, dutiable as assists. The value of the assists is the cost of producing the negative master film.
**544040 dated Nov. 8, 1988.**

When a mold that has been produced by the importer or a person related to him, in the United States or in a foreign country, its value is the cost of producing the mold. Included in this cost of production are the design and development costs incurred under generally accepted accounting principles when the work at issue was undertaken either within the United States or outside the United States.
**544192 dated June 16, 1989.**

If the importer provides design work to an unrelated U.S. manufacturer who produces the mold, then the value of the mold is based on the cost of its acquisition. This is the price paid by the buyer to the manufacturer without the additional cost of the design work, because it is the service of manufacturing the mold that is purchased and not the design work. This is similarly the outcome if the importer provides the design work to a foreign manufacturer who constructs the mold.
**544192 dated June 16, 1989.**

A tractor provided to the seller of imported melons, free of charge, is used during the production process and is essential to the growth of the melons. It is a "similar item" with respect to a tool, die or mold used in the production of imported merchandise under section 402(h)(1)(A)(ii) of the TAA and is an assist.
**544655 dated June 13, 1991.**

If the cost for tooling charges by the importer is fully included in the price of the imported finished merchandise, it is unnecessary to further include these costs in the price of its after-market service parts, as that expense has already been fully recouped.
**544844 dated Oct. 15, 1992.**

The buyer provides a "Lectra pattern maker" free of charge to the seller. The pattern maker contributes directly to the manufacture of the imported merchandise by recreating garment patterns in different sizes and by manipulating pattern pieces in order to produce the most efficient usage of material. The pattern maker is an assist within the meaning of section 402(h)(1)(A)(ii) of the TAA and its value should be added to the price paid or payable.
**545147 dated Nov. 4, 1994.**

Mold patterns are supplied by the buyer to the manufacturers of imported castings and are used to make wax castings. The wax castings are then used to make ceramic shells which, in turn, are used to make the imported castings. The mold patterns are in constant use during the production of the imported merchandise. They must be employed whenever a new casting is made because the wax casting molds and the ceramic shell are destroyed each time a new casting is made. The patterns are in constant use during the production of the imported merchandise and are essential to their production. Accordingly, the mold patterns constitute assists within the meaning of section 402(h)(1)(A)(ii) of the TAA.
**545336 dated Nov. 23, 1994.**

The importer supplies the foreign sellers with grinding machines to produce porcelain, stoneware and chinaware products. The importer indicates that the machines are used solely for the purpose of testing the quality of products. The products may not be even, i.e., they may not lay flat on a surface after the manufacturing operations. If a product does not meet specifications, then it is ground by the grinding machine. The machines bring the products up to the manufacturing specifications. The grinding machines are considered to be assists. The machines are used in the production of the imported merchandise and are essential to the production of the imported merchandise. The cost of the grinding machines is included in the transaction value of the imported merchandise.
**546102 dated Dec. 22, 1995.**

## transportation costs

19 CFR 152.103(d)(1) and (2)
<u>See</u> also, chapter on TRANSPORTATION COSTS, <u>infra.</u>

Freight paid by a U.S. buyer in sending components to its related overseas assembler is not an assist and does not form part of transaction value.
**543003 dated Feb. 25, 1983 (TAA No. 58); <u>rev'd</u> <u>by</u> 543096 dated June 21, 1983 (TAA No. 63).**

Freight and related transportation charges paid by a buyer in connection with shipments of material to a foreign assembler are assists.
**543096 dated June 21, 1983 (TAA No. 63); <u>rev'g</u> 543003 dated Feb. 25, 1983 (TAA No. 58), 544190 dated Sep. 26, 1988, 544201 dated Dec. 12, 1988.**

If in accordance with generally accepted accounting principles, the value of an assist provided to the seller is fully depreciated according to the importer's records, then the value of the assist is limited to the cost of transporting the assist to the place of production.
**544243 dated Oct. 24, 1988; 544256 dated Nov. 15, 1988.**

Defective watches are returned to the U.S. importer for repair. The defective watches are then exported from the United States to the importer's related party in the Philippines for repair and return. The watches are repaired and then sold back to the importer at prices that cover the cost of repairs plus a mark-up. Under these circumstances, the defective watches acquired by the importer and sent to the related party for repair are considered assists. The value attributed to the defective watches in this case is equal to the costs incurred in transporting the watches to the related party's plant.
**544241 dated Jan. 12, 1989.**

The importer purchases merchandise manufactured by a related party in the Philippines. The importer consigns to its related party seller certain materials and supplies for use in production of the imported merchandise. The importer has a New York based shipping department that arranges for the transportation of the materials to the related party seller's factory. These activities are incidental to the transportation of the materials and the costs associated with arranging the shipment of the materials are included in the value of the assists.
**544323 dated Mar. 8, 1990.**

## use in connection with the production or the sale for export

19 U.S.C. 1401a(h) (1) (A); 19 CFR 152.102(a) (1); GATT Valuation Agreement, Article 8, paragraph I(b)

Engineering costs incurred for establishing specifications that are used solely to obtain quotations and for issue purchase orders that are not necessary for the actual production of the imported material are not assists. However, engineering costs that involve the preparation of detailed drawings and specifications to be used directly by the vendor in manufacturing equipment or material are dutiable assists.
**542498 dated June 16, 1981.**

Samples, which convey technical information without which an article could not be made, are dutiable as assists. However, if the manufacturer is capable of producing the article without the samples and, in fact, does not use the samples to manufacture the article, then the samples are considered to be analogous to narrative specifications and do not constitute dutiable assists.
**542591 dated Sep. 18, 1981; <u>aff'd</u> <u>by</u> 542690 dated Jan. 28, 1982.**

Development performed outside the United States is an assist only if it is necessary for the production of the imported merchandise.
**542324 dated June 22, 1981 (TAA No. 33).**

Patterns and related pattern-making activities undertaken in Hong Kong instruct the manufacturer on what to produce rather than how to produce the imported merchandise. Therefore, the functions performed in Hong Kong are not necessary for the production of the imported merchandise and, therefore, are not dutiable as assists.
**543064 dated June 1, 1983.**

Expenses incurred by the buyer for furniture, fixtures, supplies, etc., in establishing an office in Hong Kong where a buying agent performs inspection and re-packing operations are not assists. These expenditures are not made "in connection with the production or the sale for export to the United States of the merchandise."
**543185 dated Sep. 13, 1984.**

Costs incurred in retaining a firm of management consultants to increase and improve the rate and quality of future production of merchandise is not "necessary" to the production of any particular merchandise and therefore, is not a dutiable assist. The present production is proceeding and can continue without the work the consultants have undertaken.
**543436 dated Dec. 14, 1984.**

Air conditioning equipment, power transformers, telephone switching equipment, emergency generators, and other equipment not used in the production of imported goods are not assists under either transaction or computed value. Sewing machines used in the production of imported goods are dutiable as assists.
**542302 dated Feb. 27, 1981 (TAA No. 18); 542762 dated Jan. 14, 1983; 544261 dated Feb. 28, 1989; 544480 dated Sep. 21, 1990.**

The equipment in question is not used in the production of the imported merchandise but it is used to operate other areas of the assembly plant. The equipment is not an assist within the meaning of section 402(h)(1)(A) of the TAA.
**544126 dated Aug. 17, 1988; 544083 dated Aug. 16, 1988; 544261 dated Feb. 28, 1989**.

A U.S. company provides test equipment free of charge to foreign manufacturers to check the integrity of the finished instruments prior to shipment to the United States. The testing equipment is not used in the production of the imported merchandise. The testing equipment is not an assist within the meaning of section 402(h)(1)(A) of the TAA.
**544315 dated May 30, 1989.**

Testing equipment provided free of charge to the foreign manufacturer by the U.S. importer may constitute an assist within the meaning of section 402(h)(1)(A) of the TAA if it can be shown that the equipment was used for testing performed during the

production process and that such testing, due to the nature of the finished product, was essential to production of the product.
**544508 dated June 19, 1990.**

A U.S. company sends a printer to Jamaica where it is used to print garment labels that are incorporated in the imported merchandise. The printer is actually used in production to mark the labels that comprise a part of the imported merchandise. The printer, provided by the buyer, free of charge or at a reduced cost, for use in the production of the garment labels, is an assist.
**545570 dated Apr. 21, 1994.**

A U.S. buyer provides "prototype" or "model" lasts free of charge to unrelated sellers for use in the production of imported shoes. The lasts are used to make "production" lasts that are used directly in the manufacturing process. The prototype lasts are in the shape of a shoe sole. In contrast, the production lasts, while resembling a shoe sole, are built up around the edges in order that they may function as molds. The prototype lasts supplied by the buyer are not used in the production of the imported shoes. Instead, they are used to make production lasts that are used to produce the imported merchandise. The prototype lasts are not similar to tools, dies, or molds. Instead, they are in the nature of U.S. design work and are not assists within the meaning of section 402(h)(1)(A) of the TAA.
**545297 dated May 31, 1994.**

## value of assists, i.e., cost of acquisition or cost of production

19 CFR 152.103(d)(1) and (2)

In determining the value of fabric furnished without charge to an unrelated assembler, the cost of acquisition to the importer must be used, and not the depreciated cost as reflected on the importer's books and records.
**542356 dated Apr. 13, 1981 (TAA No. 24); 542477 dated July 27, 1981.**

Photomasks provided by a buyer to a seller are assists, the value of which is the cost of acquisition, if purchased, or the cost of production, not including a profit factor, if produced.
**542324 dated June 22, 1981 (TAA No. 33).**

The importer has entered into a contract with the ultimate purchaser of imported merchandise for the assembly and testing of certain core memory pages. The actual assembly and test operations are performed by the importer's wholly owned subsidiary in Hong Kong. The assembler uses components furnished free of charge by the ultimate purchaser, through the importer. The value of the assist produced by the unrelated, ultimate purchaser of the imported merchandise is limited to the purchaser's cost of production, in accordance with generally accepted accounting principles, where either the assist is furnished without cost through the importer to the foreign assembler, or is furnished directly to the assembler.
**542667 dated Mar. 5, 1982.**

An integrated circuit (chip) which is supplied by the buyer at a reduced cost to the seller is deemed to be a component that is included in the imported merchandise and thus it is an assist. The value of the assist is the full cost of acquisition that includes research and development costs incurred in producing the chip, whether it is fabricated in the United States or elsewhere.
**542948 dated Nov. 29, 1982 (TAA No. 55).**

A mold is furnished to two foreign manufacturers, without charge, located either in the same or in two different countries. Once duty has been assessed on the full value of the mold assist, then no additional duty is owed once the mold is transferred to a second foreign manufacturer located either in the same country as the first manufacturer or in a second country.
**543278 dated Oct. 31, 1984; <u>overruled</u> <u>by</u> 544857 dated Dec. 13, 1991.**

The value of assists to be included in the transaction value of imported integrated circuits is limited to the cost or value of the components which are actually incorporated in the imported circuits, plus the transportation costs incurred in transporting the assist to the place of production.
**543407 dated Dec. 14, 1984; 543831 dated Jan. 25, 1988; <u>modified</u> by 545908 dated Nov. 30, 1995, Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995.**

The importer solicits offers from domestic firms for the purchase of old fabric and then sells the fabric to the foreign manufacturer for a price equal to the highest domestic bid. The manufacturer subsequently produces jackets and sells them to the importer at a price negotiated at arm's length. The fabric sold to the foreign manufacturer by the seller does not constitute an assist.
**543619 dated Oct. 23, 1985.**

U.S. engineering and development involved in producing a photomask, i.e., a mold, is used in the production of imported merchandise and the mold is provided to the seller, free of charge, by the buyer. The engineering and development that is necessary to produce the photomask is embodied in the item provided to the seller. As long as engineering and development costs are treated under generally accepted accounting principles by the company as production cost, there is no authority to exclude the U.S.

engineering and development costs that have been incurred producing the photomask (mold).
**543889 dated May 12, 1987; aff'd by 544147 dated July 5, 1988.**

A microorganism furnished to the seller, by the buyer, to produce a certain product is "consumed" in the production of the imported merchandise. The microorganism loses enzymatic activity and eventually must be replenished. This required replenishment implies "consumption" of the microorganism. Accordingly, the microorganism is to be treated as an assist. The value of the assist is the cost of its acquisition, which, in this case, includes a fee paid in a sub-license agreement entered into in order to utilize the technology.
**543943 dated Dec. 8, 1987.**

Certain technical documentation and assistance provided by the buyer to the seller, free of charge, is considered to be an assist pursuant to section 402(h)(1)(A)(iv) of the TAA. In addition, the buyer is required to pay a royalty in order to acquire the design and development. This royalty payment is part of the value of the assist given that it is part of the buyer's cost of acquisition.
**544459 dated May 30, 1991.**

Commissions paid to an alleged buying agent for obtaining various piece goods/assists are part of the costs of acquiring the materials, components, and parts incorporated in the imported merchandise. Therefore, the payments made by the importer for acquiring piece goods are part of the cost of the assist.
**544423 dated June 3, 1991.**

The importer provides the foreign manufacturer with an assist. However, the value of the assist is based upon the average net selling price of the imported merchandise and is calculated on a quarterly basis. At the time of importation, the value of the assist is unknown. Transaction value is an acceptable basis of appraisement only if, at the discretion of the port of entry, liquidation can be withheld in order to permit a determination of the cost of acquisition of the assist at a later date. If the port determines that liquidation cannot be withheld, then the merchandise must be appraised in accordance with the first applicable method arrived at through a sequential application of the statutorily enumerated methods.
**545086 dated Apr. 1, 1993.**

# BUYING COMMISSIONS

## INTRODUCTION

### GATT Valuation Agreement:

Article 8, paragraph I(a)(i), states:
1. In determining the customs value under the provisions of Article 1 [transaction value], there shall be added to the price actually paid or payable for the imported goods:
(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
(i) commissions and brokerage, except buying commissions.
In the Interpretative Notes, Note to Article 8, paragraph I(a)(i), the term "buying commissions" is defined as: “fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued."
CCC Technical Committee Explanatory Note 2.1 with regard to commissions states:
1. Article 8, paragraph I(a)(i) . . . states that, in determining Customs value under the provisions of Article 1, commissions and brokerage, except buying commissions, shall be added to the price actually paid or payable to the extent that they are incurred by the buyer but are not included in the price. According to the Interpretative note to Article 8, the term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.
2. Commissions and brokerage are payments made to intermediaries for their participation in the conclusion of a contract of sale.
3. Although the legal position may differ between countries with regard to the designation and precise definition of the functions of these intermediaries, the following common characteristics can be identified:
Buying and selling agents
4. The agent (also referred to as an "intermediary") is a person who buys and sells goods, possibly in his own name, but always on the account of a principal. He participates in the conclusion of a contract of sale, representing either the seller or the buyer.
5. The agent's remuneration takes the form of a commission, generally expressed as a percentage of the price of the goods.
6. A distinction can be made between selling agents and buying agents.
7. A selling agent is a person who acts for the account of a seller; he seeks customers and collects orders, and in some cases he may arrange for storage and delivery of the goods. The remuneration he receives for services rendered in the conclusion of a contract is usually termed "selling commission". Goods sold through the seller's agent cannot usually be purchased without payment of the selling agent's commission. These payments can be made in the ways set out below.
8. Foreign suppliers who deliver their goods in pursuance of orders placed through a selling agent usually pay for the latter's services themselves, and quote inclusive prices to their customers. In such cases, there is no need for the invoice price to be adjusted to

take account of these services. If the terms of the sale require the buyer to pay, usually direct to the intermediary, a commission that is additional to the price invoiced for the goods, this commission must be added to the price when determining transaction value under Article 1 of the Agreement.
9. A buying agent is a person who acts for the account of a buyer, rendering him services in connection with finding suppliers, informing the seller of the desires of the importer, collecting samples, inspecting goods and, in some cases, arranging the insurance, transport, storage and delivery of the goods.
10. The buying agent's remuneration which is usually termed "buying commission" is paid by the importer, apart from the payment for the goods.
11. In this case, under the terms of paragraph l(a)(i) of Article 8, the commission paid by the buyer of the imported goods must not be added to the price actually paid or payable.

**Judicial Precedent:**

The following court cases are relevant in determining whether an agency relationship exists between a buyer of merchandise and an alleged buying agent. If such a relationship exists between the parties, then the commissions paid to the buying agent are not part of the transaction value for the imported merchandise.

Rosenthal-Netter, Inc. v. United States, 12 Ct. Int'l Trade 77, aff'd 861 F.2d 261 (Fed. Cir. 1988).

In this case, Customs argues that the entity to whom the commissions are paid is not a bona fide buying agent of the importer but rather, is the actual seller of the merchandise. The court agreed with Customs and indicated that the actions of the parties do not substantiate the claim that a bona fide agency was in fact created.

The court indicated that the plaintiff has the burden of proving that an agency relationship exists, and if in fact the plaintiff fails to do so, then the relationship is not an agency relationship. In deciding whether such a relationship exists, the court must examine all relevant factors and each case is governed by its own particular facts. Citing J.C. Penney Purchasing .Corp. v. United States, 80 Cust. Ct. 84, 94, C.D. 4741, 451 F. Supp. 973, 982 (1978). The factors in deciding whether a bona fide agency relationship exists include: the right of the principal to control the agent's conduct, the transaction documents, whether the importer could have purchased directly from the manufacturers without employing an agent; whether the intermediary was operating an independent business, primarily for its own benefits; and, the existence of a buying agency agreement. Although no single factor is determinative, the primary consideration is the right of the principal to control the agent's conduct with respect to the matters entrusted to him.

In this case, the court found that several aspects of the alleged agent's conduct that the importer did not control. First, the importer did not control from which factory the merchandise was selected. Secondly, the alleged agent purchased quantities up to ten

times greater than the amount ordered by the importer. In addition, the importer did not control the amount of discretion exercised in the purchasing process. Fourth, the importer allowed the alleged agent to absorb the cost of shipping and handling, a fact that is further evidence that a true agency relationship does not exist. Fifth, the importer did not control the manner of payment.

As indicated above, the control factor is one aspect of an agency relationship. In this case, the transaction documents indicated that the alleged agent operated an independent business, primarily for its own benefit. A Special Customs Invoice listed the alleged agent as the "seller". In addition, the pricing structure established between the alleged agent and the importer belied the existence of an agency relationship and demonstrated that the alleged agent was actually trading on its own account, for its own benefit. In fact, the alleged agent bore the risk of loss on the merchandise, another factor that militates against the finding of a buying agency relationship.

In conclusion, the court held that the importer failed to meet its burden of establishing a bona fide agency relationship between itself and its intermediary.

Jay-Arr Slimwear Inc. v. United States, 12 Ct. Int'l Trade 133 (1988).

The plaintiff (importer) challenged the decision of the Customs Service to include the payment of commissions, among other fees, in the dutiable value of the imported merchandise. The commissions were held not to have been paid for services rendered by a bona fide buying agent and therefore, were held to be dutiable. (Note: A classification question was before the court as well, but that issue was not relevant to the valuation of the merchandise.)

The court cites examples of services which are characteristic of those rendered by a buying agent. These services include compiling market information, gathering samples, translating, placing orders based on the buyer's instructions, procuring the merchandise, assisting in factory negotiation, inspecting and packing merchandise, and arranging for shipment and payment. Citing Bushnell Int'l, Inc. v. United States, 60 CCPA 157, C.A.D. 1104, 477 F. 2d 1402 (1973); United States v. Nelson Bead Co., 42 CCPA 175, C.A.D. 590 (1955); J.C. Penney Purchasing Corp. et al. v. United States, 80 Cust. Ct. 84, C.D. 4741, 451 F. SUPP. 973 (1978); United States v. Knit Wits (Wiley) et al., 62 Cust. Ct. 1008, A.R.D. 251 (1969); Carolina Mfg. Co. v. United States, 62 Cust. Ct. 850, R.D. 11640 (1969).

In this case, the alleged agent is also the owner of the company that assembles the merchandise in question. Although this does not per se disqualify the agency relationship, there must be proof of a financial detachment from the manufacturer with respect to the commissions paid. In this regard, the evidence submitted does not conclusively prove that the commissions paid to the alleged agent do not inure to the benefit of the manufacturer.

In addition, the requisite degree of control over the alleged agent has not been proven. Testimony was elicited indicating that the importer had no control over the alleged agent and that the alleged agent was considered independent. Based upon these factors, the court held that the relationship between the parties is not a buying agency relationship.

Pier I Imports, Inc., v. United States, 13 Ct. Int'l Trade 161 (1989).

The importer challenged the Customs Service decision that the entity to whom the commissions were paid was not a bona fide buying agent. The court agreed with the importer that sufficient evidence was submitted to support a finding that the entity operated as the importer's buying agent. The commissions paid are not properly part of the dutiable value of the imported merchandise under transaction value.

The evidence submitted indicated that the importer did in fact control the purchasing process. The agent retained minimal discretion in purchasing the merchandise. The court stated that this fact supports the finding of an agency relationship. Citing, Rosenthal-Netter, Inc. v. United States, 12 Ct. Int'l Trade 77 (1988), aff'd, 861 F.2d 261 (Fed. Cir. 1988); J.C. Penney Purchasing Corp. v. United States, 80 Cust. Ct. 84 (1978).

In addition, the manner of payment establishes that the agent purchased merchandise only at the direction of the importer. In this case, the agent did not retain the discretion to deduct commissions, freight charges, etc., but rather, the importer invoiced charges separately and paid for these charges separately, further indicating that the importer exercised control over the agent. The importer also had the option of purchasing merchandise directly from the manufacturers, a fact that the court stated is further evidence supporting the existence of an agency relationship.

The degree of control is not the sole factor in determining whether an agency relationship exists. Additionally, in citing the Restatement (Second) of Agency, the court indicates that the agent is to act for the benefit of the importer, rather than himself. The evidence indicated that the agent did not buy on its own account, but bought on behalf of the importer. The agent did not bear the risk of loss for the merchandise, only for its own negligence.

A bona fide buying agency relationship existed between the importer and the entity paid the commissions. These commissions are excluded from the transaction value of the imported merchandise.

Moss Mfg. Co., Inc. v. United States, 13 Ct. Int'l Trade 420 (1989); aff=d, 896 F.2d 535 (Fed. Cir. 1990).

The plaintiff (importer) filed suit against the Customs Service claiming that Customs improperly included commissions paid for alleged buying agent services. The importer paid the commissions directly to the seller of the imported merchandise, for later disbursement to the alleged agent by the seller.

The court framed the issue as follows: whether monies which were disbursed by the buyer to the seller with directions from the buyer to remit the payment to the buyer's agent, who assisted in bringing about the sale, were properly included in the dutiable value of the imported merchandise.

After discussing the factors to consider in determining whether a buying agency relationship is in fact bona fide, the court determined that the agent in this case was a bona fide buying agent. However, the court found that the payment was properly part of the price actually paid or payable.

The court held that where a payment for goods is made by the buyer to the seller with instructions to the seller to remit a portion of the payment to the buyer's agent, where the agent assisted in bringing about the sale, such a payment is a disbursement for the benefit of the seller within the meaning of 19 U.S.C. 1401a(b) and is properly part of the price actually paid or payable.

Monarch Luggage Co., Inc. v. United States, 13 Ct. Int'l Trade 523 (1989).

The issue in this case is whether commissions paid were properly included in the transaction value of imported merchandise. The plaintiff (importer) contends that the invoice F.O.B. values included buying commissions paid to two Taiwanese companies and should not have been included in the dutiable value of the merchandise.

The importer testified that Monarch Luggage's primary business of importing luggage requires a presence in the exporting country in order to be successful. In 1977, the importer entered into a verbal agreement with a managing director of two companies indicating that these two companies would act as agents for Monarch Luggage. This verbal agreement continued until 1981, at which time the agreement was put in writing.

The court stated that the evidence submitted did in fact establish that the activities performed by the two companies were indicative of an agent-principal relationship and that the agents were at all times bona fide buying agents. However, with respect to entries made prior to the latter part of 1981, the invoices submitted indicated that the commissions were deducted from the price paid for the merchandise. Because the amounts were part of the price actually paid or payable for the merchandise for these entries, the amounts were properly included in the dutiable value of the imported merchandise for that specific period.

Invoicing changes were implemented in late 1981, and the commissions became an amount separate from and in addition to the price for the merchandise. The commissions paid subsequent to the invoicing changes are properly excluded from the dutiable value of the merchandise.

**Headquarters Rulings:**

## bona fide buying commissions

The commissions paid to the agent to perform the services of purchasing merchandise from foreign manufacturers are to be considered bona fide buying commissions, and are therefore, not to be added to the price actually paid or payable.
**544676 dated July 24, 1991.**

The services provided by the agent are typical of a buying agent and are not negated by the agent's furnishing of essentially ministerial services to manufacturers, given full disclosure and acquiescence by the importer. As long as the payments by the manufacturers have no impact on the importer's price actually paid or payable, it will have no effect on the non-dutiability of the agent's commissions.
**544676 dated July 24, 1991.**

The importer has established that the agent is in fact a buying agent. The fact that the agent is directed by the importer to retain title and bear the risk of loss for the imported merchandise does not negate the buying agency relationship. Therefore, the commissions paid are not part of the transaction value of the imported merchandise.
**544669 dated Aug. 15, 1991.**

Based upon the evidence submitted, consisting of purchase orders, confirmation orders, manufacturers' invoices, correspondence between the parties, responses to Customs information requests, and affidavits, the importer has in fact established that the relationship between the parties meets the criteria of a buying agency relationship. Accordingly, the commissions paid are not added to the price actually paid or payable.
**544510 dated Jan. 9, 1992.**

The fees paid to the agent pursuant to the proposed agreement for assisting in the purchase of merchandise from the foreign seller are to be considered bona fide buying commissions.
**544794 dated July 17, 1992.**

Under the facts presented, commissions paid to a buying agent for services performed on behalf of a principal, which are not included in the payment made by the buyer to the seller, are not part of the appraised value of the imported merchandise despite the fact that the buyer, seller and agent are related.
**544895 dated July 22, 1992.**

On the basis of the information provided regarding the relationship between the importer, agent and seller, the totality of the evidence indicates that the agent is in fact a bona fide buying agent. In addition, the submission of the agent's invoice along with the seller's invoice supports the fact that the agent is not an independent seller and that the commission is not part of the price actually paid or payable to the seller.
**544933 dated July 30, 1992.**

The evidence submitted, i.e., the buying agency agreement, invoices, numerous documents produced in the course of an audit and counsel's explanations, and the totality of the circumstances surrounding the arrangements, appears to satisfy the criteria for a bona fide agency relationship. Therefore, the commissions paid are not part of the price actually paid or payable.
**544584 dated Dec. 9, 1992.**

Based upon the information submitted, it has been established that a buying agency relationship exists between the importer and the agent and therefore, the commissions paid to the agent are not dutiable as part of the transaction value of the imported merchandise.
**545075 dated Dec. 23, 1992.**

The imported merchandise was purchased pursuant to a three-tiered sales agreement. The transaction between the manufacturer and the middleman may not be used for the purpose of determining the appraised value of the imported merchandise, in that there is insufficient evidence to support the claim that a bona fide sale occurred between the manufacturer and the middleman. Because the sale for export for purposes of determining transaction value is that between the middleman and the importer, the quota payments made by the importer to the middleman, i.e., the seller, are part of the price actually paid or payable. Also, an unrelated third party acts as agent for the importer and the fee paid to the unrelated third party is a bona fide buying commission; therefore, it is not included in the price actually paid or payable.
**547054 dated Aug. 6, 1999.**

Based on the evidence presented, the agent and the subagent acted as the importer's bona fide buying agents during the period under review wherein they performed the functions of buying agents, i.e., they acted on the importer's behalf in the purchase of the imported footwear and the importer maintained the necessary control over the matters entrusted to them. The evidence establishes that the importer selected the factories to produce the footwear and had the final control over the price and quality of the imported footwear. The transaction documents and the method of payment are consistent with this finding. The manufacturers issued invoices for the imported merchandise to the importer and the agent and subagent separately issued commission invoices to the importer. The importer paid the manufacturers for the imported merchandise and separately paid the commissions to the agent and the subagent. Therefore, the commissions paid to the agent and the subagent are bona fide buying commissions that should not be added to the price actually paid or payable in determining transaction value.
**546325 dated Oct. 4, 1999.**

In this case, the buying agent does not receive commissions from the importer, but rather, it is reimbursed for expenses it incurs for performing the services. To be compensated, the buying agent files an expenditure report with the importer. Nevertheless, the terms of the proposed buying agency agreement are consistent with a bona fide buying agency. Therefore, provided the actions of the parties comply with the

terms of the agreement, the funds the importer pays to the buying agent to reimburse the cost of its services constitute non-dutiable bona fide buying commissions.
**546370 dated Mar. 28, 2000.**

The buying agency agreement together with agent commission invoices and seller merchandise invoices, as well as the agent's additional documentation demonstrating its relationship with the principal and the related seller, supports a finding that commissions paid to the agency by the principal constitute bona fide buying commissions even though the agent and seller are related. Consequently, the commissions would not be added to the price actually paid or payable as buying commissions.
**547286 dated Mar. 8, 2000.**

The buying agent enters into a non-exclusive buyer's agency agreement with the importer whereby it functions as the importer's agent for the purchase of foreign-made footwear. The payments from the importer to the buying agent for transactions related to entries of the foreign merchandise constitute bona fide buying commissions. Therefore, these payments are not to be included in the transaction value of the imported merchandise.
**547523 dated Mar. 28, 2001.**

Under the terms of a buying agency agreement, the importer and buyer agree to form a buying agency relationship and the importer maintains control over the purchasing process. The agreement indicates that purchases shall be made only upon the explicit instructions of the importer. The buying agent has acquired a controlling interest in one of the factories that manufacturers merchandise for the importer. However, the buying agent does not share its commission with the manufacturer, nor does the agent share any expenses or profits with this manufacturer. Nothing in the agreement prevents the importer from purchasing directly from the manufacturers without the buying agent. The fact that profits realized by an agent may indirectly benefit the manufacturer does not in itself bar commissions from being non-dutiable. Therefore, the commissions paid to buying agent constitute bona fide buying commissions that are not part of the price actually paid or payable for the imported merchandise, as long as the parties comport with the terms of the buying agency agreement.
**547806 dated Jan. 31, 2001.**

Based on the lack of documentation demonstrating that the importer controls the seller or buyer's actions and the unclear roles of the buying agents and the U.S. seller/agent, the existence of a bona fide buying agency relationship between the importer and the seller is rejected. Thus, the fees paid to the seller/agent are to be added to the price actually paid or payable for the imported merchandise and should be included in the transaction value of the imported merchandise.
**547417 dated Nov. 9, 2001.**

Two unrelated U.S. importers entered into buying agency agreements with the foreign corporation. Under the agreement, the importers initiate the purchase orders and supply piece goods for the assembly processes sought. Upon the direction of the foreign corporation, the importers purchase merchandise from specific foreign textile factories. The importers pay the foreign corporation a commission of six percent of the invoice price of the purchases made at its direction. The foreign corporation does not remit any portion of the commission payments to the factories nor does it receive compensation from the factories for the sales to importers. Accordingly, the commissions paid pursuant to the buying agency agreement are bona fide buying commissions that are not included in the appraised value of the imported merchandise.
**548137 dated Sep. 26, 2002.**

Transactions involving a related buying agent and seller are subject to closer scrutiny in determining whether the commissions paid constitute bona fide buying agency commissions. The documentation indicates that all orders are placed at the direction and under the control of the importer, and the importer pays the seller directly for the merchandise. The totality of the circumstances demonstrates that the services, responsibilities, authority and compensation of the buying agent comport with the traditional concepts of a bona fide buying agency. In this case, the higher burden of establishing that a bona fide buying agency relationship exists has been met. The commissions paid to the agent for performing its services on behalf of the importer should not be added to the price actually paid or payable.
**548222 dated Feb. 27, 2003.**

## commissions paid to agent for acquiring assists

Through its agent, the importer intends to provide materials and parts, specifically piece goods, to the manufacturers of the apparel it imports. The piece goods constitute assists. The commissions paid by the importer as payment to the agent for services rendered in sourcing piece goods (assists) on behalf of the manufacturers of imported merchandise are considered as part of the cost of acquiring the assists. Therefore, the commissions are added to the price actually paid or payable for the imported merchandise.
**544976 dated Mar. 17, 1993.**

Commissions paid by a buyer of imported merchandise to an agent for acquiring assists are part of the cost of acquisition of the assist and are to be added to the price actually paid or payable.
**545266 dated June 30, 1993.**

In addition to the traditional duties of the buying agent, the agent also procures and furnishes assists to the manufacturer on behalf of the purchaser. When requested to do so by the purchaser, the agent procures components, materials, tooling, and design

work for use in the production of the merchandise. If the parties follow the proposed buying agency agreement, then the agent is considered to be a bona fide buying agent. Under the terms of the agency agreement, the agent has the dual role of procuring both finished goods and the assists used to produce the goods. No portion of the agency commissions it receives from purchasers arising out of the agency agreement is considered to be dutiable.
**545851 dated May 8, 1995.**

Based on the lack of documentation demonstrating that the importer controls the seller or buyer's actions and the unclear roles of the buying agents and the U.S. seller/agent, the existence of a bona fide buying agency relationship between the importer and the seller is rejected. Thus, the fees paid to the seller/agent are to be added to the price actually paid or payable for the imported merchandise and should be included in the transaction value of the imported merchandise.
**547417 dated Nov. 9, 2001.**

## control over agent

The importer exercises the requisite degree of control over the agents to warrant a finding that a bona fide buying agency exists, provided that the actions of the parties conform to the terms of the agreement.
**544887 dated Oct. 2, 1992.**

The primary consideration in determining whether an agency relationship exists is the right of the principal to control the agent's conduct with the matters entrusted to him. In this case, the agent places purchase orders with suppliers in accordance with the importer's instructions, and the purchase orders submitted on behalf of the importer conform to vendor policies established by the importer. The importer selects the manufacturer on the basis of information and samples provided by the agent. The agent's books and records are subject to review by the importer. These facts are indicative of the importer's control over the purchasing power. If the actions of the parties conform to the descriptions provided, and the terms of the agency agreement are met to the extent that the importer exercises the requisite degree of control over the buying agent, then the commissions paid are considered to be bona fide buying commissions.
**545465 dated Apr. 6, 1994.**

The evidence submitted is not sufficient to establish that a buying agency relationship between the parties exists. The buyer has not demonstrated that it has the right to exert any control over the alleged agent's activities. Without such evidence, it cannot be established that the alleged agent acts as a buying agent for the importer. The buyer cannot buy merchandise directly from the vendors. Any commissions paid for the services performed are not considered bona fide buying commissions. The payments constitute part of the price actually paid or payable.
**545362 dated May 31, 1994.**

In this case, the importer paid selling commissions to a U.S. related company. The evidence submitted does not indicate the existence of a bona fide buying agency relationship between the importer and the U.S. related company. The importer has not presented any evidence showing that it directs the activities of the U.S. and foreign related companies. In addition, it appears that the U.S. related company is not acting primarily for the benefit of the importer, but rather for its own benefit, or that it functions in support of the seller. As such, the importer does not exercise sufficient control over the purported buying agent. Therefore, a bona fide buying agency relationship does not exist between the importer and the related U.S. company. Thus, the commissions in the immediate situation constitute dutiable selling commissions and, accordingly, should be included in the transaction value of the merchandise.
**547225 dated Nov. 9, 2001.**

## deducting buying commissions

Where the payment made to the seller by the buyer for imported merchandise includes a buying commission, there is no authority to deduct the amount from the price actually paid or payable.
**542141 dated Sep. 29, 1980 (TAA No. 7); 542362 dated Mar. 18, 1981; 542176 dated May 19, 1981; 542358 dated June 4, 1981; 542785 dated Apr. 29, 1982; 543023 dated Mar. 17, 1983; 543292 dated Apr. 19, 1985; 544426 dated June 8, 1990.**

The "form" of invoicing is a significant factor in deciding whether commissions paid to buying agents are non-dutiable. Where buying commissions are calculated by deducting an amount from the total FOB invoiced value, such commissions are dutiable as part of the price actually paid or payable, regardless of whether the buying agency relationship is bona fide in all other respects.
**545519 dated June 30, 1994; modified by 547087 dated July 30, 1998.**

Under the terms of the proposed agreement, the degree of control the importer has over the alleged agent is consistent with a buying agency relationship. However, having legal authority to act as buying agent and acting as buying agent are different matters, and Customs is entitled to examine evidence that proves the latter. Therefore, despite the existence of an agency agreement, Customs is still required to determine whether the agent acts as a bona fide agent.
**545421 dated Aug. 3, 1994.**

The alleged buying commissions are included in the price actually paid or payable by the buyer and are considered as part of the transaction value of the imported merchandise. The price of the merchandise as shown on the agent's invoice includes the buying commissions. Accordingly, the amounts that the importer paid to the alleged buying agent actually represent the price for the goods when sold for exportation to the United States. There is no authority to deduct a buying commission if such is included in the price actually paid or payable.
**545564 dated Aug. 8, 1995.**

The importer's commissions to its agent are included in the price actually paid or payable for the imported merchandise. As the commissions are included in the price, there is no statutory authority that allows for the buying commissions to be deducted from that price.
**546267 dated Dec. 4, 1998.**

## dutiable as part of the price actually paid or payable

The evidence submitted does not support the existence of a buying agent for the importer. The agreement does not indicate that the importer does, or has the right to, exert any control over the agent's activities in purchasing the merchandise. In addition, the method of payment of the agent's commission, i.e., from the seller's account, is insufficient to establish that the payment is a buying commission. There is no separate invoice for the commission and it is calculated out of the total invoiced value of the merchandise. Therefore, the commissions paid to the agent are dutiable as part of the transaction value of the imported merchandise.
**544668 dated July 15, 1991.**

Based upon the lack of documentation demonstrating control over the importer's purported buying agents, and absent actual invoices from the manufacturers covering the entries in question, the existence of a buying agency relationship is rejected. Accordingly, the commissions are dutiable as part of the price actually paid or payable.
**544610 dated Dec. 23, 1991.**

Based upon the information provided regarding the relationship between the importer, agent and seller, the totality of the evidence does not indicate that the agent was under the control of the importer and is, in fact, a buying agent. Therefore, the fees paid to the agent do not constitute buying commissions and are included in the transaction value of the imported merchandise.
**545012 dated Oct. 13, 1992.**

Based upon the importer's statement of extensive quality inspections, the commensurate fifteen percent rate of commission paid to the alleged agent, and the lack of an agency agreement at the time the representative transactions occurred, the totality of the evidence does not indicate that the agent is in fact a buying agent. The fees paid to the agent do not constitute buying commissions and the fees are to be included in the transaction value of the imported merchandise.
**545038 dated Feb. 17, 1993.**

The information submitted is insufficient to support the existence of an agency relationship. There is no documentation that the requisite degree of control existed over the alleged agent. No evidence exists to indicate that the risk of loss was borne by the importer. Moreover, no invoices from the manufacturer to the alleged agent were submitted. Consequently, the commissions are part of the price paid or payable.
**545100 dated Mar. 2, 1993.**

The services provided by the agent in this case are those typically performed by a buying agent. The commissions paid to the agent are buying commissions and they do not constitute part of the price actually paid or payable. The common ownership position of the agent and the trading companies does not alter the fact that the commissions are buying commissions, provided the parties adhere to the terms of the agency agreement.
**545176 dated June 28, 1993; 545177 dated June 28, 1993.**

No invoice or other documentation from the seller has been submitted. Customs has only been provided with an invoice from the purported agent, and that is insufficient to show that the alleged agent is not a seller. The only price upon which to base appraisement under transaction value is the total price on the invoice. In this case, the price actually paid or payable includes the payment for the alleged commission, and Customs has no authority to deduct the purported commission from the price.
**545296 dated Aug. 16, 1993.**

The relationship between the importer and the agent does not support the existence of a buying agency. The importer does not exert sufficient control over the agent, and it is unclear whether the agent is related to any of the foreign manufacturers. The commissions paid to the alleged agent are not buying commissions.
**545140 dated Aug. 24, 1993.**

If the actions of the parties conform to the descriptions provided regarding the subject prospective transactions, and the terms of the agency agreement are met to the extent that the importer will exercise the requisite degree of control over the buying agents as specified in the agreements, then the commissions paid to the agent are to be considered buying commissions.
**545036 dated Dec. 14, 1993.**

The agreement between the buyer and seller specifically provides that the relationship between the parties is exclusively that of seller-purchaser. The agreement states that neither the buyer nor the seller "shall have the authority to act as agent for, or in any other manner contractually bind, the other." The contract unambiguously states that the relationship between the parties is not that of principal and agent. Therefore, the alleged "commissions" paid to the seller are part of the price actually paid or payable for the imported merchandise.
**545387 dated Feb. 27, 1995.**

The information submitted failed to substantiate fees paid to an alleged purchasing agent as bona fide buying commissions. The invoices submitted show the alleged purchasing agent is actually an independent buyer and seller of merchandise. Therefore, the fees paid do not constitute bona fide buying commissions and are included in the transaction value.
**546934 dated Jan. 27, 1999.**

The buyer included the buying agent's commission in the transaction value of the merchandise it imports from the seller. The buying agent's commission is considered dutiable as part of the transaction value of the goods, because it constitutes a disbursement "to, or for the benefit of, the seller" under section 402(b)(4)(A) of the TAA, regardless of whether the seller's billing invoice identified separately the buying commissions from the per se value of the goods.
**547098 dated Feb. 2, 1999.**

The document submitted indicates that the buying agent was an independent buyer and seller of the merchandise who had title and bore the risk of loss of the merchandise. Therefore, the fees paid do not constitute bona fide buying commissions and are included in the transaction value of the imported merchandise.
**546981 dated Feb. 8, 1999.**

The invoice submitted does not establish that a sale occurs, and the remaining documents indicate that there exists only one sale, i.e., the sale between the middleman and the importer. Based on the evidence presented, a bona fide sale does not exist between the manufacturer and the middleman. Thus, the transaction value is based on the price the importer paid for the imported merchandise. In addition, the fees paid do not constitute bona fide buying commissions and are included in the transaction value of the imported merchandise. The evidence available indicates that the importer had no control over the alleged buying agent.
**546607 dated Aug. 17, 1999**.

The evidence submitted is insufficient to establish that the importer had any control over the alleged buying agents. Also, the alleged agent did not actually perform the typical services of a buying agent. Therefore, the fees paid by the importer do not constitute bona fide buying commissions and should be included in the transaction value of the imported merchandise.
**546874 dated Aug. 17, 1999.**

Under the terms of a buying agency agreement, the importer and buyer agree to form a buying agency relationship and the importer maintains control over the purchasing process. The agreement indicates that purchases shall be made only upon the explicit instructions of the importer. The buying agent has acquired a controlling interest in one of the factories that manufactures merchandise for the importer. However, the buying agent does not share its commission with the manufacturer, nor does the agent share any expenses or profits with this manufacturer. Nothing in the agreement prevents the importer from purchasing directly from the manufacturers without the buying agent. The fact that profits realized by an agent may indirectly benefit the manufacturer does not in itself bar commissions from being non-dutiable. Therefore, the commissions paid to buying agent constitute bona fide buying commissions that are not part of the price actually paid or payable for the imported merchandise, as long as the parties comport with the terms of the buying agency agreement.
**547806 dated Jan. 31, 2001.**

The importer has the burden of proving that an agency relationship exists and that payments to its agent constitute bona fide buying commissions. The foreign seller's invoice indicates that the price to the buyer included a five percent commission. This documentation, alone, is insufficient to prove the existence of a bona fide buying commission. As such, the transaction value for the merchandise includes the total payments made by the importer to the foreign seller.
**548206 dated Nov. 15, 2002.**

The importer regularly purchases canola seeds directly from Canadian producers for importation into the United States. On occasion, seed brokers are used to locate grain suppliers that are willing to sell at the importer's quoted price. In accordance with industry business customs, the price quoted by the seed broker to the seller is understood to be a net amount from which the seed broker's commission has already been deducted. Commissions are separately remitted to the broker, and the seed brokers customarily operate without a written buying agent type of agreement. The evidence indicates that the parties include the brokerage fees in their contract price; therefore, Customs has no authority to deduct them from the transaction value of the goods.
**548258 dated Oct. 9, 2003.**

## factors to consider

A commission paid to an agent who is directed and controlled by the importer are held to be a non-dutiable buying commission.
**542807 dated May 17, 1982; 542919 dated Oct. 8, 1982; 542924 dated Nov. 17, 1982.**

A foreign intermediary acts as a service company and performs traditional buying agency functions for the importer. The profit made by the intermediary upon sale of the merchandise to the importer is a non-dutiable buying commission.
**542621 dated Jan. 4, 1982.**

A bona fide agency relationship exists between the importer and the agent and therefore, the commission paid by the importer to the agent is not part of the price actually paid or payable.
**542679 dated Jan. 11, 1982; 542781 dated Mar. 24, 1982; 542756 dated May 13, 1982; 543092 dated Apr. 10, 1984; 543249 dated June 11, 1984; 543185 dated Sep. 13, 1984; 543461 dated Mar. 1, 1985, revoked by 543990 dated Mar. 25, 1988; 543440 dated May 13, 1985; 543632 dated Oct. 22, 1985; 543616 dated Oct. 1, 1985; 543821 dated Oct. 29, 1986; 543834 dated Aug. 18, 1987; 544029 dated Dec. 2, 1987; 544119 dated May 25, 1988; 544234 dated Jan. 24, 1989; 544244 dated June 16, 1989; 544338 dated Sep. 13, 1989; 544335 dated Feb. 7, 1990; 544431**

**dated Mar. 8, 1990; 544396 dated May 14, 1990; 544472 dated July 30, 1990; 544452 dated Sep. 11, 1990.**

Whether a buying agency exists between an importer and an alleged buying agent is not determined by a single factor, but depends upon the relevant facts of each case.
**543837 dated Feb. 18, 1987; 543911 dated Nov. 1, 1988; 544008 dated Aug. 17, 1988.**

The importer has the burden of proving the existence of a principal-agent relationship and in this case, the burden has not been met. Accordingly, the alleged commissions are part of the price actually paid or payable.
**544008 dated Aug. 17, 1988; 544110 dated Apr. 26, 1990; 544426 dated June 8, 1990; 544419 dated July 12, 1990.**

While a relationship between the buying agent and the seller does not preclude the existence of a buying agency, the circumstances surrounding such related party transactions are subject to closer scrutiny in determining whether a commission is a bona fide buying commission.
**544512 dated Dec. 20, 1990.**

A buying commission is bona fide when the importer proves the existence of an agency relationship. The importer should submit the signed and executed buying agency agreement and the necessary accompanying documents (invoices, proof of payment, etc.). If these documents substantiate that importer has complete control over the buying process and that it and the alleged buying agent operate independently from one another and the manufacturers, Customs finds that a bona fide buying agency exists between the importer and alleged buying agent. Bona fide buying commissions are not included in the statutory provisions for additions to the price actually paid or payable and thus the commission is not dutiable.
**548002 dated June 13, 2002.**

## identity of seller

If the documentation submitted with the entry papers only reflects the purported agent as the seller, Customs has no alternative but to appraise on the basis that the alleged agent is the seller. Even if the actual sellers are listed on the invoice submitted, a separate invoice from the seller that establishes the price actually paid or payable is required.
**542357 dated Mar. 31, 1981; 542662 dated Feb. 16,1982; 543625 dated Feb. 4, 1986.**

In order to establish that a commission is in fact bona fide and that the price actually paid or payable for the imported merchandise does not include an amount for the alleged commission, an invoice from the seller is required. This evidentiary requirement

must be satisfied even though there may have existed a past practice of treating a commission as non-dutiable based upon the existence of a buying agency agreement.
**542141 dated Sep. 29, 1980 (TAA No. 7); 542358 June 4, 1981; 543625 dated Feb. 4, 1986; 543508 dated Feb. 18, 1986; 543496 dated Mar. 3, 1987; 544258 dated Feb. 1, 1989; 544335 dated Feb. 7, 1990; 544431 dated Mar. 8, 1990; 544396 dated May 14, 1990.**

The importer failed to furnish invoices or other documentation from the actual foreign sellers of the imported merchandise. Therefore, there is insufficient evidence to establish that the purported agent is not the seller of merchandise.
**543171 dated June 20, 1984; 543148 dated June 26, 1985.**

The purported agent acts as an independent seller of the merchandise rather than as a buying agent for the U.S. importer. The alleged buying agent pays the foreign manufacturer one price for the merchandise while it charges the importer another higher price, without the importer's knowledge, upon which is based the agent's purported commissions. The alleged commissions are dutiable and are properly part of the price actually paid or payable for the imported merchandise.
**543330 dated May 23, 1984.**

Where a buying agent incurs the cost of foreign inland freight and includes this amount in its invoice to the buyer, it is necessary for the importer to satisfy Customs that the buying agent is, in fact, a bona fide buying agent and not an independent seller or a representative of the foreign manufacturer and/or seller.
**544026 dated Oct. 20, 1987.**

An invoice or other documentation from the actual foreign seller to the alleged agent is required in order to establish that the agent is not the seller of the imported merchandise, as well as to determine the price actually paid or payable to the seller. The buyer has not provided a separate invoice from the actual foreign seller. Instead, the buyer has merely supplied a copy of the agent's invoice allegedly stamped by the seller. In addition to the fact that there is no separate invoice, the commission is calculated on the basis of the total invoice value of the merchandise. The documentation in this case is insufficient to support the contention that the commissions paid to the agent constitute bona fide buying commissions.
**545174 dated Sep. 7, 1994.**

No invoice or other documentation from the actual seller of the imported merchandise has been provided. The commission is included in the price actually paid or payable for the imported merchandise.
**545846 dated Dec. 9, 1994.**

There are no invoices available from the seller of the imported merchandise. The only invoices regarding the merchandise sold are those prepared by the alleged buying agent and which only make mention of the manufacturer. The alleged agent, not the manufacturer prepares the sales confirmation documents, and the documents identify

the alleged agent as the seller of the merchandise. Other correspondence submitted indicates that the alleged agent, not the manufacturer, is responsible for failing to meet the terms of the purchase order/contract. The fact that the alleged agent has the authority, per the agency agreement, to prepare a commercial invoice in the absence of one from the manufacturer, does not change the requirement that a manufacturer's invoice is requisite to finding a bona fide buying agency relationship. Despite the existence of the agency agreement, the remainder of the documentation submitted specifically refers to the alleged agent as the seller of the merchandise and not as the buying agent. The documentation contradicts the terms of the buying agency agreement submitted. The commissions paid to the alleged agent are dutiable as part of the price actually paid or payable for the imported merchandise.
**546604 dated Aug. 8, 1997.**

No invoice was provided from the factory and the commissions were not separately identified to Customs. In addition, no evidence exists indicating that the buyer determines who manufactures the imported merchandise or even knows the identities of the factories manufacturing the goods. Based on the facts presented, the commissions are not bona fide buying commissions.
**546691 dated Sep. 8, 1997.**

The invoices submitted make no reference to any buying commissions, nor do the invoices identify any of the sellers of the imported merchandise. These invoices are insufficient to establish the identity of the sellers in determining whether an agency relationship exists between the buyer and the alleged buying agent.
**546709 dated Dec. 1, 1997; aff'g 546539 dated Oct. 30, 1996.**

The bona fides of the buying agency relationship have been substantiated. The alleged agent acted at all times as a bona fide buying agent. In addition, the buying commissions are not included in the price actually paid or payable. The submitted manufacturer's invoices reflect the price actually paid or payable by the importer without the commissions. The agents' invoices indicate that the invoice amounts include the buying commissions. Since the manufacturer's invoice accurately reflects the price actually paid or payable without the commissions, the buying commissions are not included in the appraised value.
**547087 dated July 30, 1998; modifies 545519 dated June 30, 1994.**

## totality of circumstances

The existence of a bona fide buying commission is to be determined by the totality of the circumstances.
**542141 dated Sep. 29, 1980 (TAA No. 7).**

Sufficient evidence has been submitted by the importer to support a finding that an agency relationship exists between the importer and the buying agent. The buying commission paid should be excluded from the dutiable value of the imported merchandise.
**542912 dated June 28, 1983; 543053 dated July 11, 1983; 543386 dated July 23, 1984; 544088 dated Mar. 25, 1988; 544304 dated Mar. 20, 1989.**

There is no legal impediment to a parent corporation acting as an agent for its subsidiary corporation. However, the totality of the evidence relative to the transactions must demonstrate that the purported agent is in fact a buying agent.
**542912 dated June 28, 1983.**

A buying agent purchases merchandise on an ex-factory basis from a seller on behalf of a U.S. importer. The agent incurs the cost of transporting the merchandise from the place of manufacture to the port of exportation, and the invoice from the agent to the buyer separately identifies the price for the goods, the foreign inland freight charges and the agent's buying commission. As long as the agent's invoice clearly reflects that the terms of sale are ex-factory, the separately itemized buying commission and foreign inland freight charges are not included in the dutiable value of the merchandise.
**543208 dated Dec. 28, 1983.**

The alleged agent acts primarily as a seller of the imported merchandise and its conduct belies the claimed buying agency relationship.
**543305 dated Dec. 27, 1984.**

The fact that a buying agent of a particular importer acts as a selling agent for the seller in a separate transaction does not necessarily negate the existence of the established buying agent relationship.
**543053 dated July 11, 1983.**

On the basis of the totality of the evidence, the bona fides of the alleged buying agency have not been established. The preponderance of the evidence belies an agency relationship. Therefore, the alleged commissions are part of the price actually paid or payable.
**543447 dated Feb. 5, 1985; <u>aff'd</u> <u>by</u> 543566 dated July 10, 1986; 543625 dated Feb. 4, 1986.**

The agency relationship between the importer and the agent has been established provided that: the agent continues to perform services which are consistent with the existence of a buying agency; the importer continues to control and direct the agent; and no part of the commission inures to the benefit of any supplier.
**543636 dated Mar. 30, 1987.**

The totality of the evidence and the circumstances must demonstrate that the purported agent is in fact a bona fide buying agent and not a selling agent or an independent seller.
**543496 dated Mar. 3, 1987.**

In this case, the purported buying agent and the foreign manufacturers are related. While such a relationship does not preclude the existence of a buying agency, the circumstances surrounding such related party transactions are subject to closer scrutiny in determining whether the commission is a buying commission.
**544575 dated Jan. 31, 1991.**

Any determination of whether a buying agency exists depends upon the particular case. The appraising officer at the port of entry will make the actual determination, based upon the documentation submitted. Therefore, in order to find that a buying agency relationship exists, satisfactory documentation must be presented at the time of entry and the actions of the parties must conform to the documentation presented.
**544575 dated Jan. 31, 1991.**

Based upon the information submitted, it has been established that a buying agency relationship exists between the parties and that, therefore, the commission paid to the agent is not dutiable as part of the transaction value of the imported merchandise.
**544314 dated Apr. 15, 1991.**

If the actions of the parties conform to the evidence submitted, and the terms of the agency agreement are met to the extent that the importer exercises the degree of control over the buying agent as specified in the agreement, the commissions are considered to be buying commissions. Therefore, the commissions are not dutiable as part of transaction value.
**544634 dated June 20, 1991.**

The importer has failed to produce adequate documentation and evidence to support the claimed buying agency relationship between the parties in question. Without substantial evidence apart from an agreement, the importer has not established the existence of a buying agency and therefore, the commissions paid are dutiable as part of the price actually paid or payable.
**544423 dated June 3, 1991.**

Based upon the totality of the evidence presented, the commissions paid to the purported buying agent to perform services in conjunction with the purchase of the imported merchandise are buying commissions and should not be included in the transaction value of the imported merchandise.
**544965 dated Feb. 22, 1994.**

The duties performed by the alleged agent are those typically performed by a buying agent, and include compiling market information, obtaining samples, placing orders on the buyer's instructions, inspecting the merchandise and arranging for shipment. The

buyer selects the garments to be purchased. The buying agency agreement provides that the agent will place orders only upon the specific instructions of the buyer. The commissions paid by the buyer to the agent constitute buying commissions and are not part of the price actually paid or payable.
**544781 dated Mar. 4, 1994.**

An agreement between an importer and an alleged buying agent contains two penalty clauses, both of which are intended to induce the agent to perform its duties. If, as a result of the failure of the agent to perform the inspection services of the agreement, merchandise is received below the standard of the purchase order and satisfactory adjustments cannot be obtained from the seller, then the agent agrees to assume liability for damages to the extent of the commissions paid. In addition, if the agent fails to ensure that the merchandise is shipped on schedule, then the commissions are reduced. The penalty clauses do not negate an otherwise valid buying agency relationship between the importer and the agent. The commissions paid to the agent to perform the services specified are to be considered buying commissions.
**545423 dated Mar. 17, 1994.**

The importer has not provided sufficient documentation to support the existence of a bona fide agency relationship. Consequently, the amounts identified as "buying commissions" constitute part of the price actually paid or payable for the imported merchandise.
**545466 dated June 29, 1994; 545253 dated Aug. 10, 1994; 545255 dated Aug. 10, 1994.**

The terms of the proposed buying agency agreement are consistent with a buying agency relationship. As long as the appraising officer is satisfied that the agents act in accordance with the terms of the agreement, commissions paid to the agents by the importer will not be added to the price actually paid or payable of imported merchandise.
**545601 dated Oct. 13, 1994.**

The totality of the circumstances indicate that the alleged agents function as bona fide buying agents and not as independent sellers. From the time the buyer specifies the items to be purchased to the time the goods are ultimately shipped, the agents act under the direction and control of the buyer. The manufacturers' invoices do not include an amount for commissions. The buying commissions are non-dutiable.
**545624 dated Oct. 25, 1994.**

The buying agency agreement, the affidavit, facsimiles, invoices, and payments provide sufficient evidence to show that there is a bona fide buying agency relationship between the parties. Consequently, the buying commissions are not dutiable.
**544843 dated Oct. 31, 1994; reconsideration of 544423 dated June 3, 1991 (new facts presented in reconsideration request; position in HRL 544843 does not represent a revocation or modification of HRL 544423).**

The information presented is insufficient to establish that a buying agency relationship existed between the parties. No details regarding the services allegedly performed by the agent were provided. There is no information regarding the right of the principal to control the agent's conducts with respect to the matters entrusted to him. It appears as if the alleged agent was operating an independent business primarily for its own benefit rather than acting as a buying agent. No invoice or other documentation from the actual seller was provided. The buyer has not met its burden of proving that an agency relationship existed or that the payments constitute buying commissions.
**545715 dated Nov. 8, 1994.**

The information submitted is insufficient to support the existence of a bona fide agency relationship. There is no evidence that demonstrates that the importer exercised control over the alleged buying agent, and no invoices from the manufacturer to the purported buying agent were submitted. The commissions are part of the price actually paid or payable.
**545744 dated Jan. 19, 1995.**

The evidence presented supports the finding that the commissions paid to the agent by the buyer constitute buying commissions, notwithstanding the fact that the agent, in some instances, receives compensation from unrelated manufacturers for ministerial services provided to the manufacturers.
**545660 dated Feb. 10, 1995.**

The buyer did little to control the actions of its purported buying agent. The buyer did not know the names of the factories that produced the merchandise, did not visit the factories and did not know who actually negotiated the price of the goods with the factories. The buyer failed to exercise control over the alleged agent. The commissions paid do not constitute buying commissions.
**545661 dated Mar. 3, 1995.**

The terms of the buying agency agreement are consistent with the existence of a bona fide buying agency relationship. However, having legal authority to act as a buying agent and acting as a buying agent are different matters, and Customs is entitled to examine evidence that proves the latter. Despite the existence of the agency agreement, the appraising officer must make a case-by-case determination regarding whether the agent acts as a true buying agent. As long as the appraising officer is satisfied that the agent acts in accordance with the terms of the buying agency agreement, the commissions paid to the agent by the U.S. importer do not represent dutiable buying commissions.
**545129 dated Mar. 6, 1995.**

The importer exercises the requisite degree of control over the agent, and the totality of the evidence demonstrates that the agent is in fact a buying agent. Provided the actions of the parties conform to the evidence submitted, and the terms of the agency agreement are met, the agent is a bona fide buying agent and the fee paid to the agent is not included in the transaction value of the imported merchandise.
**545422 dated Mar. 13, 1995.**

The alleged buying agent performs services on behalf of the purchaser that are typically performed by a buying agent. The agent's primary function is to find and negotiate the best deal in terms of price and quality for the purchaser. It also performs other functions such as quality control inspection, arranging for transportation and insurance, and preparing necessary documents. The agreement specifically states that these functions are performed on behalf of and at the direction of the purchaser. The terms of the buying agency agreement are consistent with a bona fide buying agency. Therefore, provided the actions of the parties comply with the terms of the agreement, the commissions paid to the agent by the purchaser for its services constitute buying commissions.
**545851 dated May 8, 1995.**

The fact that an importer and a purported buying agent are related does not negate an otherwise legitimate buying agency relationship. It appears as if the buyer exercises sufficient control over the actions of the agent. The buying agent performs the services described in the agency agreement for the account of the importer and at the importer's instructions. Provided the parties adhere to the terms of the agreement, the commissions paid to the agent constitute buying commissions and are not part of the price actually paid or payable.
**545988 dated May 18, 1995.**

Based upon the information submitted and provided the parties' actions conform to the terms of the proposed agency agreement, Customs is satisfied that the alleged agent is a buying agent. The agency commissions paid constitute bona fide buying commissions and are not included in the transaction value of the imported merchandise.
**545708 dated May 25, 1995.**

The duties performed by the agents are those typically performed by bona fide buying agents. The agents place production orders with the factories designated by the importer and only at the direction of the importer. The importer controls the manner of payment, and the buying agency agreement requires the importer's written authorization with regard to most matters involving the purchase of the merchandise. The commissions paid to the buying agent are buying commissions and as such are not part of transaction value.
**545420 dated May 31, 1995.**

Although the terms of the buying agency agreement reserve control over the alleged buying agent's actions, having legal authority to act as buying agency and acting as buying agent are different matters and Customs is entitled to examine evidence that

proves the latter. In the instant situation, it is questionable as to whether the buyer exercises control over the agent's actions. It does not appear as if the agent places orders with factories only after having been instructed to do so by the principal. The alleged agent's actions are largely discretionary. Accordingly, the importer has not established that the commissions paid are buying commissions.
**544945 dated June 30, 1995.**

The information submitted is insufficient to support the existence of a buying agency relationship. Although a number of services performed by the alleged agent are among those usually performed by an agent, there are several aspects of its conduct that the importer failed to control. Nothing in the agreement shows that the importer controlled from which factory the agent ordered the merchandise or that the importer had to approve the order before it was placed. There is no evidence to indicate that the importer could buy the merchandise directly from the manufacturer without going through the agent or that the importer controlled the method of payment. The fees paid do not constitute buying commissions, but rather are included in the price actually paid or payable.
**545759 dated Aug. 11, 1995.**

Insufficient evidence has been submitted to conclude that the alleged agent was acting as a bona fide agent for the importer. There is no written agreement between the parties, and the facts and documentation indicate that the importer did not exercise control over the agent's activities. It has not been established that a buying agency relationship exists.
**545627 dated Sep. 13, 1995.**

Based upon the totality of the evidence presented, the total commissions paid by the importer to the two alleged agents are not for buying agency services. The commissions should be included in the transaction value of the merchandise. In addition, as the importer has failed to establish that the two alleged agents are not selling agents or independent sellers of the imported merchandise, the quota payments made to them by the importer are included in the transaction value of the imported merchandise.
**545550 dated Sep. 13, 1995.**

No documents such as purchase orders, invoices, or proof of payment have been submitted concerning the alleged agents. Customs is unable to conclude that the buyer was substantially involved in choosing manufacturers, participated in negotiations with the factory, could have purchased directly from the sellers, absorbed shipping and handling costs, or controlled the manner of payment. In addition, Customs is not able to determine whether the alleged agents operated as independent businesses for their own benefit. The totality of the evidence does not enable Customs to reach a finding regarding the bona fides of the agency relationships.
**545938 dated June 5, 1996.**

When examining whether a purported agent is a bona fide buying agent, closer scrutiny is warranted where the purported agent and the seller are related. Such a relationship does not, however, automatically preclude the existence of a buying agency relationship. In this case, the evidence establishes that the alleged agent acted as an independent seller rather than as a buying agent. The importer does not exercise the requisite degree of control over the alleged agent but rather, the alleged agent acts primarily for its own benefit and not for the benefit of its purported principal. The price actually paid or payable includes the twenty percent additional payment.
**546035 dated July 11, 1996.**

The evidence does not support a finding that the alleged buying agent actually acted as a bona fide buying agent under the terms of the agency agreement. The importer has not established that the alleged agent was not an independent seller of the imported merchandise. Accordingly, the alleged buying commissions are part of the price actually paid or payable for the imported merchandise and are properly included in transaction value.
**546539 dated Oct. 30, 1996.**

The duties of the alleged buying agent, pursuant to a written buying agency agreement, include: investigating buying possibilities; checking the acceptability of potential suppliers; obtaining market intelligence; assisting with supplier meetings and negotiations; obtaining samples; assisting in the preparation of documents; inspecting merchandise, and expediting the shipment of merchandise. Although these services are performed on behalf of the buyer of the imported merchandise, the buyer makes all of the final decisions regarding the ordering of merchandise and the price paid for the merchandise. Only the buyer has the authority to place orders with a supplier, and the agent does not have the authority to accept or reject price quotations on behalf of the buyer. The terms of the buying agency agreement are consistent with a bona fide buying agency. Provided the parties comply with the terms of the agreement, the commissions that the buyer pays to the buying agent are buying commissions.
**546341 dated Nov. 12, 1996.**

The duties performed by the alleged buying agent are duties typically performed by bona fide buying agents, and include compiling market information, obtaining samples, placing orders on the buyer's instructions, inspecting the merchandise and arranging for shipment. The buying agent has no financial interest in the factories and acts only upon explicit written instructions from the buyer. As long as the buying agent remains under the control of the buyer and the transactions are carried out as described, the amounts remitted to the buying agent qualify as buying commissions and as such, are not dutiable.
**546135 dated Nov. 25, 1996.**

The information submitted is insufficient to support the existence of a bona fide buying agency relationship. No information regarding the services performed by the purported agents on behalf of the importer has been provided. In addition, there is no evidence available to indicate that the importer exercised control over the purported agents with

respect to the matters entrusted to them. Similarly, there is no evidence that the purported agents acted primarily for the benefit of the importer, nor that the purported agents were financially detached from the importer. It is unclear whether the importer could have purchased directly from the manufacturers of the imported merchandise. Although a buying agency agreement has been submitted, and commission invoices were provided, these items are insufficient to support the existence of an agency relationship. The amounts in question should be included in the transaction value of the imported merchandise.
**546284 dated July 14, 1997.**

The commissions paid to the agent by the importer/buyer appear to be bona fide buying commissions notwithstanding the fact that the agent will, in some instances, receive compensation from unrelated manufacturers/sellers for services provided to the manufacturer/sellers. Accordingly, as long as the agent informs the importer/buyer about the nature of the services to be performed for the manufacturers/sellers and the amount of compensation to be received is the same, and the selling agent services do not exceed the functions described, then only the commissions paid to the agent by the manufacturers/sellers, and not the buying commissions, will be added to the price actually paid or payable.
**546543 dated Aug. 6, 1997.**

Based on a review of the buying commission agreement, the duties to be performed by the alleged buying agent appear to be those typically performed by a buying agent with the agent's primary function being to find the best price/quality deal for the buyer. However, the agreement contains language that expressly states that the relationship between the parties is that of principal and independent contractor. The agreement also states that nothing in the agreement shall constitute the representative as an agent of the buyer; rather each respective party acts as a principal. Under these circumstances, the parties have agreed that their relationship cannot be construed as an agency relationship. Accordingly, the commissions paid are not bona fide buying commissions and are dutiable as part of the price actually paid or payable for the imported merchandise.
**546520 dated Aug. 11, 1997.**

As long as the importer and the buying agent provide the services described in the submitted buying agency agreement and comply with the agreement, and the proper invoices and documentation can be provided to Customs, then the commissions paid are not included in the transaction value of the imported merchandise. Under the terms of the agreement, the buyer has the right to control the actions of the buying agent, and the agent is agreeing to perform services that are typical of a bona fide buying agent.
**546727 dated Nov. 25, 1997.**

Insufficient evidence was presented to indicate that the alleged buying agent actually performed as a buying agent pursuant to the agreement or that it performed typical services of a buying agent, such as compiling market information, gathering samples, placing orders pursuant to the buyer's direction, assisting in price negotiations,

inspecting and packing merchandise, and arranging for shipment. On the contrary, the evidence submitted indicates that the buyer deals directly with the foreign supplier. The fees paid do not constitute bona fide buying commissions and are included in the transaction value of the imported merchandise.
**546262 dated Nov. 29, 1997.**

Based on the terms of the submitted buying agency agreement between the parties and representations made regarding the relationship, it appears that the alleged agent's actions are primarily for the benefit of the importer and the importer has the right to control the agent's actions. It appears that the commissions paid to the buying agent are bona fide buying commissions.
**546744 dated Feb. 24, 1998.**

Pursuant to the terms of the submitted buying agency agreement, the alleged agent will act on behalf of, and subject to the control of the principal, and the principal will delegate responsibilities to the agent and pay a commission. The alleged agent will act on behalf of the principal only upon the explicit instructions of the principal and not vary any of the terms of the purchase order without the express written authorization of the principal. The agreement further provides that the agent is never to act as a seller in any transaction involving the principal and, without exception, the agent will provide the principal with the seller's invoice reflecting the transaction and indicating the price to be paid for the merchandise. As long as the parties transact business in accordance with the terms of the agreement, the commissions paid are bona fide buying commissions such that they are not added to the price actually paid or payable.
**547058 dated May 19, 1998.**

Based upon the representations of counsel and the terms of the buying agency agreement, it appears that the principal controls the agent=s activities and conduct. The principal controls the selection of suppliers via the procurement process and its oversight process. The principal negotiates its contracts with suppliers through the agent, and the agent is prohibited from issuing any purchase order on behalf of the principal without prior approval. The principal retains ultimate control of the terms of the purchase and of the negotiation process. The agent never bears the risk of loss for damaged, lost or defective merchandise. The terms of the buying agency agreement are consistent with the existence of a bona fide buying agency. Assuming the parties transact business according to the representations made by counsel and the terms of the agreement, the commissions paid to the agent are bona fide buying commissions.
**547117 dated Aug. 31, 1998.**

The terms of the submitted buying agency agreement are consistent with a bona fide buying agency arrangement between the parties. Provided the actions of the parties comply with the terms of the agreement, the commissions paid by the buyer for the agent's services constitute bona fide buying commissions. The commissions are not added to the price actually paid or payable in the determination of transaction value.
**547176 dated Oct. 23, 1998.**

Under the terms of the submitted buying agency agreement, the services to be performed by the agent are indicative of those generally provided in a buying agency relationship. The agent might be visiting factories, negotiating favorable prices, arranging for shipping, inspecting the goods, but all activities are under the control of the importer. It appears that the agent is acting primarily at the specific direction of the principal, as is necessary in an agency relationship. The commissions paid to the agent constitute bona fide buying commissions, such that the payments are not added to the price actually paid or payable for the imported merchandise.
**547127 dated Nov. 20, 1998; clarified by 547239 dated Mar. 29, 1999.**

The information submitted supports a finding that commissions paid to agent constitute bona fide buying commissions when the agent and seller are related. Payments made to the agent by the principal constitute buying commissions such that they are not additions to the price actually paid or payable under 19 U.S.C. 1401a(b). The totality of the evidence must demonstrate that the purported agent is in fact a buying agent and neither a selling agent nor an independent seller. Additionally, the actual determination of a buying agency relationship is made by the appraising officer at the applicable port of entry and will be based upon the entry documentation submitted.
**547239 dated Mar. 29, 1999; clarification of 547127 dated Nov. 20, 1998 (additional facts provided, HRL 547127 remains valid).**

The transaction value of the sale from the foreign vendors to the middleman may be used to determine the price actually paid or payable when those sales are bona fide sales for export to the U.S. and negotiated at arm's length. The following factors indicate that the middleman is acting as an independent seller of merchandise: current market conditions underlying the prospective transactions, the absence of provisions in the agreements detailing the ability of the importer the control the middleman's company, the possibility that the middleman would receive title and assume the risk of loss, and the middleman's essential role in prospective transactions. Thus the buying agency program between the importer and the middleman does not constitute a bona fide principal-agent relationship and a buying commission may not be deducted from the price paid or payable between the middleman and the importer. Only activities necessary for the production of imported merchandise will be considered assists and such assists are considered to be dutiable only if they are performed outside of the U.S.
**547642, 547643, 547644 dated Feb. 13, 2002.**

A prima facie, contractual designation alone will not create a bona fide principal-agent relationship. In the instant case, the agreements contain no provisions explaining how the importer will exercise control over the subsidiary and, at its discretion, the subsidiary can resell some merchandise to the importer. Even after the purchase, the importer must submit to the subsidiary's claims policy to recover losses for damaged or defective merchandise. Therefore, commissions paid by the importer to its subsidiary must be added to the price paid or payable.
**547645 dated Feb. 13, 2002.**

Buying commissions are fees paid by an importer to an agent for the service of representation abroad in the purchase of the goods being appraised. Customs will not evaluate the buying agency agreement between the importer and the middleman in an application for further review of a protest when the agreement was drafted after the formal protest. Even so, if the available evidence taken as a whole still leads to the conclusion that a principal-agent relationship existed, then the buying commission may still be classified as bona fide. However, in the instant case, the importer failed to meet the burden of demonstrating with sufficient evidence the validity of its claim. Insufficient documentation coupled with the finding of a relationship between that the middleman and the manufacturers precludes a bona fide buying agency relationship between the importer and the middleman. (The middleman is related to the seller on the basis of having a common officer and having a common shareholder.) The commissions paid to the middleman by the importer are thus for the benefit of the seller and are considered to be part of the price paid or payable for the subject merchandise.
**547608 dated Feb. 21, 2002.**

Based on the following factors, there was insufficient evidence to conclude that a bona fide buying agency existed: (1) the middleman and the manufacturer are related parties; (2) submissions by the importer do not include any documentation that the importer directed the middleman to purchase merchandise on its behalf; and (3) there is no concrete indication that the importer instructed the middleman as to how to conduct its agency on behalf of the principal. The commissions paid by importer to the middleman do not constitute bona fide buying commissions, but rather are payments made to a party related to the seller for the benefit of the seller. As such, the commissions are to be included in the transaction value of the imported merchandise.
**547623 dated Feb. 21, 2002.**

The middleman performs services primarily for the benefit of the buyer, i.e., to find the best price/quality deal as designated by the importer. Additionally, the middleman performs services on behalf of the seller. These services, provided to the manufacturer, include locating materials, providing quality control, assisting in importation requirement, etc. The services that the middleman performs on behalf of the manufacturers are ministerial and they are to be performed with the full knowledge and acquiescence of the buyer. Under these circumstances, the services that the middleman performs on behalf of the manufacturer do not preclude Customs from finding that the commissions paid to the middleman by the importer/buyer constitute bona fide buying commissions. The existence of the buying agency relationship is factually specific. Based on the facts presented, the middleman is acting as a bona fide buying agent, notwithstanding the fact that it will, in some instances, receive compensation from unrelated manufacturers for ministerial services that it provided to the manufacturers.
**548135 dated July 30, 2002.**

Under the buying program, a U.S. based apparel-sourcing company facilitates the purchase of apparel produced by foreign manufacturers for its United States clients. The company receives a commission based on a percentage of the "selling" price, either FOB port of export or ex-factory price of the goods. The company and its clients negotiate the exact percentage. The company does not assume title and risk of loss for the goods, nor does it act as an independent seller. Under the terms of the agreement, the services provided by the company are performed under the discretion and control of the buyer. The existence of a buying agency is factually specific. Based on the totality of the evidence in the instant case, a bona fide buying agency relationship exists. Accordingly, the fees paid to the company under the buying program are bona fide commissions that are to be excluded from the price actually paid or payable.
**548163 & 548188 dated Aug. 29, 2002.**

# CANCELLATION PAYMENTS

## INTRODUCTION

**Headquarters Rulings:**

### contract termination fee

If the buyer of merchandise requests termination of an order and the supplier has in its inventory excess fabric which is then sold to recoup the loss, the buyer is to reimburse the supplier for the loss incurred. This payment is not part of the price actually paid or payable for the imported merchandise since these payments are made to compensate the supplier for losses incurred from the sale of the unused fabric.
**543924 dated May 29, 1987.**

In determining whether a payment is truly a charge for the termination of a contract, Customs will consider whether the charges are incurred for a legitimate business purpose and whether the charges are treated separately from the imported merchandise in the importer's records. In the instant case, the importer has not established that the fee is a true contract cancellation fee. There was no written notice of cancellation, as required by the terms of the purchase agreement between the parties. No evidence of subsequent cost settlement between the parties was provided. Therefore, there is no authority to deduct the fee from the total price actually paid or payable for the merchandise already imported.
**544516 dated Jan. 9, 1991.**

A payment from the buyer to the seller for cancellation of a production order does not constitute part of the price actually paid or payable for merchandise which has already been imported when it is established that the payment is clearly a charge for termination of the order and no merchandise is imported as a result. However, in this case, insufficient evidence has been submitted to support the non-dutiability of such a payment, i.e., that the fee was paid for the right to cancel the purchase order. The evidence indicates that the buyer internally handled the fee, and that the payments are not actual cancellation payments.
**544689 dated Sep. 26, 1991; aff'g 544516 dated Jan. 9, 1991.**

### goods not imported

If a cancellation occurs prior to any importation, no dutiable consequences can arise. Charges paid by an importer to cancel a production order do not constitute part of the price actually paid or payable for merchandise already imported, so long as such charges are incurred for a legitimate business purpose, and are treated separately from the imported merchandise on the importer's accounting records.
**543088 dated June 28, 1983.**

An amount paid by the ultimate purchaser (not the buyer of the imported merchandise), to the seller of imported merchandise, for cancellation of a contract, is not part of the price actually paid or payable. Even if the buyer had paid the cancellation fee to the seller of the imported merchandise, the reason for the payment is to compensate the seller for merchandise that was contracted for but not imported.
**543295 dated Jan. 15, 1985.**

Amounts paid by the importer to the seller in connection with the failure of the importer to purchase any diesel engines during the relevant model year are not dutiable since the diesel engines were subject to a purchase agreement in which no engines were imported.
**543445 dated Oct. 23, 1985.**

If charges incurred by an importer are truly charges for the termination of a contract, and merchandise is not imported as a result of the terminated contract, then the payments made to the seller are not to be included in the price actually paid or payable for merchandise imported subsequent to the terminated contract.
**543770 dated Feb. 10, 1987; 544205 dated Dec. 12, 1988.**

Maintenance payments for the seller's out-of-pocket costs resulting from underutilized capacity are not part of the price actually paid or payable for imported merchandise. Rather, the payments are made to compensate the seller for expenses incurred in preparation for production of merchandise contracted for by the imported but never imported. These payments are not dutiable under transaction value.
**543882 dated Mar. 13, 1987; aff'd by 554999 dated Jan. 5, 1989.**

An agreement between the buyer and seller provides for a payment to the seller resulting from the buyer's decision not to place new orders with the seller. The buyer is not breaching an ongoing contract and no merchandise is imported as a result of the payment. The payment is excluded from the price actually paid or payable for merchandise imported prior to the payment.
**544031 dated Jan. 19, 1988.**

An additional payment made by the buyer to the seller represents a payment made for merchandise that was ordered but not manufactured nor imported. This payment is not part of the price actually paid or payable for merchandise previously imported into the U.S.
**544121 dated June 24, 1988.**

The importer's payments to the seller for costs incurred for work in progress, materials, and overhead and labor for merchandise that was contemplated by contract but never ordered by the importer, are not part of the price actually paid or payable for merchandise actually imported. The seller's invoices, the importer's documentation and accounting records establish that the cancellation fees are for expenses incurred with respect to merchandise that was not imported.
**545175 dated Jan. 4, 1995.**

## liquidated damages and/or penalties

If a contract termination charge is in the nature of a penalty, then such a charge cannot reasonably be construed as part of the price actually paid or payable by the buyer to the seller for the imported merchandise. Also, the termination charge is not encompassed by any of the items set forth in section 402(b)(1), which are items to be added to the price actually paid or payable.
**543293 dated Jan. 15, 1985; overruled on other grounds by 543574 dated Mar. 24, 1986.**

Delay payments incurred by the buyer are liquidated damages separate from the specific price actually paid or payable and, thus, are not part of transaction value.
**543812 dated Apr. 20, 1987.**

## minimum quantity cancellation charges

Additional compensation paid by the importer to the seller as a result of the former's failure to purchase a contracted minimum quantity of engines during a model year is properly part of the price actually paid or payable for the engines purchased and imported into the United States during that model year. There is a direct relationship between the additional compensation and the engines that were purchased and imported.
**543456 dated Nov. 6, 1985.**

Additional compensation required as a result of the importer's failure to purchase a contracted minimum quantity of engines was computed on the basis of a specific amount for each engine below the minimum quantity that was not purchased. There is a direct relationship between this additional compensation and the gasoline engines that were purchased. Therefore, the additional compensation required in connection with the purchase of the engines is properly part of the price actually paid or payable for the imported engines.
**543445 dated Oct. 23, 1985.**

The unit purchase price of merchandise is determined by a schedule in the contract that provides for a price reduction as the quantity purchased increases. The contract specifically provides for a purchase price adjustment if the minimum number is not purchased. The buyer's payment to the seller represents the price actually paid or payable.
**544205 dated Dec. 12, 1988.**

The importer purchases fabric to utilize in the production of samples. A minimum quantity purchase is required. When the importer does not order this minimum quantity specified, the seller imposes a charge. In this case, it is unlikely that the importer will ever order the minimum quantity since only 50 to 75 yards are required for the production of the samples. Since there is little likelihood that the minimum quantities will

be purchased, the total payment for the imported merchandise usually includes the surcharge. Accordingly, this amount is part of the price actually paid or payable.
**544340 dated Sep. 11, 1990.**

# COMPUTED VALUE

## INTRODUCTION

The TAA, 19 U.S.C. 1401a(e), defines computed value as the following:

COMPUTED VALUE. - (1) The computed value of imported merchandise is the sum of -
(A) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;
(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;
(C) any assist, if its value is not included under subparagraph (A) or (B); and
(D) the packing costs.
(2) For purposes of paragraph (1) -
(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and
(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

19 U.S.C. 1401a(e)(h)(5) defines "sufficient information" as the following:

The term sufficient information, when required under this section for determining - (A) any amount - . . . (iii) added under subsection (e)(2) as profit or general expense; . . . means information that establishes the accuracy of such amount, difference, or adjustment.

19 U.S.C. 1401a(g)(2) states:

For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

Regarding Customs regulations, 19 CFR 152.106 is relevant with respect to computed value. In sections 152.106(a) and (b), the language is similar to that found in the TAA. In addition, 19 CFR 152.106(c) through (f) provides for the following:

(c) Profit and general expenses. The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind.

(1) Interpretative note 1. A product is introduced into the United States, and the producer accepts either no profit or a low profit to offset the high general expenses required to introduce the product into this market. If the producer can demonstrate that there is a low profit on sales of the imported merchandise because of peculiar commercial circumstances, the actual profit figures will be accepted provided the producer has valid commercial reasons to justify them and his pricing policy reflects the usual pricing policies in the industry.

(2) Interpretative note 2. Producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or they sell merchandise to complement a range of merchandise being produced in the United States and accept a low profit to maintain competitiveness. If the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of merchandise of the same class or kind as the merchandise being valued which are made in the country of exportation for export to the United States, the amount for profit and general expenses will be based upon reliable and quantifiable information other than that supplied by or on behalf of the producer of the merchandise.

(d) Assists and packing costs. Computed value also will include an amount equal to the apportioned value of any assists used in the production of the imported merchandise and the packing costs for the imported merchandise. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States will be included in computed value only to the extent that their value has been charged to the producer. Depending on the producer's method of accounting, the value of assists may be included (duplicated) in the producer's cost of materials, fabrication, and other processing, or in the general expenses. If duplication occurs, a separate amount for the value of the assists will not be added to the other elements as it is not intended that any component of computed value be included twice.

(e) Merchandise of same class or kind. Sales for export to the United States of the narrowest group or range of imported merchandise, including the merchandise being appraised, will be examined to determine usual profit and general expenses. For the purpose of computed value, merchandise of the same class or kind must be from the same country as the merchandise being appraised.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated persons. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed. The U.S. importer has requested that the shipment be appraised under computed value. The profit and general expenses figure for the same class or kind of merchandise in the country of exportation for export to the U.S. is known. How

should the merchandise be appraised? The merchandise should be appraised under computed value, using the company's profit and general expenses if not inconsistent with those usually reflected in sales of merchandise of the same class or kind.
(f) Availability of information. (1) It will be presumed that the computed value of the imported merchandise cannot be determined if: (i) the importer is unable to provide required computed value information within a reasonable time, and/or (ii) The foreign producer refuses to provide, or is legally prevented from providing, that information. (2) If information other than that supplied by or on behalf of the producer is used to determine computed value, the district director shall inform the importer, upon written request, of: (i) The source of the information, (ii) The data used, and (iii) The calculation based upon the specified data, If not contrary to domestic law regarding disclosure of information. See, also section 152.101(d).

19 CFR 152.102(h) defines "merchandise of the same class or kind" as:

merchandise (including, but not limited to, identical merchandise and similar merchandise) within a group or range of merchandise produced by a particular industry or industry sector.

**GATT Valuation Agreement:**

In Article 6, the Agreement provides:

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:
(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;
(c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Party under Article 8.2 [cost of transport of the goods to the port or place of importation; loading, unloading and handling charges associated with the transport of the goods to the port or place of importation; and the cost of insurance].
2. No Party may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

In the Interpretative Notes, Note to Article 6, Paragraphs 1 and 2, states:

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.
2. The "cost or value" referred to in a Article 6.1(a) [cited above] is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

Interpretative Notes, Note to Article 6, paragraphs 3, 4, 5 and 6, are similar to 152.106(d), 152.106(b)(2), 152.106(c)(1) and (2), and 152.106(f)(2), respectively.

The term "general expenses" covers the direct and indirect costs of producing and selling the goods for export. See, Interpretative notes, Note to Article 6, paragraph 7.

Interpretative Notes, Note to Article 6, paragraph 8 corresponds with 19 CFR 152.106(e), “Merchandise of same class or kind.”

In Article 15, paragraph 3, "goods of the same class or kind" is defined as:

goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

In addition, Interpretative Notes, General Note, Use of generally accepted accounting principles, paragraph 2, regarding computed value states:

For the purposes of this Agreement, the customs administration of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. . . . On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 [computed value] would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production.

**Judicial Precedent:**

In Campbell Soup Co., Inc. v. United States, 853 F.Supp. 1443 (Fed. Cir. 1994), the Court of International Trade affirmed Customs' decision regarding the calculation of

computed value. The importer claimed a deduction for taxes paid by the importer's subsidiary in Mexico, which were subsequently rebated by the Mexican government. The rebates represented a percentage of the value of the exported product. The Court agreed with Customs and disallowed the deduction from expenses that the importer had claimed for the subsidiary's payments, and in determining computed value, included the amount of the rebates in the subsidiary's profits. In addition, the Court agreed with Customs in determining that inland freight costs were properly regarded as selling expenses that contributed to the subsidiary's "profit and general" expenses under computed value. (Appeal pending; Appeal 94-1435 dated 7/24/94).

Campbell Soup Co., Inc. v. United States, 107 F.3d 1556 (Fed. Cir. 1997).
The Court of Appeals determined that 1) the Court of International Trade (CIT) erred in not allowing the ACertificado Export de Devolucion de Impuestos@ (CEDIS - Mexican export program whereby recipients of CEDIS apply the certificates as credit toward payment of Mexican taxes) rebates as a reduction of material costs for purposes of the computed value calculation; 2) the CIT was correct in including the CEDIS rebates as a part of the manufacturer's profits because such amounts were included as such in the producer's financial statements and there was no showing that the producer's actual general expenses and profits are inconsistent with the usual profit calculation of other product or similar merchandise; and 3) the CIT was correct in including freight costs associated with shipping the product from the manufacturer's loading dock in Mexico to the U.S. border in the computed value calculation because the producer recorded these costs as a general expense in its financial records and because this treatment is consistent with generally accepted accounting principles in Mexico.

**Headquarters Rulings:**

## assists

19 U.S.C. 1401a(e)(1)(C); 19 CFR 152.106(d); GATT Valuation Agreement, Interpretative Notes, Note to Article 6, paragraph 3

General purpose equipment is treated as an assist under computed value. Only the items listed in section 402(h)(i)(A) are assists, consistent with generally accepted accounting principles.
**542139 dated Oct. 15, 1980 (TAA No. 9).**

The buyer purchases materials in Japan and resells them to a related party seller in Brazil for use in the manufacture of components subsequently sold to the buyer. Due to government regulations in Brazil and currency fluctuations, the transfer price of the materials is lower then the actual cost. The transfer of the materials at a price lower then their actual cost constitutes an assist and it is included in determining computed value.
**544481 dated May 8, 1991.**

# cost of fabrication

19 U.S.C. 1401a(e) (1) (A) ; 19 CFR 152.106(a) (1); GATT Valuation Agreement, Article 6, paragraph l(a) and Interpretative Notes, Note to Article 6, paragraph 2

Design department costs, not carried on a producer's books as a cost or value of materials and of fabrication, or a general expense, if in accordance with generally accepted accounting principles, are not part of computed value.
**542325 dated Apr. 3, 1981 (TAA No. 23).**

Accounting services furnished by a U.S. parent to a foreign subsidiary which are kept on the parent's books, are not assists. Plant rental and building depreciation not on the manufacturer's books are dutiable as a cost of fabrication under computed value, unless not included as such under generally accepted accounting principles of the producing country.
**542658 dated Jan. 12, 1982 (TAA No. 44); 542873 dated July 20, 1982 (TAA No. 44, Supp. No. 1).**

The following expenses do not relate to the materials and fabrication employed in the production of the imported merchandise and are not included in computed value: (1) expenses incurred by the assembler's plant manager in traveling from the Mexican plant to the U.S. plant (manager is a U.S. resident and is paid by the importer); (2) entertainment expenses incurred by plant manager in the U.S. and Mexico; (3) expenses incurred in transporting an engineer employed by the assembler to the home office in the U.S.; (4) membership fees and dues paid to a U.S. association to which the plant manager belongs. The expenses are not encompassed within any of the assist categories and are not included in computed value as assists.
**543502 dated June 11, 1985.**

The cost of a software system design, program development, programming and a carrier medium is included in the computed value of production equipment which is imported already programmed if these costs are reflected in the parent company seller's commercial accounts as costs relating to the production of that equipment.
**543391 dated Feb. 18, 1987.**

The buyer of imported merchandise pays part of the salaries of 21 employees of the related party seller. These employees are primarily engineering and quality control supervisors who work directly with engineering and production personnel in the seller's plant. The salaries are not included in determining computed value as a cost of fabrication.
**544481 dated May 8, 1991.**

Capital improvement expenses depreciated by the importer that relate to the assembly process are costs of fabrication or other processing of the imported merchandise and

are included in computed value, unless the importer can establish otherwise under generally accepted accounting principles of the country of production.
**545199 dated Dec. 22, 1994.**

Employees of the foreign assembler are paid ”make-up pay” where the employees are paid for more than is produced to arrive at a minimum pay as required by the Mexican government. In addition, to comply with Mexican Labor Laws, the employees are paid “time work pay” whereby the employees are paid even when the factory is temporarily out of work. Finally, the employees are paid a premium for those hours worked beyond their normal workday, i.e., “overtime premium pay.” The “make-up pay” and the “overtime premium pay” are directly related to the cost of production and are part of the dutiable value. They are actual labor costs involved in the assembly of the merchandise. With regard to “time work pay”, the payments are part of the producer’s general expenses and profit related to the merchandise and dutiable under computed value.
**545679 dated June 23, 1995.**

## election by importer between computed and deductive value

19 U.S.C. 1401a(a); 19 CFR 152.101(c); GATT Valuation Agreement, Article 4 and Interpretative Notes, General Note, Paragraph 3

Unless the importer chooses at the time of entry to use computed value, deductive value is applicable as the means of appraisement.
**542765 dated Apr. 20, 1982.**

If transaction value and transaction value of identical or similar merchandise cannot be determined, then the value is based on deductive value, unless the importer has elected computed value.
**543912 dated Apr. 19, 1988.**

## elements of computed value

Computed value cannot be used when certain elements of cost are not included in the computation. In this case, elements such as patent, trademark, research and development costs, royalties, etc., have been excluded from computed value. Customs does not have the authority to exclude costs associated with the production of the merchandise from computed value. Neither the seller nor the importer is able to provide the information. Computed value is not proper under these circumstances.
**544605 dated Mar. 15, 1991.**

Assuming computed value is the appropriate method of appraisement in this case, neither drop shipping merchandise directly from the port of entry nor importing through various ports of entry will affect the computed value of the merchandise.
**546156 dated Jan. 10, 1997.**

The importer must provide to Customs, if requested, the documentation that supports the figures regarding the cost of manufacturing the merchandise in order to establish a valid computed value. Regarding computed value, 19 CFR 141.88 provides that when the port director determines that information as to computed value is necessary in the appraisement of any class or kind of merchandise, the importer shall be notified. Thereafter, invoices of such merchandise shall contain a verified statement by the manufacturer or producer of computed value as defined in section 402(e) of the TAA.
**546735 dated June 19, 1997; clarified by 546735 dated June 24, 1997 (classification issued clarified).**

In order to increase production, the importer established a second manufacturing plant. Due to this, the importer funded certain start-up costs, including training and excess overhead costs, which were maintained on the producer's books. Based on the information submitted and pursuant to section 402(e)(1)(B), the non-production salary and training expenses incurred in establishing the related foreign producer are general expenses for the purpose of calculating the computed value of the imported merchandise.
**547548 dated Sep. 26, 2001.**

A manufacturing plant incurred damages from a fire and the importer claimed an $80,000 business interruption expense resulting therefrom. A credit could not be allowed against foreign operating expenses that represent an opportunity loss rather than an actual expense incurred by the importer, on which duties were paid. There is no authority, either in determining the appraised value of the imported merchandise under sections 402(e) or 402(f) of the TAA, or in determining the dutiable value of the imported merchandise to effect adjustments with respect to claimed business interruption credit where the underlying credit is not offset by expenses incurred.
**545611 dated Jan. 2, 2002**.

Where packing costs are unavailable, the computed value may not be used to determine the value of the subject merchandise. Instead, a fallback method, pursuant to section 402(f), using a modified computed value should be applied. Subsequently, Customs may make adjustments and estimations for unknown packing costs. The importer erred in a number of ways, including the following: (1) the packing costs submitted by the importer were inconsistent with the manufacturer's records; (2) the importer was not able to substantiate the reporting method; and (3) the importer could not provide invoices to support the purchase of foreign packing bags. In light of these shortcomings, it was reasonable for Customs to base the value of foreign packing on the cost of the most expensive packing bags used by the importer.
**545611 dated Jan. 2, 2002.**

Customs fixed the computed value of the imported merchandise based on the values that the importer provided at the time of entry. The importer claims that the merchandise

should not have been liquidated at the entered values because the entered values were estimates and did not represent the actual computed value. The importer determined the actual computed value and submitted it to Customs at a later date. The importer did not provide evidence detailing the breakdown of the adjusted cost figures on an entry-by-entry basis. Without the submission of an entry-by-entry calculation of the actual computed value, Customs will determine the computed value on the basis of the values provided at the time of entry.
**548096 dated June 4, 2002.**

The distributor is a U.S. company that manages the engineering, marketing, and sales of automotive merchandise, including merchandise manufactured by the importer. U.S. customers enter into agreements with the distributor whereby the distributor contracts with a third party to produce the merchandise. The distributor enters into production agreements with the importer/manufacturer, and the importer/manufacturer assumes the following responsibilities: arrange and pay for freight and insurance; maintain title and risk of loss until the merchandise is ready for shipment to the customer from the U.S. warehouse; and act as importer of record for the transaction. After entry, the importer/manufacturer arranges for storage of the merchandise in warehouses in the United States. The transactions between the importer/manufacturer and the distributor are not bona fide sales. Transaction value is inapplicable as a means of appraisement. With respect to deductive value, the shipment of the merchandise and the resulting sale to the customer may occur as late as five months after the importation of the merchandise. Because the deductive value method may only be used when merchandise is sold within 90 days of importation, deductive value is not an appropriate method of appraisement. The merchandise concerned is properly appraised on the basis of computed value. Because the importer is also the manufacturer of the merchandise, information concerning material and processing costs should be readily available.
**548165 dated Mar. 21, 2003.**

## merchandise of the same class or kind

19 CFR 152.106(e), 19 CFR 152.102(h); GATT Valuation Agreement, Article 15, paragraph 3 and Interpretative Notes, Note to Article 6, paragraph 8

In the instant case, no other Mexican producer of merchandise of the same class or kind exists. The assembler's general expenses and profit are to be regarded as the “usual,” including all of the expenses incurred relating to the production facility.
**543031 dated Apr. 12, 1983.**

No other Mexican producers of the same class or kind of merchandise undergoing appraisement exist. The producer's profit and general expenses may be used as the "usual" profit and general expenses in ascertaining a computed value for the merchandise.
**543268 dated Dec. 14, 1984.**

The importer defines "pass and destroy" materials as vegetables, which are removed from the fields in which they were planted and taken to the subsidiary's plant for processing, but were then rejected for quality control purposes and destroyed. The producer has not demonstrated that such costs are inconsistent with expenses that are usually reflected in sales of merchandise of the same class or kind as the imported merchandise. Additionally, the producer provides insufficient information concerning the maintenance of commercial accounts with respect to the costs at issue. For these reasons, the amounts identified for "pass and destroy" materials should be included in the computed value calculation for the imported merchandise.
**548149 dated Aug. 21, 2002.**

## profit and general expenses

19 U.S.C. 1401a(e) (1) (B); 19 CFR 152.106(b) (1) and (2); 19 CFR 152.106(c); GATT Valuation Agreement, Article 6, paragraph l(b) and Interpretative Notes, Note to Article 6, paragraphs 4 and 5

A loan expense incurred by the assembler prior to commencement of assembly operations appearing on the assembler's books of account is properly included in the amount for usual profit and general expenses under computed value.
**542849 dated Aug. 6, 1982.**

In the instant case, no other Mexican producer of merchandise of the same class or kind exists. The assembler's general expenses and profit are to be regarded as the "usual," including all of the interest expense incurred relating to the production facility.
**543031 dated Apr. 12, 1983.**

General expenses of an assembler reimbursed by the importer are part of the computed value of the imported merchandise.
**543166 dated Jan. 6, 1984.**

A sculpture that is imported several times during its development for review may be appraised pursuant to its computed value. This is the cost of producing the imported article plus an amount for the profit and general expenses usually reflected in sales of merchandise of the same class or kind in the country of exportation for export to the United States. Of course, a particular sculpture that is imported on multiple occasions has a progressively higher computed value on each importation as the sculpture nears completion.
**543239 dated Jan. 24, 1984.**

No other Mexican producers of the same class or kind of merchandise undergoing appraisement exist. The producer's profit and general expenses may be used as "usual" in ascertaining a computed value for the merchandise.
**543268 dated Dec. 14, 1984.**

Unless there is evidence to indicate that figures submitted which reflect a company's profit and general expenses are inconsistent with the profit and general expenses usually reflected in sales of merchandise of the same class or kind, these figures must be accepted. The general expenses and profit called for by the statute and regulations are the "actual" expenses and profit as shown on the books of the assembler.
**543076 dated Sep. 6, 1983.**

Design department costs, not carried on a producer's books as a cost or value of materials and of fabrication, or a general expense, if in accordance with generally accepted accounting principles, are not part of computed value.
**542325 dated Apr. 3, 1981 (TAA No. 23).**

Under computed value, the amount for general expenses and profits is determined by information the producer supplies, provided such is in accordance with generally accepted accounting principles in the country of production. Currency conversion losses cannot be used for computed value purposes since, in this case, the losses have no direct relationship to the assembly process and are used only to balance the general ledger when accounts are converted from foreign currency to U.S. dollars.
**543276 dated May 15, 1984.**

Interest on a loan is considered to be a general expense under computed value. Because general expenses are not considered to be direct costs of processing pursuant to 19 CFR 10.178, the interest expense in question in this case may not be included in computing the 35 percent requirement for GSP eligibility.
**543159 dated May 7, 1984.**

General expenses incurred by a foreign assembler which are reimbursed by the importer are not included in computed value as part of "materials and fabrication," "profit and general expenses," or, if not encompassed within one of the four assist categories, as an assist. This conclusion assumes that the expenses are reflected on the importer's books.
**543502 dated June 11, 1985.**

Where general expenses incurred in connection with an assembly operation are reflected as such in the assembler's commercial accounts, those expenses are dutiable under computed value even if they were actually paid by the importer and they do not qualify as assists.
**543576 dated Mar. 3, 1986.**

The profits and general expenses of the producer of imported merchandise are used in the calculation of computed value, unless the producer's profit and general expenses are inconsistent with amount usually reflected in sales of merchandise of the same class or kind.
**543820 dated Dec. 22, 1986.**

In determining computed value, Customs relies upon information derived from the commercial accounts of the foreign assembler. If those accounts reflect a loss during a separate accounting period from that during which the merchandise under consideration is assembled, this loss may not be carried forward to offset profits, if any, realized during the latter period. Even if the accounts reflect that the loss is experienced during the same account period as the period during which the merchandise is assembled, it is necessary for the importer to establish that offsetting the loss against future profits is consistent with generally accepted accounting principles applied in the country of production.
**543857 dated Feb. 18, 1987.**

A tax rebate is calculated on a percentage of Mexican integral costs that is given to Mexican firms who export products containing a certain percentage of Mexican raw materials. The value of the tax is included in computed value as part of the profit and general expenses of the Mexican company because it is treated in such a manner by the producer on its books. In the absence of information showing that these figures are inconsistent with what is usual, the producer's figures are used to determine profit and general expenses.
**543891 dated May 2, 1988.**

Prepaid transportation costs directly related to transporting a finished product from the loading dock of a Mexican plant to the U.S. border are carried on the books of the producer. Prepaid insurance premiums paid to cover the risk of transportation from the plant to the border are also carried on the producer's books. These expenses are included in the exporter's financial statements as a cost of production and included in the computed value of the merchandise.
**543891 dated May 2, 1988.**

Severance payments made to employees who are discharged as a result of a decrease in production levels are included in the computed value of the imported merchandise as part of the profit and general expenses usually reflected in sales of merchandise of the same class or kind.
**544616 dated Apr. 15, 1991.**

Export incentives provided to a seller of imported merchandise by the foreign government are to be included in the computed value of the merchandise to the extent that such is reflected in the overall profit and general expenses, pursuant to section 402(e)(1)(B) of the TAA.
**544481 dated May 8, 1991.**

Whether the producer's profit and general expenses are consistent with the profit and general expenses usually reflected in sales of merchandise of the same class or kind as the imported merchandise that is made by producers in the country of exportation for export to the United States is a question of fact and, as such, the outcome will vary depending on the particular point in issue. Customs' authority to reject figures relating to the producer's profit and general expenses is limited to those situations where such

figures are inconsistent with those usually reflected in sales of merchandise of the same class or kind.
**544736 dated Aug. 26, 1992.**

A Canadian company imports merchandise into the United States by consigning inventory to storage warehouses operated by a related U.S. company. The merchandise is appraised pursuant to computed value. Certain general expenses related to the Canadian company's U.S. operations are recorded on the books and records of the Canadian company. These expenses include commissions paid to distributors on U.S. sales, the costs of conventions conducted in the United States, commissions paid to marketing companies on U.S. sales, credit card fees on U.S. sales, management fees to operate U.S. warehouses, and depreciation expenses associated with assets used in the warehouses. These expenses related to the U.S. operations are carried on the Canadian company's books as general expenses and are properly a component of computed value.
**545384 dated Nov. 23, 1993.**

An unusual and non-recurring expense for losses suffered by the producer may not be used to calculate the amount of profit and general expenses for computed value purposes.
**545384 dated Nov. 23, 1993.**

Where 9801.00.10 HTSUS merchandise is entered with 9802.00.80 HTSUS merchandise, the profit and general expenses and packing costs attributable to the packing of the 9801.00.10 merchandise should be allocated to that merchandise and not included in the appraised value of the 9802.00.80 merchandise, provided that the importer's cost submission conforms to generally accepted accounting principles.
**545161 dated Apr. 7, 1994.**

Various U.S. related costs and non-production costs are general expenses of the producer and are included in the computed value of imported merchandise. Fire loss expenses are extraordinary expenses under generally accepted accounting principles and are not included in computed value. Rent expense for the twenty percent portion of unused space is a cost of fabrication or other processing and is included in computed value. Excess start-up and pre-production costs should be included and whether these costs are amortized depends upon their treatment in the producer's books. Verified freight charges for transporting U.S. components from the U.S. facility to the port of exportation are part of the cost or value of the U.S. components to be deducted from the full value of imported merchandise entered under 807.00 TSUS and 9802.00.80, HTS.
**544863 dated Sep. 29, 1994.**

Where the producer's amount for general expenses and profit is recorded on the producer's books in a manner consistent with generally accepted accounting principles, there is no authority to add to that figure certain amounts recorded on the importer=s books. Therefore, the amount for general expenses and profit recorded on the importer's books is not included in the computed value of imported merchandise.
**545577 dated Jan. 4, 1995; 545088 dated Feb. 14, 1995.**

The imported merchandise is appraised pursuant to computed value, section 402(e) of the TAA. The following items are expenses incurred and recorded in the related Mexican assembler's accounting records as expenses: wages paid to U.S. resident employees who perform management services at the assembly facility in Mexico; U.S. Customs duties paid upon the importation of the merchandise into the United States; and U.S. freight paid for the transport of the merchandise from the U.S./Mexican border to North Carolina. No evidence has been submitted to indicate that the amount for profit and general expenses recorded on the foreign assembler's books is inconsistent with that usually reflected in sales of merchandise of the same class or kind. Therefore, the expenses at issue are appropriately included in the calculation of computed value for the imported merchandise.
**545953 dated Aug. 3, 1995.**

Customs appraised the merchandise at issue pursuant to computed value. The importer has not provided any information to refute Customs' calculations. The statutory requirement of using the material and processing costs incurred in the production of the subject merchandise has been followed. In addition, the amount for profit and general expenses is generally based on the producer's profit and expenses. The requirements of section 402(e) of the TAA regarding computed value have been met, and the merchandise has been properly appraised.
**546673 dated Mar. 17, 1998.**

A company imports t-shirts into the United States. A related contractor in El Salvador has assembled the t-shirts from U.S.-cut components provided by the importer. Some of the non-production expenses incurred are either shown initially on the importer's books or are transferred from the assembler's books to the importer's books on a monthly basis. The accounting principles followed by the assembler are in accordance with generally accepted accounting principles as they are followed in El Salvador. In addition, there is no evidence to indicate that the amount is inconsistent with the amount for general expenses and profit usually reflected in sales of merchandise of the same class or kind. The amount for general expenses and profit reflected on the importer's books should not be included in determining the computed value of the imported merchandise.
**546801 dated Nov. 5, 1998.**

Under computed value, gains or losses due to currency fluctuations should not be considered in determining the amount for profit, as long as they have no direct relationship to the assembly process. In this case, no information with regard to expenses other than which is shown on the income statement was provided to demonstrate that the currency translations are listed under Financial Expenses, which are listed separately from: Income, Costs of Sales, Production Expenses, and Administrative Expenses. Therefore, the currency fluctuations do not appear to be directly related to the Mexican assembly process. This ruling presumes that no additional payments beyond the invoice price are made to the producer.
**546882 dated Apr. 9, 1999.**

An importer of wearing apparel has a factory in Costa Rica that is its sole source of the apparel. All costs associated with operating the related party facility in Costa Rica are maintained in an account found on the importer's books. Because the foreign factory's commercial account records are used as a basis of calculating computed value, all of the general expenses recorded in the account are included in the "amount for profit and general expenses" under section 402(e)(1)(B) of the TAA. Thus, those expenses are dutiable under computed value.
**547094 dated June 3, 1999.**

The cost of materials damaged by the fire and labor expenses associated with the fire are extraordinary expenses incurred by the manufacturer, whose manufacturing plant caught fire. The importer’s classification of these expenses as general expenses, in a computed value appraisement, is in error.
**545611 dated Jan. 2, 2002.**

The importer did not submit evidence to indicate that certain amounts incurred for general expenses recorded on the foreign assembler’s books were inconsistent with that which is usually reflected in sales of merchandise of the same class or kind. Start-up costs, including training costs and overhead costs related to excess capacity in a new manufacturing facility, are to be included in the computed value of merchandise imported into the United States.
**547652 dated Apr. 9, 2002.**

A freeze completely destroyed certain fields of vegetables that were being grown exclusively for the importer. The expenses associated with this field disaster may be construed as extraordinary expenses under generally accepted accounting principles. As such, they are not included in the computed value so long as they are not recorded in the producer’s commercial accounts as either general expenses or as fabrication costs.
**548149 dated Aug. 21, 2002.**

A factory located in Germany is the parent company to the importer and designer, both located in the United States. The factory intends to contract with the designer to design and engineer items that the factory subsequently produces and sells worldwide, including to the importer. The imported merchandise is a prototype that is actually produced in the United States, exported to Germany, then re-imported and consigned to the importer in the United States. Proceeding through the available means of appraisement, computed value is not an appropriate method of appraising the merchandise. The adequacy of the producer's profits and expenses is measured by sales of merchandise of the same class or kind made by producers in the country of exportation for export to the United States. In this case, although the country of exportation is Germany, the imported merchandise is in fact produced in the United States. Therefore, it is impossible to employ the standard of comparability to ensure the adequacy of the producer's profit and general expenses for purposes of a computed value appraisement.
**548276 dated Apr. 29, 2003.**

## severance pay

Severance payments made to employees who are discharged as a result of a decrease in production levels are included in the computed value of the imported merchandise as part of the profit and general expenses usually reflected in sales of merchandise of the same class or kind.
**544616 dated Apr. 15, 1991.**

An importer purchases merchandise from a related party. Employees of the related seller accumulate severance pay based upon the employees' length of employment and percentage of yearly income. Upon termination of employment, the employee receives the severance pay. The related seller pays the severance pay to its employees. The payable is expensed on the foreign books when paid, and the importer records an estimated liability at each year-end, should the foreign assembler's factory close. The importer does not actually make the severance payments, however, it uses the yearly addition to its severance pay liability to reduce its revenue. The severance payments recorded on the related seller's books are included in computed value. The severance pay expensed on the importer's books is not included in the computed value of the imported merchandise.
**545405 dated Feb. 1, 1994.**

# CONDITIONS OR CONSIDERATION FOR WHICH A VALUE CANNOT BE DETERMINED

## INTRODUCTION

19 U.S.C. 1401a(b)(2)(A) provides the following:

The transaction value of imported merchandise . . . shall be the appraised value of that merchandise for the purposes of this Act only if - . . . (ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise.

In addition, 19 CFR 152.103(j)(1)(ii) states:

Limitations on use of transaction value -
(1) In general. The transaction value of imported merchandise will be the appraised value only if: . . . (ii) The sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined.

19 CFR 152.103(k)(2), along with interpretative notes, states:

The transaction value will not be accepted as the appraised value if the sale of, or the price actually paid or payable for, the merchandise is subject to a condition or consideration for which a value cannot be determined.

(i) Interpretative note 1. The seller establishes the price of the imported merchandise on condition that the buyer also will buy other merchandise in specified quantities.
(ii) Interpretative note 2. The price of the imported merchandise is dependent upon the price or prices at which the buyer of the merchandise sells other merchandise to the seller of the merchandise.
(iii) Interpretative note 3. The price of the imported merchandise is established on the basis of a form of payment extraneous to the merchandise, such as where the merchandise is to be further processed by the buyer, and has been provided by the seller on condition that he will receive a specified quantity of the finished merchandise.

## GATT Valuation Agreement:

Article 1, paragraph I(b), parallels 19 U.S.C. 1401a(b)(2)(A)(ii).

Interpretative Notes, Note to Article 1, Paragraph I(b) corresponds with the above-cited Customs regulation, 19 CFR 152.103(k)(2). In addition, that paragraph states:

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

In addition, CCC Technical Committee Advisory Opinion 16.1 states the following:

1. What treatment should be given to the situation where the sale or price is subject to some condition or consideration for which a value can be determined with respect to the goods being valued? (emphasis added)
2. The Technical Committee on Customs Valuation expressed the following view:
3. According to clause (b) of Article 1.1 the Customs value of imported goods cannot be established on the basis of the transaction value if the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued.
4. The provision of clause (b) of Article 1.1 should be interpreted to mean that if the value of a condition or consideration can be determined with respect to the goods being valued, the Customs value of the imported goods should, subject to the other provisions and conditions of Article 1, be the transaction value as determined under that Article. Interpretative Notes to Article 1 and the Protocol make it very clear that the price actually paid or payable is the total payment made by the buyer to or for the benefit of the seller, that the payment may be made directly or indirectly and that the price includes all payments actually made or to be made by the buyer to the seller, or by the buyer to a third party. Thus the value of the condition, when it is known and relates to the imported goods, is a part of the price actually paid or payable.
5. It should rest with individual administrations as to what they consider would be sufficient information to specifically determine the value of a condition or consideration.

See also, CCC Technical Committee Commentary 11.1, which discusses tie-in sales and their treatment under the GATT Valuation Agreement.

**Headquarters Notices:**

Tie-in Sale Transactions, Cust. B. & Dec., Vol. 30, No. 23, June 5, 1996.

This notice reminds the public that sales of imported merchandise in which there is a condition or consideration for which a value cannot be determined, such as a tie-in sale, will preclude the use of transaction value as a basis of appraisement. A tie-in sale of imported merchandise is one in which the sale of or price for the imported merchandise is conditioned on the sale of or consideration for other merchandise. Pursuant to 19

U.S.C. 1484(a)(1), the importer of record is required, using reasonable care, to make and complete entry by filing with Customs, among other things, the declared value of the merchandise. The importer's use of transaction value in circumstances in which there is a tie-in sale constitutes a failure to exercise reasonable care.

**Headquarters Rulings:**

## transaction value inapplicable

Higher than contract prices of imported merchandise are off-set by lower than contract prices on other merchandise imported by the buyer. This off-set arrangement has a value that cannot be determined and therefore, transaction value is eliminated as a means of appraisement.
**542747 dated June 3, 1982; 542994 dated Apr. 26, 1983; 543358 dated Sep. 13, 1984 (543358 overruled on other grounds by 544856 dated Dec. 13, 1991).**

An agreement stipulates that the U.S. buyer is responsible for the construction and management of a seawater treatment plant. At the time the original contract was entered into, there was nothing indicating that services on the plant were to be performed by personnel provided under contract with the owner. Transaction value is not applicable as a method of appraisement because there exists a condition or a consideration for which a value cannot be determined.
**543066 dated July 25, 1983.**

The price of merchandise is dependent upon the price or prices at which the buyer of the imported merchandise sells other merchandise to the seller of the imported merchandise. This interdependency of prices affects the cost and price of the imported goods and is, therefore, a consideration for which a value cannot be determined with respect to the imported goods.
**543881 dated Dec. 3, 1987.**

The importer has entered into an "exchange savings agreement" with the seller. The agreement involves the calculation of a duty and freight savings amount realized when the importer, through its Saudi Arabian affiliate, supplies glycol to the seller's Japanese affiliate and in-turn, the seller supplies product to the importer's U.S. plant. Transaction value must be eliminated as a means of appraisement because there exists a condition or consideration for which a value cannot be determined.
**544491 dated Oct. 29, 1990.**

The merchandise is originally purchased for a C&F price, to be shipped by ocean vessel. However, the price was renegotiated prior to the exportation of the merchandise resulting in a higher C&F price, to be shipped by air. The "renegotiated" price did not represent a value for the goods and a value for the allegedly included air freight costs. In this particular case, transaction value was inappropriate as a means of appraisement

because the renegotiated price subjected the imported merchandise to a condition for which a value could not be determined.
**544620 dated Dec. 23, 1991.**

The price of imported merchandise is based upon the transaction being structured as a sale to Canada rather than as a sale to the United States. The seller offers to sell canned tomatoes to the buyer at a lower price, made possible by an export subsidy program. The program is not available on tomato products exported to the United States, therefore the seller can offer the lower price only if the transaction is structured in such a way to make it appear to the Italian authorities that the tomatoes are being sold to a non-U.S. buyer. Transaction value is inapplicable as a means of appraisement since there exists a condition or consideration for which a value cannot be determined.
**545477 dated Nov. 22, 1994.**

# CONFIDENTIALITY

## INTRODUCTION

The Customs Service is guided by the current U.S. laws relating to confidentiality and disclosure, primarily those contained in the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), and the Privacy Act of 1974 (5 U.S.C. 552a; 18 U.S.C. 1904). See also Statement of Administrative Action.

## GATT Valuation Agreement:

Article 10 states:

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

# CONSIGNMENTS

## INTRODUCTION

In 19 U.S.C. 1401a(b)(1), transaction value is defined as "the price actually paid or payable for the merchandise when sold for exportation to the United States . . . ." (emphasis added)

The corresponding Customs regulation is 19 CFR 152.103(b).

**GATT Valuation Agreement:**

Article I, paragraph 1, parallels 19 U.S.C. 1401a(b)(1).

CCC Technical Committee Advisory Opinion 1.1 states the following with regard to consignments:

I. Free consignments

Where transactions do not involve the payment of a price they cannot be regarded as sales under the Agreement. Examples: gifts, samples, promotional items.

II. Goods imported on consignment

Under this trading practice, the goods are dispatched to the country of importation not as a result of a sale, but with the intention that they would be sold for the account of the supplier, at the best price obtainable. At the time of importation no sale has taken place. Example: Producer P in country of exportation E sends his agent X in country of importation I a consignment of 50 carpets for sale by auction. The carpets are sold in the country of importation at a total price of 500,000 c.u. The sum to be transferred by X to producer P in payment of the imported goods will be 500,000 c.u., less the costs incurred by X in connection with the sale of the goods and his remuneration on the transaction.

**Headquarters Rulings:**

### transaction value inapplicable

See, 19 U.S.C. 1401a(b)(1); 19 CFR 152.103(b); GATT Valuation Agreement, Article 1, paragraph 1; CCC Technical Committee, Advisory Opinion 1.1

Transaction value is inapplicable as a means of appraisement for fabric that is imported into the United States in an unfinished condition and consigned to a U.S. textile firm for processing.

**542765 dated Apr. 20, 1982.**

Transaction value does not apply to merchandise which has been consigned rather than sold.
**543128 dated June 4, 1984; 543403 dated Sep. 24, 1984.**

In a transaction where a machine is imported by two joint-owners and only one of the importer "purchases" its portion prior to exportation, the machine is not sold for export to the United States and therefore, transaction value is inapplicable.
**543243 dated Apr. 30, 1984.**

No sale for exportation occurs between the exporter and the importer in the United States but rather, the merchandise is consigned to the importer. Transactions involving goods that are shipped on a consignment basis do not constitute bona fide sales and cannot be appraised pursuant to transaction value.
**546602 dated Jan. 29, 1997.**

In this case, an airline hires a company to install aircraft furnishings. The company that installs the aircraft furnishings serves as the importer of record and ultimate consignee. The airline is billed for time, labor, cost of any parts necessary for installation, Customs brokerage fees, delivery costs and U.S. Customs duties (if any). The installation company was unable to provide the requested information which would have verified the quantity of the goods received and the price paid for the goods; therefore, the merchandise cannot be appraised using the valuation methods of transaction value of identical or similar merchandise; deductive value; or computed value. Therefore, the merchandise must be appraised under 19 U.S.C 1401a(f) as a modified transaction value, which uses the prices between the purchasing airline and the supplier. Thus, it appears that the purchasing airline procured the goods with the intent to have them shipped to the U.S. for installation into its airlines.
**547604 dated Apr. 10, 2001.**

## transaction value of identical or similar merchandise

Consigned goods cannot be used as "identical" or "similar" merchandise for purposes of appraising goods under transaction value of identical or similar merchandise. Such goods must similarly be sold for exportation to the United States.
**542568 dated Nov. 16, 1981; 543112 dated May 10, 1984; 543128 dated June 4, 1984; <u>overruled</u> <u>by</u> 543641 dated Aug. 22, 1986.**

The fact that merchandise is consigned rather than sold is not a basis for denying the use of transaction value of identical or similar merchandise. Of course, it is necessary that sufficient information be available in order to make any adjustment that may be necessary.
**543641 dated Aug. 22, 1986; <u>overrules</u> 542568 dated Nov. 16, 1981, 543112 dated May 10, 1984, 543128 dated June 4, 1984**.

The fact that merchandise is consigned rather than sold is not a basis for denying the use of transaction value of identical or similar merchandise.
**544469 dated Aug. 16, 1990.**

Based on the evidence available, transaction value is not the proper basis of appraisement for the subject wearing apparel, in that no sale for exportation occurred between the exporter and the importer in the United States but, rather, the merchandise is consigned to the importer. Thus, transactions involving goods that are shipped on a consignment basis do not constitute bona fide sales and cannot be appraised pursuant to transaction value. Appraisement of the imported wearing apparel should proceed sequentially through the subsequent provisions of section 402 of the TAA, with the first alternative basis of appraisement being the transaction value of identical or similar merchandise in section 402(c) of the TAA.
**547591 dated Apr. 21, 2000; 547573 dated Apr. 21, 2000; 547628 dated Apr. 21, 2000.**

# COUNTERTRADE

## INTRODUCTION

### GATT Valuation Agreement:

CCC Technical Committee Advisory Opinion 6.1 states the following with respect to barter or compensation deals:

How are barter or compensation deals to be treated with reference to Article 1 of the Agreement? The Technical Committee on Customs Valuation expressed the following opinion:

1. International barter takes various forms. In its purest form, it consists of an exchange of goods or services of approximately equal value, without recourse to a common unit of measurement (money) to express the transaction.
Example: X tons of product A from country E are exchanged for Y units of product B from country I.

2. Disregarding the question as to whether a sale has occurred in cases of pure barter, where the transaction is neither expressed nor settled in monetary terms, and there is no transaction value or objective and quantifiable data for determining that value, the Customs value should be established on the basis of one of the other methods set out in the Agreement, taken in the sequence prescribed.

3. For a variety of reasons (e.g. bookkeeping, statistics, taxation, etc.), it is hard to dispense entirely with reference to money in international trade relations and, hence, pure barter is rarely encountered nowadays. Barter now usually involves more complex transactions in which a value of bartered goods is determined (e.g. on the basis of current world market prices) and expressed in monetary terms.
Example: Manufacturer F in the country of importation I has the opportunity of selling electrical equipment in country E provided an equivalent value of goods produced in country E is bought and exported from that country. After an arrangement between F and X trading in plywood in country I, X imports into country I a quantity of plywood from country E and F exports electrical equipment to country E, the equipment being invoiced at 100,000 c.u. The invoice presented on importation of the plywood also shows a value of 100,000 c.u.; no financial settlement is however made between X and the seller in country E, the payment for the goods being covered by exportation of the electrical equipment by F.

4. Although many barter deals expressed in monetary terms are concluded without a financial settlement being made, there are situations where money does change hands, for example, when a balance has to be paid in clearing operations, or in cases of partial barter where part of the transaction involves a money payment.

Example: Importer X in country I imports from country E two machines priced at 50,000 c.u., on the understanding that only one fifth of this sum is to be the subject of a financial settlement, the rest being offset by the delivery of a specified quantity of textile products. The invoice presented on importation shows a value of 50,000 c.u.; however, the financial settlement between X and the seller in country E involves only 10,000 c.u., the balance being covered by the delivery of the textile products.

5. Under the legislation of some countries barter transactions expressed in monetary terms can be regarded as sales, such transactions however will of course be subject to the provisions of Article 1, paragraph I(b) [condition or consideration for which a value cannot be determined].

6. Barter or compensation deals should not be confused with certain sales transactions in which the supply of the goods, or their price, is governed by factors extraneous to the transaction concerned. This would apply in the following cases: - The price of the goods is fixed by reference to the price of other goods which the buyer may sell to his supplier.
Example: Manufacturer F in country of exportation E has an agreement with importer X in country I to supply specialized equipment designed by F, at a unit price of 10,000 c.u., on condition that importer X supplies him with relays used in the production of the equipment, at a unit price of 150 c.u.- The price of the imported goods depends on the purchaser's willingness to obtain from the same supplier other goods, in a specified quantity or at a specified price.
Example: Manufacturer F in country of exportation E sells leather goods to buyer X in country I at a unit price of 50 c.u., on condition that X also purchases a consignment of shoes at a unit price of 30 c.u.

7. It should be pointed out that these transactions too are subject to the condition laid down in Article 1, paragraph I(b) [condition or consideration for which a value cannot be determined].

See, also CCC Technical Committee Commentary 11.1 on tie-in sales, which includes countertrade as an example.

**Headquarters Notices:**

Countertrade Transactions, Cust. B. & Dec., Vol. 24, No. 22, May 30, 1990.

The U.S. Customs is forming a Countertrade Committee to study and prepare a report on the current status of countertrade and its effect on Customs practices, particularly the determination of transaction value under the Trade Agreements Act of 1979 (TAA).

Countertrade Transactions, Cust. B. & Dec., Vol. 25, No. 6, February 6, 1991.

The Customs valuation aspects of any countertrade transaction can be considered only on the basis of the particular facts and circumstances of that transaction. Therefore, in

their consideration of countertrade transactions which result in the importation of merchandise into the United States, the importing public is advised that obtaining a ruling from the U.S. Customs should be an integral part of their planning process.

**Headquarters Rulings:**

## price actually paid or payable

GATT Valuation Agreement, CCC Technical Committee Advisory Opinion 6.1

Unless barter transactions specify monetary value of the merchandise involved, inherent difficulties in ascertaining a value for such goods precludes a finding of transaction value.
**543209 dated Jan. 25, 1984.**

An exchange agreement between a foreign supplier and a U.S. importer provides for the importer to send the supplier copper cathodes in exchange for the supplier shipping certain merchandise in return. Because the contract involved does not specify a monetary value for the goods, the goods are precluded from valuation pursuant to transaction value.
**543400 dated Apr. 16, 1985.**

The use of transaction value is precluded in countertrade transactions if the parties have not made reference in their contracts to some reasonable monetary standard representing the price actually paid or payable.
**543644 dated Nov. 20, 1985.**

The use of transaction value is precluded in a pure barter situation where the transaction is neither expressed nor settled in monetary terms, and there is no transaction value or objective and quantifiable way to determine that value. The importations must be appraised pursuant to the next available method.
**544666 dated Apr. 5, 1993.**

# CURRENCY CONVERSION

## INTRODUCTION

The U.S. Customs Service uses the date of exportation for currency conversion purposes. This is in accordance with section 522 of the Tariff Act of 1930, as amended (31 U.S.C. 372). See also Statement of Administrative Action.

### GATT Valuation Agreement:

Article 9 states:

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Party.

In the Interpretative Notes, Note to Article 9, the "time of importation" may include the time of entry for customs purposes.

CCC Technical Committee Advisory Opinion 20.1 states:

1. The question has been asked whether conversion of currency is necessary in cases in which the contract of sale of the imported goods provides for a fixed rate of exchange.

2. The Technical Committee on Customs Valuation considered this question and advised that the conversion of currency is not necessary if the settlement of the price is made in the currency of the country of importation.

3. Therefore, what is important in this matter is the currency in which the price is settled and the amount of the payment.

### Headquarters Rulings:

## computed value

Under computed value, the amount for general expenses and profits is determined by information the producer supplies, provided such is in accordance with generally accepted accounting principles in the country of production. Currency conversion losses cannot be used for computed value purposes because, in this case, the losses have no direct relationship to the assembly process and are used only to balance the general ledger when accounts are converted from foreign currency to U.S. dollars.
**543276 dated May 15, 1984.**

Under computed value, gains or losses due to currency fluctuations should not be considered in determining the amount for profit, as long as they have no direct relationship to the assembly process. In this case, no information with regard to expenses other than what is shown on the income statement was provided to demonstrate that the currency translations are listed under Financial Expenses, which are listed separately from: Income, Costs of Sales, Production Expenses, and Administrative Expenses. Therefore, the currency fluctuations do not appear to be directly related to the Mexican assembly process. This ruling presumes that no additional payments beyond the invoice price are made to the producer.
**546882 dated Apr. 9, 1999.**

## formulas used in determining the price actually paid or payable

A price, which is determined pursuant to a formula that takes currency fluctuations into account, may represent the transaction value for imported merchandise.
**543094 dated Mar. 30, 1984; 543252 dated Mar. 30, 1984.**

The final sales prices between the buyer and seller are determined pursuant to a formula that is fixed at the time of exportation. Because the formula from which the prices is determined and is agreed to before the dates of importation, the currency exchange payments from the seller to the buyer do not constitute rebates or other decreases in the price actually paid or payable. Adjustments to the invoice prices resulting from currency exchange gains as well as from currency exchange losses are taken into consideration in determining transaction value.
**543089 dated June 20, 1984.**

## price actually paid or payable

When a transaction originally negotiated in dollars and prior to exportation is changed to yen, the price actually paid or payable in yen represents the transaction value.
**543191 dated Jan. 31, 1984.**

In determining the price actually paid or payable, it is necessary to ascertain whether payment is made in U.S. or Canadian currency. If, at the time of entry, the purchaser pays or intends to pays for a shipment in U.S. currency, then that amount constitutes the price actually paid or payable. If the purchaser pays or intends to pay in Canadian

currency, then that amount, converted to U.S. dollars, constitutes the price actually paid or payable.
**543437 dated May 17, 1985.**

If at the time of entry, the purchaser has paid, or intends to pay for a shipment in U.S. dollars, then that amount constitutes the price actually paid or payable for the imported merchandise. If the purchaser has paid or intends to pay in foreign currency, then the invoiced amount, converted to U.S. dollars, constitutes the price actually paid or payable. For currency conversion purposes, Customs uses the rate of exchange in effect on the date of exportation.
**544754 dated Oct. 24, 1991**.

The price actually paid or payable for the imported merchandise between the importer and the seller is the peseta price presented on the invoice at the time the imported merchandise is entered, converted to United States dollars in accordance with the appropriate currency conversion rate which is in effect on the date of exportation.
**544739 dated Jan. 21, 1992.**

Conversion of the invoice price from British pounds to U.S. dollars pursuant to a currency provision in a distributorship agreement between the parties is allowable. The invoice price in U.K. pounds, converted into dollars in accordance with the fixed exchange rate and paid in U.S. dollars, constitutes the price actually paid or payable.
**544940 dated May 13, 1992.**

The transaction value of an imported yacht, in U.S. dollars, is properly based on the exchange rate applicable on the date of its exportation from the Netherlands to the United States. Section 152.1(c), Customs Regulations, provides that the date of exportation or time of exportation referred to in section 402 of the TAA, means the actual date the merchandise finally leaves the country of exportation for the United States. 19 CFR 159.32 provides that the date of exportation for currency conversion shall be fixed in accordance with section 152.1(c).
**545574 dated Oct. 12, 1994.**

While the importer had previously purchased the DM at a different exchange rate than that in effect at the date of exportation, there is no evidence that the parties had entered into a currency exchange rate contract for purposes of setting the exchange rate for the price of the imported merchandise. Under these circumstances, the exchange rate at which the DM were purchased cannot be used to determine the transaction value of the imported merchandise and, instead, the rate of exchange in effect at the date of exportation controls.
**546523 dated Aug. 11, 1997.**

The importer sources general merchandise from various countries including Italy and Spain in unrelated party transactions. Based on the information presented, the currency exchange rate to be used on entries in transactions where payment is made to the vendor either prior to or after entry of the shipment, is the rate of exchange in effect on

the date of exportation. In this case, where there is no agreement establishing the exchange rate to be used for Customs purposes between the U.S. importer and the two foreign vendors, 19 C.F.R. section 159.34(a) controls the applicable exchange rate.
**547546 dated Jan. 18, 2000.**

The importer negotiates and purchases the merchandise in Japanese yen. At the time of export, the currency conversion rate in effect on the date of export is applied to calculate the value. As a result, if the exchange rate fluctuates post-entry, there is a difference in the amount of U.S. dollars that are remitted between the calculation that results based on the exchange rate in effect at the time of entry and the exchange rate in effect at the time of payment. Absent an agreement between the unrelated parties to adjust the price by reason of currency conversion rate fluctuations, the appropriate rate of currency conversion is the rate in effect on the date of exportation. Therefore, the price actually paid or payable for the importations from Japan should be determined based on the currency conversion rate applicable at the time of exportation.
**547633 dated June 9, 2000.**

# DEDUCTIVE VALUE

## INTRODUCTION

19 U.S.C. 1401a(d) states the following:

DEDUCTIVE VALUE- (1) For purposes of this subsection, the term "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.
(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:
(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.
(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the 90th date after the date of such importation.
(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th date after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th date after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.
(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A) (i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.
(3)(A) The price determined under paragraph (2) shall be reduced by an amount equal to-
(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;
(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);
(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily, liable; and
(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.
(B) For purposes of applying paragraph (A)-
(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and
(ii) any State or local tax imposed on the importation with respect to the sale of imported merchandise shall be treated as a general expense.
(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.
(D) For purposes of determining the deductive value of imported merchandise, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

The Customs regulations regarding deductive value are found in 19 CFR 152.105(a) through (i) and various interpretative notes. The following sections provide definitions regarding deductive value:

(a) <u>merchandise concerned.</u> For the purposes of deductive value, "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.
(b) <u>merchandise of the same class or kind.</u> For the purposes of deductive value, "merchandise of the same class or kind" includes merchandise imported from the same country as well as other countries as the merchandise being appraised.

(Note: 19 CFR 152.105(c) and (d) parallel the TAA, see 19 U.S.C. 1401a(d)(2) and (3), <u>supra.)</u>

19 CFR 152.105(e) through (i) supplement the statutory provisions in the TAA and state the following:

(e) Profit and general expenses; special rules. (1) The deduction made for profit and general expenses (taken as a whole) will be based upon the importer's profits and general expenses, unless the profit and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind from all countries, in which case the deduction will be based on the usual profit and general expenses reflected in those sales, as determined from sufficient information. Any State or local tax imposed on the importer with respect to the sale of imported merchandise will be treated as a general expense. (2) In determining deductions for commissions and usual profit and general expenses, sales in the United States of the narrowest group or range of imported merchandise of the same class or kind, including the merchandise being appraised, for which sufficient information can be provided, will be examined.
(f) Packing costs. The price determined under paragraph (c) of this section will be increased, but only to the extent that the costs are not otherwise included, by an amount equal to the packing costs incurred by the importer or the buyer with respect to the merchandise concerned.
(g) Assists. For purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.
(h) Unit price in greatest aggregate quantity. The unit price will be established after a sufficient number of units have been sold to an unrelated person. The unit price to be used when the units have been sold in different quantities will be that at which the total volume sold is greater than the total volume sold at any other unit price.
(1) [See, 19 CFR 152.105(h)(1), Interpretative Note 1.]
(2) Interpretative Note 2. Two sales to unrelated persons occur: in the first sale, 500 units are sold at a price of $95 each, in the second sale, 400 units are sold at a price of $90 each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is $95.
(3) [See, 19 CFR 152.105(h)(3), Interpretative Note 3.]
(i) Further processing - (1) Quantified data. If merchandise has undergone further processing after its importation into the United States and the importer elects the method specified in paragraph (c)(3) of this section, deductions made for the value added by that processing will be based on objective and quantifiable data relating to the cost of the work performed. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis for the deduction. That deduction also will reflect amounts for spoilage, waste, or scrap derived from the further processing.
(2) Loss of identity. If the imported merchandise loses its identity as a result of further processing, the method specified in paragraph (c)(3) of this section will not be applicable unless the value added by the processing can be determined accurately without unreasonable difficulty for either importers or Customs. If the imported merchandise maintains its identity but forms a minor element of the merchandise sold in the United States, the use of paragraph (c)(3) of this section will be unjustified. The district director shall review each case involving these issues on its merit.

## GATT Valuation Agreement:

The provision in the GATT Valuation Agreement for deductive value is found in Article 5, paragraphs 1 and 2 (similar to statute, 19 U.S.C. 1401a(d)).

In the Interpretative Notes, Note to Article 5, paragraph 1, states:

The term "unit price at which . . . goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from which they buy such goods at the first commercial level after importation at which such sales take place.

Note to Article 5, paragraphs 2, 3 and 4 correspond with the Customs regulations, 19 CFR 152.105(h)(1) through (3).

Note to Article 5, paragraph 5, is similar to 19 CFR 152.105(g), Assists.

In addition, Note to Article 5, paragraphs 6, 8 and 9 are found in 19 CFR 152.105(b) and (e), Merchandise of the same class of kind, and Profit and general expenses; special rules.

In referring to Article 5, paragraph l(a)(i) regarding profit and general expenses, Note to Article 5, paragraph 7 states:

The "general expenses" include the direct and indirect costs of marketing the goods in question.

With respect to superdeductive value, i.e., further processing in the country of importation, Note to Article 5, paragraphs 11 and 12 correspond with 19 CFR 152.105(i).

In addition, Interpretative Notes, General Note, Use of generally accepted accounting principles, paragraph 2, the relevant portion regarding deductive value states:

For the purposes of this Agreement, the customs administration of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 [deductive value] would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation.

**Judicial Precedent:**

The following case involves the deduction for "the customs duties . . . currently payable on the merchandise", provided for in 19 U.S.C. 1401a(d)(3)(A)(iv), from the appropriate price in accordance with 19 U.S.C 1401a(d)(2)(A)(i), (ii) or (iii).

Figure Flattery, Inc. v. United States, 13 Ct. Int'l Trade 726 (1989), aff'd, 907 F.2d 141 (Fed. Cir. 1990).

The merchandise in question was assembled abroad of United States components, the value of which was eligible for exemption from duty under item 807.00, TSUS (prior to Harmonized System). In calculating deductive value, the Customs Service subtracted the value of the eligible components from the unit price before reducing it by "the customs duties currently payable on the merchandise".

The plaintiff claims that the proper method of calculating deductive value with respect to merchandise classifiable under item 807.00, TSUS, is to reduce the sales price by the customs duties currently payable on the merchandise prior to subtracting the value of the United States components eligible for duty exemption from the sales price.

Customs contends that deductive value contemplates a deduction for actual duties assessed. The duty assessed, i.e., duties currently payable, is to be based upon the rate that is appropriate after the value of the U.S. components has been deducted from the value of the entire article.

The Court concluded that the Customs Service interpretation is proper. The plaintiff has not established that Customs incorrectly appraised the merchandise.

**Headquarters Rulings:**

## deduction for commissions

Whether a commission is of the type usually paid or agreed to be paid in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, is a question of fact determined by the appraising officer.
**544635 May 24, 1991.**

The determination as to whether a commission is of the type usually paid or agreed to be paid in connection with sales in the United States of merchandise that is of the same class or kind, regardless of the country of exportation, is to be made by the appraising officer, as this is a question of fact.
**544806 dated Aug. 10, 1992.**

## deduction for usual profits and general expenses

19 U.S.C. 1401a(d) (3) (A) (i); 19 CFR 152.105(d) and (e); GATT Valuation Agreement, Article 5, Paragraph I(a)(i)

The price determined under deductive value is reduced by either a commission paid or the addition usually made for profit and general expenses. Therefore, an importer who elects deductive value as a means of appraisement is only entitled to an adjustment of either the commission or the addition usually made for profit and general expenses.
**543065 dated June 20, 1983.**

A customhouse broker's fee is either a general expense or a cost of transportation that is deductible under deductive value.
**542267 dated Apr. 3, 1981 (TAA No. 22).**

In determining the deductive value of imported merchandise, the amounts designated by the importer as salaries and wages, rent, taxes, travel, advertising, automotive expense, and contract services are fully deductible as “general expenses” from the unit price at which the merchandise is sold to unrelated U.S. purchasers. The general expenses indicated are consistent with those reflected in sales in the United States of imported merchandise of the same class or kind.
**545187 dated Feb. 14, 1995.**

In appraising merchandise pursuant to deductive value, demurrage fees due to devanning, customs devanning exam costs, and harbor maintenance fees are all deductible either as associated transportation costs from the place of delivery in the United States or as general expenses in selling the merchandise.
**546120 dated Mar. 26, 1996.**

## duties currently payable

19 U.S.C. 1401a(d) (3) (A) (iv); 19 CFR 152.105(d) (4); GATT Valuation Agreement, Article 5, paragraph I(a)(iv); See Figure Flattery, Inc., v. United States, 720 F. Supp. 1008 (1989), aff’d 907 F.2d 141 (1990).

In determining the duties that are to be paid under deductive value where there is entitlement to the partial exemption for U.S. components, "customs duties currently payable on the merchandise concerned by reason of its importation" are arrived at after the cost or value of the U.S. components has been deducted.
**542439 dated June 12, 1981.**

## election by importer between deductive and computed value

19 U.S.C. 1401a(a); 19 CFR 152.101(c); GATT Valuation Agreement, Article 4 and Interpretative Notes, General Note, Paragraph 3

Unless the importer chooses at the time of entry to use computed value to appraise the imported merchandise, deductive value is applicable as the means of appraisement.
**542765 dated Apr. 20, 1982.**

If transaction value and transaction value of identical or similar merchandise cannot be determined, then the Customs value will be based upon deductive value, unless the importer has elected computed value.
**543912 dated Apr. 19, 1988.**

## related party transactions

19 U.S.C. 1401a(d)(2)(B)

The resale price in the United States between two related parties cannot be used to determine a deductive value for imported merchandise.
**542267 dated Apr. 3, 1981 (TAA No. 22).**

The importer purchases lamps from a related company and from other unrelated manufacturers. Although the method described by the importer's written transfer pricing policy may be acceptable for establishing an arm's length transaction, the documentation does not support that the calculations are acceptable for purposes of transaction value. Thus, based on the facts provided, it is appropriate to appraise the subject merchandise using the deductive value method.
**547231 dated Dec. 16, 2001.**

## resale in the United States

19 U.S.C. 1401a(d)(2)(B)

The first commercial level subsequent to importation is the sales price from which any deductions are made to determine a deductive value of imported merchandise. The base price must be taken from sales to unrelated purchasers.
**544469 dated Aug. 16, 1990.**

Expenses for the repacking and repackaging of merchandise incurred after Customs release of the merchandise and in selling the merchandise in the United States are deductible expenses incurred in connection with the selling of the merchandise in the United States. Therefore, these expenses should be deducted in the determination of the deductive value of imported merchandise.
**546120 dated Mar. 26, 1996.**

Merchandise is consigned to the importer from its related party supplier. Transaction value is inapplicable as a means of appraising the merchandise due to the fact that there is not sale for exportation. In addition, there is no transaction value of identical or similar merchandise, nor is there a computed value appraisement applicable. The importer resells the merchandise in the United States; however, it is not resold until six

to nine months subsequent to the importation. Therefore, deductive value does not apply. The most appropriate way to appraise the imported merchandise is to use a modified deductive value pursuant to 19 U.S.C. 1401a(f), where the time restriction of A90 days@ enumerated in 19 U.S.C. 1401a(d) is relaxed.
**546312 dated Jan. 17, 1997.**

Asparagus shipped to the United States on a consignment basis is appraised pursuant to deductive value. The deductive value is based upon weekly figures that do not account for price adjustments to the instant importations, which may take several months to finalize. However, section 402(d)(1) of the TAA provides that ”merchandise concerned“ as provided in section 402(d) means the merchandise being appraised, identical merchandise, or similar merchandise. All three types of merchandise may be utilized for appraisement, and there is no indication that one type must have priority over the other. Although Customs generally concerns itself with the sale of the goods being valued, it is not precluded, based on the information available at or about the date of importation, from utilizing on-going sales of identical or similar goods for appraisement. Customs is not required to wait until the instant goods are actually sold or the necessary information concerning such sales is made available. Assuming such prices otherwise fit the definitions set forth in section 402(d), they may serve as the appropriate bases of appraisement.
**546602 dated Jan. 29, 1997.**

With regard to appraising merchandise imported and placed in inventory for sale in the U.S., it is determined that based on the information presented, it appears that the portion of the merchandise that is resold within 90 days after importation must be appraised using a deductive value method of appraisement. The merchandise sold after the 90th day after importation must be appraised under the fallback method, i.e. section of 402(f) of the TAA, using a modified deductive value approach. It is incumbent on the importer to provide sufficient information and to correctly appraise their imported merchandise. However, the final determination regarding the appropriateness of the proposed figures, including the deductions, will be subject to the discretion of the Customs officer at the port of entry.
**546442 dated Mar. 23, 1999.**

Due to financial hardship, the prospective buyer was unable to pay for the goods; therefore, the sale was never consummated and the merchandise was abandoned. Another company later bought the merchandise and the documentation presented shows that the merchandise was resold in the United States in the condition in which it was imported and that the merchandise was imported more than ninety days later. Therefore, 19 C.F.R. 152.107(c), one of the modifications to deductive value under section 402(f), allows more than ninety days for the importation of the merchandise. Accordingly, the appraisement of the subject merchandise should be undertaken pursuant to 19 U.S.C. 1401a(f), flexibly applying deductive value.
**547314 dated Sep. 27, 2001.**

The distributor is a U.S. company that manages the engineering, marketing, and sales of automotive merchandise, including merchandise manufactured by the importer. U.S. customers enter into agreements with the distributor whereby the distributor contracts with a third party to produce the merchandise. The distributor enters into production agreements with the importer/manufacturer, and the importer/manufacturer assumes the following responsibilities: arrange and pay for freight and insurance; maintain title and risk of loss until the merchandise is ready for shipment to the customer from the U.S. warehouse; and act as importer of record for the transaction. After entry, the importer/manufacturer arranges for storage of the merchandise in warehouses in the United States. The transactions between the importer/manufacturer and the distributor are not bona fide sales. Transaction value is inapplicable as a means of appraisement. With respect to deductive value, the shipment of the merchandise and the resulting sale to the customer may occur as late as five months after the importation of the merchandise. Because the deductive value method may only be used when merchandise is sold within 90 days of importation, deductive value is not an appropriate method of appraisement. The merchandise concerned is properly appraised on the basis of computed value. Because the importer is also the manufacturer of the merchandise, information concerning material and processing costs should be readily available.
**548165 dated Mar. 21, 2003.**

The importer, through its supplier and independent warehouse contracts, operates a just-in-time inventory management program whereby inventory management warehouses are located near the importer's various manufacturing facilities. The program is designed to assure adequate supplies of product that are readily available to the importer. The importer does not take title, nor does it become obligated to pay for the product until it is withdrawn from the warehouse. The commercial invoice price is not the agreed upon price, and the price is not known until the merchandise is withdrawn from the warehouse. There is no sale for exportation to the United States upon which to base a transaction value. With respect to the use of deductive value, merchandise is appraised on the basis of the price at which it is sold in the United States in its condition as imported and in the greatest aggregate quantity either at or about the time of importation, or before the close of the 90th day after the date of importation. This price is subject to certain enumerated deductions. For any specific entry, the importer is not able to provide the price for merchandise when it is withdrawn and the price for the sales that take place in the greatest aggregate quantity. The merchandise cannot be appraised under the deductive value method. The imported merchandise should be appraised pursuant to section 402(f), value if other values cannot be determined. In this case, the commercial invoice price is acceptable under a section 402(f) appraisement.
**548236 dated Mar. 27, 2003.**

## sales to unrelated persons

With regard to the use of deductive value, if there are no sales to unrelated persons at the first commercial level after importation, then deductive value should be based on the unit price at which the greatest number of units is sold after importation at the first level at which sales to unrelated persons occur. Deductive value is not limited to the first sale after importation, but can be applied to any unrelated sale after importation, provided quantity levels are satisfied.
**545481 dated Sep. 14, 1994.**

## similar merchandise

Honeydew melons are imported from Mexico and appraised pursuant to deductive value using the price of similar merchandise at the greatest aggregate quantity. If merchandise is commercially interchangeable, (for example, the same USDA standard grade) then the merchandise is "similar" within the meaning of the statutory language regarding deductive value.
**544784 dated Aug. 10, 1992.**

The use of the unit price at which the merchandise concerned is sold in the greatest aggregate quantity in this case is acceptable. The importer has failed to produce evidence regarding a claim that the merchandise is of inferior quality and therefore, no adjustment is necessary. If the merchandise is commercially interchangeable, then the merchandise is "similar" to the imported merchandise and is acceptable in appraising merchandise pursuant to deductive value.
**544806 dated Aug. 10, 1992.**

## superdeductive value

19 U.S.C. 1401a(d) (2)(A)(iii); 19 CFR 152.105(c)(3); GATT Valuation Agreement, Article 5, paragraph 2

Superdeductive value (section 402(d)(2)(A)(iii)) is proper as a means of appraisement, so long as the cost of processing in the United States may be determined by sufficient information and if the time limitations are satisfied.
**542765 dated Apr. 20, 1982.**

Defective parts imported to be repaired and resold in the United States should be appraised under the superdeductive value method of appraisement, reasonably adjusted under section 402(f) of the TAA.
**543123 dated Dec. 20, 1983.**

In determining a superdeductive value, there shall be deducted from the United States resale price the value added by processing the merchandise after importation to the extent that the value is based on sufficient information relating to the cost of such processing.
**543769 dated Oct. 8, 1986.**

## transportation costs

19 U.S.C. 1401a(d)(3)(A)(ii) and (iii); 19 CFR 152.105(d)(2) and (3); GATT Valuation Agreement, Article 5, paragraph l(a)(ii) and (iii)

The proper amount to be deducted for appraisement purposes pursuant to deductive value is the actual costs of the transportation. An airway bill submitted in this case serves as sufficient evidence of the actual costs of transportation.
**544236 dated Oct. 31, 1988.**

In a deductive value appraisement, section 402(d)(3)(A)(iii) of the TAA provides for a deduction for usual costs associated with U.S. inland freight. Where the invoice is clear as to the usual costs associated with the U.S. inland freight, the appropriate deduction will be made. However, where invoices state identical costs figures, regardless of whether the merchandise is being shipped to the distributor or directly to the importer's warehouse, the usual costs are unclear. In such a case, sufficient evidence is not available to make the adjustment.
**544635 dated May 24, 1991.**

The Mexican grower shipped the melons on consignment and through a bill of lading to the United States. Before entering the United States, a Mexican customhouse broker cleared the shipment through Mexican Customs. Under the deductive value method, foreign inland freight may be deducted from the price for the subject merchandise imported from Mexico for which there was a through bill of lading. The customhouse charges, in contrast, are not general expenses subject to a deduction under the deductive value method.
**547826 dated Jan. 22, 2002.**

# DEFECTIVE MERCHANDISE

## INTRODUCTION

The Customs regulations provide the following with respect to damaged goods:

(a) Allowance in value. Merchandise which is subject to ad valorem or compound duties and found by the district director to be partially damaged at the time of importation shall be appraised in its condition as imported, with an allowance made in the value to the extent of the damage . . .
19 CFR 158.12(a)

See Statement of Administrative Action.

**Judicial Precedent:**

United States v. Menard, Inc., 16 Ct. Int'l Trade 410 (1992).

Invoices submitted to Customs relating to current shipments did not reflect a credit issued by the seller for previously imported, allegedly defective merchandise. The seller adjusted the price actually paid or payable to give the buyer credit on imported items that were claimed to be defective. The Court indicated that the importer "failed to exercise due care in determining the proper method of declaring the value of subject entries." The Court also rejected the importer's argument that it is entitled to a recoupment against Customs' claim for lost duties based upon the duties it overpaid on the imported, allegedly defective merchandise.

Samsung Electronics America, Inc., vs. United States, 904 F.Supp. 1403 (1995).

Samsung Korea sold televisions, stereos, and other electronic equipment to its related party, Samsung America. In addition to the purchase agreements, the parties entered into a Servicing Agent Agreement where Samsung Korea agreed to pay for any inspection, repair, refurbishing, or other customer requested services that Samsung America performed on the merchandise. Samsung America claimed that approximately 4.7 percent of the articles contained latent defects detected some time after importation. Samsung America then received compensation from Samsung Korea pursuant to its rights under the agreement. The Court held that Samsung was not entitled to a value allowance pursuant to 19 CFR 158.12. The Court indicated that when the merchandise arrived in the United States, Samsung received no less than that for which it had contracted, i.e., it did not contract only for defect-free merchandise. In addition, the Court found it inappropriate to grant relief in accordance with 19 U.S.C. 1401a(b)(3)(A)(i), which authorizes a deduction for post-importation costs incurred for construction, assembly, and maintenance of the imported merchandise. Samsung

America did not incur, and consequently could not identify, the alleged post-importation maintenance costs as part of the total payment made for the imported merchandise. The court concluded that Customs correctly determined the transaction value of the merchandise using the price that Samsung America paid, and that section 402(b)(3)(A)(i) of the TAA does not apply.

Samsung Electronics America, Inc., vs. United States, 106 F.3d 376 (Fed. Cir. 1997).

In this case, the appellate court held that the lower court misinterpreted the sales contracts for the Samsung electronic equipment by incorrectly concluding that Samsung had ordered both defect-free and defective merchandise. Rather, the agreements between the parties show that Samsung "ordered only perfect merchandise and contracted specifically to address the inevitability that, despite its order, 'occasionally' some of the merchandise delivered would contain latent manufacturing defects." The court held that duties are to be assessed on the value of the goods as imported, and the value added to the goods via repair in the U.S. is added subsequent to importation. The case was remanded for a determination of the allowance to be made in the value to the extent of the damage.

Samsung Electronics America, Inc., vs. United States, 35 F.Supp.2d 942 (Ct. Int'l Trade 1999), aff'd, 195 F.3d 1367 (Fed. Cir. 1999).

In the Court of Appeals' second review of this case, the court held that in order to qualify for an allowance in appraised value under 19 CFR 158.12(a), an importer must prove that a specific entry contained defective merchandise and what the allowance in appraised value should be for each entry. The Court of Appeals agreed with the Court of International Trade, finding that Samsung proved that some of the merchandise contained latent defects at the time of importation. However, the court held that Samsung failed to establish which of the subject entries contained merchandise with latent defects at the time of importation and what was their reduced value.

The court indicated that it was legally insufficient for an importer to show repair costs for a calendar year without connecting the repair costs to particular entries. Thus, the court concluded that Samsung did not prove that the repair costs were related with adequate specificity to particular entries as required by 19 CFR 158.12(a).

Fabil Mfg. Co. v. United States, 56 F. Supp. 2d 1183 (Ct. Int'l Trade 1999); rev'd by 56 F. Supp. 2d 1183 (Fed. Cir. 2001).

In this case, Fabil challenged Customs' refusal to grant an allowance in the appraised value of imported merchandise pursuant to 19 CFR 158.12(a), due to the fact that the merchandise was defective. The court determined that Fabil must provide clear and convincing evidence that the imported merchandise was partially damaged at the time of importation and that the allowance sought is commensurate to the diminution in value caused by the defect. The court could not determine whether the merchandise actually

contained a defect at the time of importation." In addition, the importer could not link the allegedly defective merchandise to entries of imported merchandise.

Saab Cars USA, Inc. v. United States, 276 F. Supp. 2d 1322 (Ct. Int'l Trade 2003), relief granted in part and denied in part, No. 04-3, slip op. (Ct. Int'l Trade Jan. 6, 2004).

Saab Cars USA, Inc. imports automobiles into the United States from the Swedish manufacturer Saab Automobile AB. SAAB protested Customs' liquidation of several entries of automobiles appraised at transaction value. Saab claimed that is should receive allowances for defective merchandise under 19 CFR 158.12 for automobiles with latent manufacturing defects repaired after entry under its warranty program. The Court found that it lacked jurisdiction for claims for automobiles that were repaired after the corresponding protest was filed. The Court denied motions for summary judgment, finding that factual questions remained regarding whether defects existed at the time of importation, and the amount of allowances tied to those defects.

The court reiterated its prior holding in Slip Op. 03-82, July 14, 2003, that it has no jurisdiction where the repairs were performed after the filing of the protests. On the expenses claimed under warranty, the court analyzed the case using the 3 part Samsung test. The court accepted that SAAB contracted for defect-free merchandise. However, SAAB was also required to present objective and verifiable evidence containing some semblance of specificity which would correlate the claimed defective merchandise to particular entries and prove the amount of the allowance for each entry. With a few exceptions, the computer records submitted by SAAB, while they relate the defective merchandise to particular entries though the use of Vehicle Identification Numbers (VINs), do not describe the defects with sufficient specificity. The printouts merely list the name of the vehicle part or component that was allegedly defective; and nothing indicates how the component was defective or what type of repair was performed. (The court gives an example of one claim for "upholstery" and indicates that this item represents the utter lack of specificity that "plagues" the entire spreadsheet. No one can figure out from this one word description whether the upholstery was defective at importation.) In fact, SAAB was able to retrieve more detailed records that it submitted for a few claims, but claimed it was prohibitively expensive to do so for all entries. The court indicated that the fact that to do so would be costly does not relieve SAAB of its legal obligation to prove its entitlement to an allowance by a preponderance of the evidence. Thus, except for a few claims, the Court denied SAAB's claims for allowances under 19 CFR 158.12 for repairs made under its warranty program. As to the class of expenses known as port repairs (which are done at the port of importation), the court held that SAAB was entitled to an allowance. Although the same type of evidence was offered, the court was not concerned as it was with the warranty claims, that the repairs may have been made to fix damage resulting from intervening circumstances. The fact that the repairs were made at the port almost immediately after importation was sufficient. The port repair expenses were a smaller part of the total claim.

Fabil Manufacturing Co. v. United States, 23 Ct. Int'l Trade 395 (1999), reversed and remanded, 237 F.3d 1335 (Fed. Cir. 2001).

This case is an appeal from the Court of International Trade's grant of summary judgment for the government by refusing to grant an allowance in the appraised value of imported merchandise claimed to be defective by the importer/appellant, Fabil Manufacturing. The importer/appellant purchased jackets bearing the Coca-Cola logo and imported them into the United States. The jackets were to be machine washable; however, subsequent to importation, Fabil discovered that when the jackets were washed, the logos "disintegrated and ruined the jackets", and that as a result of the defect, purchasers returned the jackets to Fabil. Essentially, the jackets were alleged to be completely worthless. The Court of International Trade, citing the authority to reduce the valuation of defective imported merchandise pursuant to 19 CFR 158.12, states that "section 158.12 requires the value for defects or damage to be associated with the entry appraised, so any refund on duty paid can be determined based on the specific entry at issue." In this case, Fabil claims that *all* the merchandise covered by the entries were defective. In these circumstances, the Court of Appeals for the Federal Circuit found on appeal that there appears to be no reason to require Fabil to tie the defective merchandise to any entry or group of entries. Therefore, the lower court's summary judgment was reversed, and the case was remanded to that court for further proceedings.

Volkswagen of America, Inc., v. United States, 4 F. Supp. 2d 1259 (Ct. Int'l Trade 1998), cross-mot. for summ. judgment denied, 277 F. Supp. 2d 1364 (Ct. Int'l Trade 2003).

Volkswagen of America (VW) is an importer of automobiles for subsequent resale in the United States. After importation, VW discovered that some automobiles were defective, and pursuant to various consumer warranties, VW repaired the defects and tracked the repairs by Vehicle Identification Numbers (VIN's). Computer records held by VW indicated the cost of repair for each warranty repair and reimbursement by the seller for warranty repairs. In citing to 19 CFR §158.12 that allows for an allowance in value for merchandise partially damaged at the time of importation, the Court rejected Customs argument that the port director has to discover defects at the time of importation in order for 19 CFR §158.12 to apply. That section applies to defects existing at the time of importation, regardless of whether the defects are discovered by the port director at the time of importation. The Court cites Samsung III, 35 F.Supp.2d 945-46, and sets forth three requirements for an importer to successfully claim an allowance pursuant to 19 CFR §158.12. First, the importer must show that it contracted for "defect-free" merchandise. Second, the defective merchandise must be linked to specific entries. Third, the importer must prove the amount of the allowance for each entry. In this case, VW has shown that it in fact contracted for "defect-free" merchandise. The warranty itself is evidence of an intent to provide defect-free merchandise. VW also provided evidence regarding descriptions of repairs to each vehicle, and connected each vehicle repaired to a specific entry through VIN's. Finally, VW has provided detailed repair records that indicate the costs for repairs. Through the VIN's, VW can tie the repair

costs to each entry. The Court denied both VW's and Customs' motions for summary judgment. Factual issues remain regarding whether defects existed at the time of importation and the amount of allowances linked to those defects, and provides the basis for new, relevant evidence to be produced by VW to meet the burden of proof at trial. In addition, the Court found it did not have jurisdiction over the automobiles that were repaired after the date VW filed its protests.

**Headquarters Rulings:**

## allowance in price

The importer and its related party manufacturer have agreed to a .75 percent discount that is given on every shipment to cover any defective merchandise. This discount is deducted from the FOB Hong Kong value of the merchandise and it is reflected on the commercial invoice. Because the price actually paid or payable reflects the discount, then this discount should be taken into account in determining the transaction value of the imported merchandise.
**544371 dated June 11, 1990.**

Ceiling fans are imported into the United States by the importer from various vendors and are accompanied by invoices that list an original and an adjusted price. The importer pays the adjusted price that is determined by a set percentage, labeled as a defective allowance and deducted from the original price. The method described is used by the vendors to reimburse the importer for damaged or defective goods in a current shipment. The figure ranges from 1 – 7 percent, depending on the vendor and its prior two-year history of shipping defective goods. The defective allowance is not part of the price actually paid or payable.
**544762 dated Jan. 17, 1992; 544841 dated Jan. 17, 1992.**

No allowance is made in the value of merchandise where it is claimed that the merchandise is defective but no evidence is presented to support that claim. Despite being asked by Customs for information regarding the claim that the merchandise was defective, the importer failed to do provide and documentation.
**544879 dated Apr. 3, 1992.**

An allowance can be made in the value of imported merchandise to the extent of the claimed damage if the import specialist determines at the time of importation that the merchandise was in fact defective.
**544973 dated Jan. 11, 1993.**

The importer received gloves from the foreign seller; those gloves were found to be defective. The seller was promptly notified of the defect in writing, and the seller acknowledged the defect and explained the cause. The importer was then compensated for the defect, thereby changing the price actually paid or payable. The

refund, together with the notice sent to the seller and the seller's written acknowledgment in return, suffices to permit an allowance in the value of the gloves.
**545231 dated Nov. 5, 1993.**

An importer of automobiles alleges that vehicles staged at the dock in Japan for shipment to the United States were exposed to an acid rain shower and were damaged. By authority of 19 CFR 158.12(a), the vehicles that were defective at the time of importation are entitled to an allowance in their value to the extent of the damage. With regard to vehicles that are repaired, an allowance in the value of the vehicles may be made equal to the repair costs in instances where Customs is satisfied that the repairs were made on account of acid rain damage and reasonable and well-documented repair costs are presented to Customs.
**545192 dated Jan. 4, 1995.**

Insufficient evidence has been submitted for corroborating the importer's claim that the imported dresses were defective at the time of importation. Although the importer has submitted some evidence pertaining to the price at which it intended to sell the imported merchandise and the price at which it was eventually sold, this evidence is insufficient to establish that the merchandise was defective at the time of importation. A lower resale price than that which was originally anticipated could result from a variety of factors. Consequently, no adjustment in the appraised value is warranted.
**545658 dated Feb. 3, 1995.**

The importer purchased shorts from various foreign sellers. Subsequent to importation and sale in the United States, customers of the retailer began returning the shorts with complaints that the zippers were defective. Some of the shorts were repaired and invoices documented the actual repair costs. The importer agreed to pay the retailers a certain sum for the retailer's costs of recalling and returning the merchandise, lost profits, and lost customer goodwill. An allowance in the value of the repaired imported shorts may be made equal to the demonstrated repair costs. Allowances based on the resale price of the shorts less the buyer's expenses, the sale allowance paid by the buyer to the retailer, or the difference between the original sale price and the resale price of the merchandise are impermissible. Such allowances can not be made where the buyer fails to prove that the resale prices—allowances and expenses must have a direct correlation to the extent of the damage.
**545534 dated May 15, 1995.**

The imported merchandise was appraised based upon the price specified in the contract on the pro-forma invoice submitted at the time of entry. However, the importer claims than an allowance should be given because the imported product did not meet the specifications of the contract and, consequently, the seller reduced the price. Based upon the evidence submitted, Customs is satisfied that the merchandise was imported in a defective condition and that an allowance should be made in this case.
**545959 dated Apr. 22, 1996.**

The importer purchased wearing apparel from a related party seller and then sold the merchandise to its U.S. customer. The U.S. customer returned the merchandise to the importer and claimed that the garments were defective. The importer then sold a portion of the merchandise to other retailers at a lesser value than anticipated. Insufficient evidence was presented to demonstrate any correlation between the claimed value allowance and the extent of the damage. In addition, insufficient evidence was presented to show that the price actually paid or payable by the importer was lowered due to the defects or that the amounts the importer indicated in its charge back statement reflected the extent of the damage or defect. No allowance for the claimed defective merchandise is warranted.
**546150 dated July 11, 1996.**

The importer purchased yarn from a foreign seller and then resold the yarn to a company in the United States. During the dying process, it is alleged that the yarn would not dye properly because it was contaminated with polypropylene and vegetable matter. The foreign seller was notified and the importer received a credit to cover the cost of removing the contaminants. The importer has not provided sufficient, independent evidence that corroborates the claim that the yarn was defective at the time of importation. An analysis of the yarn by a Customs laboratory indicates that the sample was composed wholly of wool fibers, and that the yarn was not contaminated or defective. There is insufficient evidence to support a finding that the imported merchandise was partially damaged at the time of importation; therefore, no adjustment in the appraised value is warranted.
**546354 dated July 19, 1996.**

There is insufficient evidence available to substantiate the importer's claim that the imported merchandise was defective when imported or to indicate that the merchandise was of a lesser quality than that which was ordered. Regarding the alleged defect, there is no evidence of communications between the importer and its supplier or between the importer and its customers. The price reduction is not considered in determining transaction value.
**546311 dated Sep. 19, 1996.**

Imported merchandise, which is of a lesser quality than ordered and paid for, should be granted a defective merchandise allowance and appraised at a lower value. However, adjustments can only be made where there is clear and convincing evidence to establish that the merchandise was defective at the time of importation. Insufficient evidence has been submitted to demonstrate that the merchandise was imported in a defective condition and that there was any correlation between the claimed value allowance and the extent of the alleged damage. No allowance for the claimed defective merchandise is warranted.
**546661 dated Oct. 7, 1998.**

Sufficient evidence was provided to establish that the merchandise was defective at the time of importation and that an adjustment of the price occurred between the buyer and foreign seller for the defective merchandise. Thus, the imported merchandise is appraised pursuant to the transaction value with an allowance granted pursuant to 19 CFR 158.12 in the amount of the price adjustment.
**547062 dated May 7, 1999.**

Sufficient evidence was submitted to substantiate that the merchandise was damaged at the time of importation and should be appraised in its lesser condition as imported. The actual repair costs were, in fact, a measure of the extent of the damage to the merchandise. Therefore, an allowance in appraised value of the subject merchandise may be equal to no more than the amount of the actual repair costs. No allowance should be made for the expenses for overseeing and examining the repair work, transportation involved in the repair work, and the expense of the warehouse facility. Those costs are not the actual costs of the repair work and should not be included in the calculation of the allowance because those expenses do not have a direct correlation to the extent of the damage.
**547042 dated June 17, 1999.**

The information provided was insufficient to establish that the imported merchandise was defective, in that it didn't show a value allowance that correlated to the claimed defective nature of the imported merchandise. Therefore, an allowance pursuant to 19 CFR 158.12 for the merchandise is not warranted.
**546761 dated Sep. 23, 1999.**

The defective allowances paid to the importer by the manufacturer are rebates.
Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of the importation of merchandise into the United States shall be disregarded in determining the transaction value. Additionally, the port will not award a defective merchandise allowance when the allowance sought is an estimate that is not tied to specific entries and where the importer can not demonstrate a link in diminution in value due to defects in specific merchandise to particular entries.
**548093 dated Apr. 26, 2002; aff'd by 548184 dated Nov. 5, 2002.**

## defective parts returned to the U.S.

Defective parts imported to for repair and resold in the United States should be appraised using the superdeductive value method of appraisement, reasonably adjusted under section 402(f).
**543123 dated Dec. 20, 1983.**

Defective parts returned to the United States for replacement are not considered "sold" for exportation to the United States, and transaction value is eliminated as a means of appraisement.
**543288 dated Nov. 26, 1984.**

The importer purchased and imported parts that were manufactured abroad. The parts were then exported out of the United States to a foreign subsidiary. Subsequently, some of the parts would break, thereby necessitating their return to the United States. When merchandise is returned to the United States, adjustments to the original purchase price in accordance with generally accepted accounting principles are made in order to properly appraise the merchandise.
**543637 dated Dec. 2, 1985.**

A U.S. company imports merchandise from a related party in Canada for repair at the importer's U.S. facility. There is no sale between the parties, nor are there any sales of identical or similar merchandise available on which to base a transaction value. The importer does not resell the merchandise in the United States, thereby eliminating deductive value as a means of appraisement. There is insufficient information available to appraise the merchandise pursuant to the computed value method. The merchandise is properly appraised pursuant to section 402(f) at seventy percent of the standard cost of new equipment. This is the inventory value of the goods in the Canadian company's accounting records.
**544377 dated Sep. 1, 1989.**

## defective merchandise imported

19 CFR 158.12(a)

The claim that merchandise purchased and appraised at a certain level of quality is in fact of a lesser quality than that which was ordered must be supported by clear, concise, and convincing evidence.
**543106 dated June 29, 1983.**

Where it is discovered subsequent to importation that the merchandise being appraised is defective, allowances will be made. However, the importer has failed to establish by satisfactory evidence that the merchandise was imported in a damaged condition. Therefore, no adjustment may be made in this case.
**543091 dated Sep. 29, 1983.**

Defective parts imported into the United States for repair and later resold in the United States should be appraised under the superdeductive value method of appraisement, reasonably adjusted under section 402(f) of the TAA.
**543123 dated Dec. 20, 1983.**

The importer submitted sufficient evidence for Customs to conclude that aircraft components, in their condition as imported, were defective. Where it is discovered

subsequent to importation that the merchandise being appraised is defective, allowances will be made. In this case, the dutiable value should be represented by the manufacturer's statement of the "realistic scrap value" of the merchandise.
**543240 dated Aug. 10, 1984.**

The importer returned certain defective equipment to the manufacturer and, in return, the manufacturer provided a refund to the importer. Under the circumstances in this case, an allowance is made for the defective merchandise that is returned.
**543537 dated Feb. 14, 1986**.

The importer purchased blouses from a foreign seller. Upon importation, the blouses were shipped to the retailer's individual stores. After the retailer began to sell the blouses, it was discovered that there were deficiencies in the stitching of the blouses. The retailer returned the unsold merchandise to the importer and cancelled the balance of its purchase orders. Upon being made aware of the defective blouses, the importer refused delivery of additional shipments of the merchandise. The importer later sold all the blouses for which it had accepted delivery on an off-price basis. The importer has been unable to negotiate a settlement with the foreign seller. There is insufficient evidence from which the Customs can determine that the imported merchandise was partially damaged at the time of importation. The importer must provide clear and convincing evidence to support a claim that merchandise purchased and appraised as a certain quality was in fact of a lesser quality, thus warranting an allowance in duties. The remedies available under 19 CFR 158.11 and 19 CFR 158.12 are not applicable. The importer is not entitled to an adjustment in appraised value of the blouses.
**544986 dated Mar. 21, 1994.**

The importer failed to provide sufficient evidence that the imported merchandise was of a lesser quality than that ordered. The importer is not entitled to an allowance in the appraised value of the imported merchandise.
**545613 dated May 31, 1994.**

The information provided was insufficient to establish that the imported merchandise was defective because it failed to demonstrate that the allowance sought correlated to the claimed defective nature of the imported merchandise. Therefore, an allowance pursuant to 19 CFR 158.12 for the merchandise is not warranted.
**546761 dated Sep. 23, 1999.**

The importer claimed that the jackets were defective after discovering that they were not water-resistant at the time of importation. The importer failed to present purchase orders or invoices attesting to the fact that water-resistant jackets were ordered, nor is there objective evidence from an unbiased source that the jackets were defective at the time they were imported to the U.S. There is insufficient evidence to support a finding that jackets were defective at the time of importation. Accordingly, the importer is not entitled to an adjustment in the appraised value of the imported merchandise.
**547060 dated Mar. 8, 2000.**

## in-transit damage to imported goods

Merchandise dutiable under transaction value does not include the value of repairs for in-transit damage that occurred in a third country and which merely restores the merchandise to its original condition, even if replacement parts were needed. However, the addition of parts to merchandise while in a third country when that addition enhances the value of the merchandise may be sufficient to make the third country the country of exportation, and rendering transaction value inapplicable.
**542516 dated Oct. 7, 1981 (TAA No. 39); modified by 543737 dated July 21, 1986.**

## price renegotiation

The Statement of Administrative Action provides that where it is discovered subsequent to importation that the merchandise being appraised is defective, an allowance will be made. If the defect is discovered within the statutory protest period, and the protesting party submits evidence that the price was lowered due to a defect, an allowance should be taken into account.
**543061 dated May 4, 1983.**

Merchandise that does not meet contractual terms requiring visas for entry will not be considered as "defective goods." A post-importation price reduction is not considered in determining the price under transaction value.
**543609 dated Oct. 7, 1985.**

As a result of late delivery of imported merchandise, the importer receives a ten percent decrease in the purchase price. This refund is disregarded in determining transaction value because the rebate is effected after the date of importation of the merchandise.
**543537 dated Feb. 14, 1986.**

## subsequently imported merchandise discounted

The importer received a credit on future shipments of merchandise in settlement of a claim for previously imported merchandise that was defective and/or second quality. The markdown represents an indirect payment and it is properly part of the price actually paid or payable for the subsequent shipment when determining the transaction value of the imported merchandise.
**543772 dated July 11, 1986.**

Reductions in price for current shipments in satisfaction of a debt owed the buyer by the seller resulting from the previous shipment of defective goods constitute indirect payments and are properly part of the price actually paid or payable of the current shipments in determining transaction value.
**543766 dated Sep. 30, 1986; 543830 dated Nov. 7, 1986.**

The importer is owed a credit as a result of defects in a prior shipment and this credit is applied against a later shipment. Although it was not intended at the time that the initial shipment was imported that a part of its purchase price would be applied to other goods, the overpayment on the initial shipment is an indirect payment for part of the later shipment.
**543830 dated Nov. 7, 1986.**

## warranty provisions

The consideration paid for imported merchandise, i.e., the price actually paid or payable, includes all charges paid for any warranty that is a guarantee that the merchandise will be free from any defects. The warranty attaches to and is an integral part of the imported merchandise and the payments made for this warranty are part of the consideration paid for the merchandise. The charge at issue is properly part of the price actually paid or payable for the merchandise.
**542699 dated Mar. 10, 1982.**

An article imported under warranty and subsequently found to be defective by the importer is exported for repairs and later re-imported. The duty is assessed upon the value of the repairs or alterations. It is irrelevant that the article is under warranty and that the repairs have been performed at no cost to the importer.
**543142 dated May 7, 1984; 543180 dated July 17, 1984.**

Defective watches are returned to the U.S. importer for repair. The defective watches are then exported from the United States to the importer's related party in the Philippines for repair and return. The watches are then repaired and re-sold back to the importer at prices that cover the cost of repairs plus a mark-up. Under these circumstances, the defective watches acquired by the importer and sent to the related party for repair are considered assists. The value attributed to the defective watches in this case is equal to the costs incurred in transporting the watches to the related party's plant.
**544241 dated Jan. 12, 1989.**

The importer sells imported merchandise to U.S. consumers and guarantees the quality of the merchandise by means of a warranty. Initial returns of defective merchandise are repaired by the importer and resold as second quality merchandise. The importer also contracts with unrelated service centers to repair defective merchandise. These service centers invoice the importer for the total cost of repair. The amount for the warranty is included in the total payment transferred from the importer to the foreign seller in exchange for the imported merchandise. It is properly part of the price actually paid or payable and dutiable pursuant to transaction value.
**544394 dated Oct. 9, 1990; 544368 dated Oct. 9, 1990; 544370 dated Oct. 9, 1990; 544574 dated Nov. 14, 1990.**

# DIRECT COSTS OF PROCESSING

## INTRODUCTION

19 CFR 10.178- Direct costs of processing operations performed in the beneficiary developing country.
(a) Items included in the direct costs of processing operations. As used in [section] 10.176, the words "direct costs of processing operations" means those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to: (1) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel; (2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise; (3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and (4) Costs of inspecting and testing the specific merchandise.
(b) Items not included in the direct costs of processing operations. Those items which are not included within the meaning of the words "direct costs of processing operations" are those which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing the product. These include, but are not limited to: (1) Profit; and (2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

**Headquarters Rulings:**

### direct costs of processing operations

19 CFR 10.178

If costs for certain research and development necessary for the production of imported merchandise are not included in the appraised value of imported merchandise, then such costs would not be included in the "direct costs of processing operations" for purposes of GSP.
**T.D. 81-282 dated Oct. 16, 1981.**

A royalty fee paid in exchange for engineering and design information constitutes a cost that will be directly incurred in the production of the merchandise under consideration. Therefore, inasmuch as the price will encompass all production costs, including the royalty payment, then the royalty payment is deemed to be part of the direct costs of processing operations.
**543155 dated Dec. 13, 1983.**

Interest on a loan is considered to be a general expense under computed value. Because general expenses are not considered to be direct costs of processing pursuant to 19 CFR 10.178, the interest expense in question in this case may not be included in computing the thirty-five percent requirement for GSP eligibility.
**543159 dated May 7, 1984.**

Freight and handling costs are not costs incurred in the production of the imported merchandise and, therefore, may not be included as part of the direct costs of processing operations. However, such costs may be included in the cost of materials produced in the beneficiary developing country to the extent provided for in section 10.177(c)(1)(ii) of the Customs regulations. In addition, costs incurred for "fuel and other materials" and "electricity" may be included in the direct costs of processing operations only to the extent that they are allocable to the specific merchandise and are related to the production of the merchandise.
**543538 dated July 31, 1985.**

# DISCOUNTS

## INTRODUCTION

The following section in the Customs regulations provides guidance with respect to discounts:

Price actually paid or payable- (1) General. In determining the transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations . . . .
(emphasis added)
19 CFR 152.103(a)(1)

The regulations further cite an example which is relevant: Example 5. A seller offers merchandise at $100, less a two percent discount for cash. A buyer remits $98 cash, taking advantage of the cash discount.
The transaction value is $98, the price actually paid or payable.
19 CFR 152.103(a)(1), Example 5.

Additionally, the Statement of Administrative Action states the following:

Changes in a price actually paid or payable which are arrived at subsequent to the time of importation shall not be taken into account in determining a transaction value. This would apply to renegotiation, deferred quantity discounts, or rebates. (emphasis added)

**GATT Valuation Agreement:**

CCC Technical Committee Advisory Opinions 5.1, 5.2 and 5.3 regarding Cash Discounts state the following:

Advisory Opinion 5.1
1. When, prior to the valuation of imported goods, a buyer has availed himself of a cash discount offered by the seller, should that cash discount be allowed in determining the transaction value of the goods?
2. The Technical Committee on Customs Valuation expressed the following view:
Since the transaction value under Article 1 of the Valuation Agreement is the price actually paid or payable for the imported goods, the cash discount should be allowed in determining the transaction value.

Advisory Opinion 5.2
1. When a cash discount offered by the seller is available but payment for the goods has not yet been made at the time of valuation, would the requirement of Article 1.1(b)

of the Agreement [condition or consideration for which a value cannot be determined] preclude using the sale price as a basis for the transaction value?
2. The Technical Committee on Customs Valuation expressed the following view:

The fact that a cash discount, although available, has not been availed of because payment has not yet been made at the time of valuation, does not mean that the provisions of Article 1.1(b) apply; there is, thus, nothing that precludes using the sale price in establishing transaction value under the Agreement.

Advisory Opinion 5.3
1. When a cash discount is available to the buyer but payment has not been made at the time of valuation what amount should be accepted as a basis for transaction value under Article 1 of the Agreement?
2. The Technical Committee on Customs Valuation expressed the following view:
When a cash discount is available but payment has not yet been made at the time of valuation, the amount the importer is to pay for the goods should be taken as the basis for transaction value under Article 1. Procedures for determining what is to be paid may vary; for example, a statement on the invoice might be accepted as sufficient evidence or a declaration by the importer as to the amount he is to pay could be the basis for action, subject to verification and to possible application of Articles 13 and 17 of the Agreement.

Advisory Opinion 15.1 deals with Quantity Discounts and states the following:

1. Quantity discounts are deductions from the price of goods allowed by the seller to customers according to the quantities purchased over a given basic period.
2. The GATT Valuation Agreement makes no reference to a standard quantity which would need to be taken into consideration when deciding whether the price actually paid or payable for the imported goods is a valid basis for the determination of the Customs value under Article 1.
3. It therefore follows that for Customs valuation purposes it is the quantity which has determined the unit price of the goods being valued when they were sold for export to the country of importation that is relevant. Thus quantity discounts arise only when it is shown that a seller sets the price for his goods according to a fixed scheme based upon the quantity of the goods sold. Such discounts fall into two broad categories:
(1) those established prior to the importation of goods, and
(2) those established subsequent to the importation of
goods.
4**.** These considerations are illustrated by the following examples.
<u>General facts</u>
5. There is demonstrated evidence that the seller offers the following quantity discounts on the goods purchased within a given specified period e.g. a calendar year. 1 to 9 units - no discount; 10 to 49 units - 5% discount; over 50 units - 8% discount. In addition to the above discounts a further discount of 3% is granted at the end of a specified period calculated retrospectively by reference to the total quantity purchased in that period.
<u>Example 1</u>

6. First situation: Importer B in country X purchases and imports 27 units in a single shipment. The invoice price reflects a 5% discount.
7. Second situation: Importer C in country X purchases 27 units in a single transaction at a price which reflects a 5% discount but imports them in 3 separate shipments each comprising 9 units.

Valuation treatment
8. In both situations, the Customs value is to be determined on the basis of the price actually paid or payable for the imported goods, i.e., those prices reflecting a 5% discount which contributed to the setting of those prices.
Example 2
9. Subsequent to the purchase and importation of the 27 units, importers B and C purchase and import within the same calendar year a further 42 units (i.e., a total of 69 units each). The price charged to both B and C for the second purchase of 42 reflects an 8% discount.
10. First situation: Importer B's first purchase of 27 units and the second purchase of 42 units are the subject of two separate contracts which are entered into in the context of an initial general agreement which provides for the cumulative progressive discounts between the buyer and seller.
11. Second situation: The position is as in the first situation above except that importer C's purchases are not the subject of an initial agreement. The cumulative progressive discounts are however offered by the seller as a feature of his general terms of sale.
Valuation treatment
12. With respect to both situations the 8% discount on the 42 units is a feature of the seller's price; it contributed to the setting of the unit price of the goods when they were sold for export to the country of importation. It therefore follows that it should be allowed in determining the customs value of those goods.
13. In this respect the fact that the quantity discount is granted by the seller taking into account quantities purchased previously by the buyer does not means that the provisions of Article 1.1(b) apply [condition or consideration for which a value cannot be determined].
Example 3:
14. In this example, the position is as in example 2 above except that the discounts are also granted retrospectively. In each case the importer purchases and imports 27 units and a further 42 units within the same calendar year.
15. For the first shipment of 27 units B is charged a price which reflects a 5% discount and for the second shipment of 42 units, the price charged reflects an 8% discount with an additional reduction representing a further discount of 3% on the first shipment of 27 units.
Valuation treatment
16. The 8% discount on the 42 units should be allowed in determining the Customs value of the imported goods. However, the additional 3% discount granted retrospectively should not be allowed for the second importation as it did not contribute to the setting of the unit price of 42 units being valued but relates to the previously imported 27 units. As to the treatment to be accorded by Customs to the 27 units, guidance is already provided in advisory opinion 8.1 on credits in respect of earlier

transactions [see, chapter on INDIRECT PAYMENTS, infra.] and commentary 4.1 on price review clauses [see, chapter on FORMULAS IN DETERMINING THE PRICE ACTUALLY PAID OR PAYABLE, infra.]

Example 4

17. After all importations during the specified period have been completed, an accounting is taken. On the basis of the total quantity which had been imported during the period, the importer qualifies for an additional 3% discount.

Valuation treatment

18. The discount of 3% granted retrospectively cannot be taken into account for the reasons set out in paragraph 16. However, it should be noted that the Committee has already provided guidance in advisory opinion 8.1 on credits in respect of earlier transactions and commentary 4.1 on price review clauses.

**Headquarters Rulings:**

## early payment discount

The importer and manufacturer have agreed, prior to exportation of the merchandise, that an early payment discount will be applied if payments are made prior to the date payment is required under a purchase order. Where it is established that such a discount is agreed upon to prior to exportation, and the price actually paid or payable reflects the discount, then the discount is taken into account in determining transaction value.

**544791 dated Mar. 11, 1992.**

A discounted price must be agreed upom and effected prior to importation in order for the discounted price to constitute the price actually paid or payable. The importer did not submit evidence indicating that it took advantage of a two percent A45 day discount" that the importer alleges was agreed to by the seller. Because no evidence of the discount was presented, it is not considered in the determination of transaction value.

**546037 dated Jan. 31, 1996.**

## price actually paid or payable

19 CFR 152.103 (a) (1)

A discount will be considered in determining transaction value as long as the discount is actually taken so as to reduce the net amount "actually" paid or payable for the merchandise when sold for export to the United States.

**542559 dated Aug. 18, 1981.**

Where a seller discounts its price for certain merchandise to a buyer, and the discount is agreed to and effected prior to importation of the merchandise, the discounted price clearly constitutes the price actually paid or payable for the merchandise.

**543302 dated Nov. 1, 1984.**

As a result of late delivery of imported merchandise, the importer receives a ten percent discount or decrease in the purchase price. This refund is disregarded in determining transaction value because the rebate is effected after the date of importation of the merchandise.
**543537 dated Feb. 14, 1986.**

The importer and its related party manufacturer have agreed to a .75 percent discount that is given on every shipment to cover any defective merchandise. This discount is deducted from the FOB Hong Kong value of the merchandise and is reflected on the commercial invoice. Because the price actually paid or payable reflects the discount, this discount should be taken into account in determining the transaction value of the imported merchandise.
**544371 dated June 11, 1990.**

A U.S. company solicits orders in the United States for printing paper. The company's role is that of a sales agent for the sellers. The sellers offer a range of discounted prices from the list prices, which are known as market, grade, quantity and merchant discounts. The discounts are either conditional or unconditional. A discount is unconditional when there are no specified purchasing obligations placed on the customer. A conditional discount is monitored for performance compliance where a customer is to fulfill specified purchasing obligations. Market, merchant and grade discounts are unconditional, and quantity discounts are conditional. The unconditional discounts are figured into the value declared at entry and are reflected on the invoices presented to Customs. In cases where a conditional discount is granted at the time of order placement because the order meets the size required for a quantity discount, no amount is rebated and the discount is figured into the declared value at the time of entry and is reflected on the invoice presented to Customs. However, there are situations with regard to the conditional discounts where the discounts are credited to the customer's account at the end of the obligatory period. In such cases, the discount is not reflected in the entered value because it is not credited to the customer's account until after the time of entry. With respect to both the unconditional and conditional discounts that are indicated on the invoice at the time of entry when no amount is rebated, these discounts are taken into consideration in determining transaction value. In those instances where the customer has not yet fulfilled the specified purchasing obligation at the time of entry, the conditional discounts are not taken into consideration in determining transaction value.
**545659 dated Oct. 25, 1995.**

An importer receives a five percent discount from its supplier of costume jewelry. The supplier has agreed to the discount because the importer is remodeling its retail stores, and the supplier is contributing to the remodeling in hopes that the stores will attract more customers and boost sales. The discount is unconditional and is not taken in satisfaction of a debt owed by the seller. In addition, the discount is agreed to and is in effect prior to the importation of the merchandise. The five percent discount is not

included in the price actually paid or payable for the imported merchandise if it is reflected on the invoice presented to Customs at the time of importation.
**547144 dated Nov. 20, 1998.**

## quantity discounts

See Statement of Administrative Action; GATT Valuation Agreement, CCC Technical Committee Advisory Opinion 15.1.

The importer receives a quantity discount, i.e., the inclusion of an additional piece of merchandise when a specific number of items have been purchased (one extra with the purchase of ten). The price actually paid or payable is based upon the entire shipment and not upon the value of each individual article. The quantity discount is disregarded in determining transaction value.
**542741 dated Mar. 30, 1982.**

A retroactive volume discount received after the importation of the merchandise is not considered in determining the transaction value of the imported merchandise.
**543662 dated Jan. 7, 1986.**

The unit purchase price of merchandise is determined by a schedule in the contract, which provides for a price reduction as the quantity purchased increases. The contract specifically provides for a purchase price adjustment if the minimum number of items is not purchased. The buyer's payment to the seller represents the price actually paid or payable.
**544205 dated Dec. 12, 1988.**

Prior to the importation of the merchandise, the importer and the foreign vendor/seller agree to a volume discount program wherein the seller discounts its price for certain merchandise. The discount is agreed to and effected prior to the importation of the merchandise. The discounted price constitutes the price actually paid or payable for the imported merchandise.
**547210 dated Mar. 25, 1999.**

## renegotiation of price

The buyer and seller agree that merchandise is to be exported on a specified date. The merchandise is shipped subsequent to that date and the importer refuses to pay for the goods at the negotiated price. Rather than cancel the contract, the parties agree to a reduction in price. The price actually paid or payable in this case is represented by the original contract price. These prices were in effect when the merchandise was sold for exportation. Nothing in the original agreement between the parties allowed for a price reduction due to the seller's late delivery. The price was not reduced prior to exportation and the discount is disregarded in determining transaction value.
**544628 dated Mar. 11, 1992.**

Cigarettes are imported into the United States. The importer submits an invoice to Customs that indicates a $320 per case price and a $319 per case discount. The importer alleges that the cigarettes should be appraised at $1 per case. The reduction in price represents a credit to the importer for a previous shipment involving slow-moving goods. The reduction in price is not to be considered in determining the price actually paid or payable for the current shipment. This claimed reduction in price represents satisfaction of a debt owed the buyer by the seller resulting from the previous shipment and constitutes an indirect payment which is part of the price actually paid or payable.
**546132 dated Apr. 10, 1996.**

The renegotiated invoice price, accounting for both late delivery and a faster, more costly means of transportation, appropriately represents the transaction value. The terms of sale changed from FOB Port of Origin to C&F Port of Destination, so that the invoice price took into consideration the price reductions as negotiated by the buyer and the seller prior to shipment.
**547178 dated Jan. 13, 1999.**

# DUTIABLE VALUE

## INTRODUCTION

**Headquarters Rulings:**

### appraised value versus dutiable value

Appraised value has a meaning that is distinct from the meaning of dutiable value. Appraised value means the final determination by Customs, pursuant to section 402 of the TAA, as to the full value of the imported merchandise. Dutiable value refers to that portion, if any, of the appraised value of the imported article upon which duty is actually assessed.
**542095 dated June 24, 1980; 543319 dated Jan. 17, 1985; 544198 dated Aug. 29, 1988.**

Where a rate of duty is regulated by the value of imported merchandise, the term "value" refers to the appraised value of the merchandise, determined in accordance with section 402 of the TAA. Accordingly, the value of U.S. origin containers classified in subheading 9801.00.10, HTSUS, is part of the appraised value of the imported merchandise. The term "value" in subheading 9902.7113, HTSUS, refers to the appraised value of the imported merchandise.
**545224 dated Sep. 19, 1994; modified by 546043 dated Nov. 30, 1995, Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995.**

# DUTIES AND TAXES

## INTRODUCTION

19 U.S.C. 1401a(b) (3) (B) states the following:

The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1) . . . (B) The customs duties and other Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.

Similarly, in determining deductive value, the TAA states:

The price . . . shall be reduced by an amount equal to - . . . the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.
19 U.S.C. 1401a(d) (3) (A) (iv)

The corresponding regulations with respect to the above-cited provisions regarding duties and taxes are 19 CFR 152.103(i)(2) and 19 CFR 152.105(d)(4), respectively.

**GATT Valuation Agreement:**

Interpretative Notes, Note to Article 1, Price actually paid or payable, in relevant part states:

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods: . . . duties and taxes of the country of importation.

Regarding a deductive value appraisement, Article 5, paragraph (1)(a)(iv), allows for a deduction from the price for:

. . . the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

CCC Technical Committee Advisory Opinion 3.1 states:

1. When the price paid or payable includes an amount for the duties and taxes of the country of importation, should these duties and taxes be deducted in those instances

where they are not shown separately on the invoice and where the importer has not otherwise claimed a deduction in this respect?
2. The Technical Committee on Customs Valuation expressed the following view:

Since the duties and taxes of the country of importation are by their nature distinguishable from the price actually paid or payable, they do not form part of the Customs value.

In addition, with regard to the treatment of anti-dumping and countervailing duties when applying the deductive method of valuation, CCC Technical Committee Advisory Opinion 9.1 states:

1. When imported goods which are subject to anti-dumping or countervailing duties fall to be valued by the deductive method under Article 5 of the Agreement, should those duties be deducted from the selling price in the country of importation?
2. The Technical Committee on Customs valuation expressed the following view:
In the determination of Customs value under the deductive method, anti-dumping and countervailing duties should be deducted under Article 5.1(a)(iv) as Customs duties and other national taxes.

**Judicial Precedent:**

Century Importers, Inc., v. United States, 22 Ct. Int'l Trade 821 (1998).

The issue before the Court of International Trade was whether the importer had established that a deduction from the invoice price should have been made for the amount of duties paid in determining the transaction value of the imported merchandise. Century Importer, a subsidiary of the buyer, Miller Brewing Company, imported beer from a related seller, Molson Brewing Company. At the time of the importations, the normal duty rates were replaced by a fifty percent rate of duty. Century paid the duties and was later reimbursed by Molson, subsequent to importation. Customs appraised the beer using transaction value based on the invoice price because there was no evidence that the invoice price included the applicable duties. The CIT held in favor of Century deciding that the claimed deduction for the applicable duties was in fact warranted. The court concluded that there was an error in the preparation of the entry papers so that the duty-paid nature of the transaction was not indicated at the time of entry. The court indicated that there is nothing in the statutes or regulations that indicates that the failure to identify the "duty paid" status of a sale at the time of entry is an error which may never be corrected. In addition, a repayment of identified duties is not a "rebate of price" within the meaning of 19 U.S.C. 1401a(b)(4) which excludes rebates or other price reductions in the determination of transaction value.

Century Importers, Inc., v. United States, 205 F.3d 1308 (Fed. Cir. 2000), vacating and rev'g 22 Ct. Int'l Trade 821 (1998).

The Court in this case reversed the decision of the Court of International Trade in holding that Customs should have allowed a deduction for duties paid by the importer and subsequently reimbursed by the seller, after importation. Century Importer, a subsidiary of the buyer, Miller Brewing Company, imported beer from a related seller, Molson Brewing Company. At the time of importation, the normal duty rates were replaced by a 50 percent rate of duty. Century paid the duties and was later reimbursed by Molson, subsequent to importation. Century claimed that in calculating the duties on the imported beer, Customs should have deducted the reimbursed duties from the invoice price. The Court applied the relevant statutory formula, 19 USC 1401a(b)(3) that excludes customs duties from the transaction value if identified separately to Customs. The record indicates that the parties did not identify these duties separately, and therefore, Customs has no authorization to deduct these duties from the price calculation. The Court further stated that because Molson reimbursed the duties after the date of importation, that the post-importation action was in fact a rebate that, pursuant to §1401a(b)(4)(B), is disregarded in the determination of transaction value.

## Headquarters Rulings:

### appraised value

Where a rate of duty is regulated by the value of imported merchandise, the term "value" refers to the appraised value of the merchandise determined in accordance with section 402 of the TAA. Accordingly, the value of U.S. origin containers that are classified in subheading 9801.00.10, HTSUS, is part of the appraised value of the imported merchandise. The term "value" in subheading 9902.7113, HTSUS, refers to the appraised value of the imported merchandise.
**545224 dated Sep. 19, 1994; modified by 546043 dated Nov. 30, 1995, Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995.**

### currently payable

19 U.S.C. 1401a(d) (3) (A) (iv); 19 CFR 152.105(d) (4); GATT Valuation Agreement, Article 5, paragraph I(a)(iv); See Figure Flattery, Inc. v. United States, 720 F. Supp. 1008 (1989), aff'd 907 F.2d 141 (1990), cited in chapter on DEDUCTIVE VALUE, supra.

In determining the duties that are to be paid under a deductive value appraisement where there is entitlement to the partial exemption for U.S. components, "customs duties . . . currently payable on the merchandise concerned by reason of its importation" are arrived at after the cost or value of the U.S. components has been deducted.
**542439 dated June 12, 1981; aff=d by Figure Flattery, id.**

### deduction from transaction value

19 U.S.C. 1401a(b)(3)(B); 19 CFR 152.103(i)(2); GATT Valuation Agreement, Interpretative Notes, Note to Article 1, Price actually paid or payable; CCC Technical Committee Advisory Opinion 3.1

The proper amount of Customs duties to be deducted from the total price actually paid or payable, where an invoice indicates that a specified dollar amount has been included for such duties, is the amount "currently payable on the imported merchandise by reason of its importation."
**542524 dated July 15, 1981 (TAA No. 34).**

A Puerto Rican excise tax paid by the seller and included in the invoice price is not a deductible charge under transaction value.
**542512 dated July 21, 1981 (TAA No. 36).**

The duty that is to be deducted from a C.I.F. duty-paid price is the actual duty due on the transaction. The excess estimated duty is an additional payment made to the seller, as this amount inures to the seller's benefit.
**542401 dated May 21, 1981.**

In determining the proper deduction for duties from a C.I.F. price, the actual rate of the duty at the time of liquidation must be used.
**542467 dated Aug. 13, 1981; modified by 542874 dated Aug. 27, 1982.**

In determining the deduction for duties from a C.I.F. duty-paid charge, the applicable rate of duty is based upon the rate that is in effect at the time of entry.
**542874 dated Aug. 27, 1982; modifies 542467 dated Aug. 13, 1981.**

A state sales tax is deductible from the selling price of goods as a cost of erection and installation when the party responsible for the erection and installation of the goods pays such a tax.
**542451 dated June 4, 1981 (TAA No. 27).**

A state sales tax based upon the value of foreign materials and engineering is dutiable under transaction value because the tax is neither a federal tax nor is it part of erection or installation costs. No authority exists to exclude the sales tax from the transaction value of the merchandise.
**543161 dated Jan. 3, 1984.**

State sales taxes are deductible from the selling price of goods as a cost of erection and installation when the party responsible for the erection and installation of the goods pays such taxes.
**543263 dated Sep. 5, 1985.**

The amount of Customs duties to be excluded from transaction value is the amount currently payable on the full appraised value of the imported merchandise. The amount of Customs duties to be deducted in this case should be calculated based upon the sum of the invoice price and the value of the assists (less U.S. freight and brokerage fees).
**543557 dated Oct. 2, 1985.**

Countervailing duties assessed on imported merchandise, if identified separately from the price actually paid or payable, are to be deducted from transaction value.
**543963 dated Sep. 11, 1987; modified by 544722 dated June 4, 1991.**

In most instances, a C.I.F. delivered duty paid price does not include anti-dumping duties, countervailing duties, or marking duties. Therefore, these items would usually not be deducted from a C.I.F. delivered price to determine the price actually paid or payable.
**544722 dated June 4, 1991; modifies 543963 dated Sep. 11, 1987.**

Antidumping duties forming part of a C.I.F. duty-paid price, provided they are identified separately from the price actually paid or payable, constitute Customs duties and other federal taxes and should not be included in the transaction value of imported merchandise determined under section 402(b) of the TAA.
**545304 dated Jan. 4, 1994.**

The terms of sale indicated on the invoice are "Free Delivered Duty Paid" to the U.S. purchaser of imported merchandise. The seller fulfills its obligation to deliver when the goods have been made available at the named place in the country of importation. The actual charges incurred for international freight and insurance are listed on the invoice and should be deducted from the price actually paid or payable. In addition, the U.S. duties are also to be deducted, because the terms of sale include the U.S. duties.
**546037 dated Jan. 31, 1996.**

The transaction value of imported merchandise does not include any cost incurred for Customs duties associated with the imported merchandise, if such duties are identified separately from the price actually paid or payable. The actual U.S. duties, not the estimated duties, are excluded from the price actually paid or payable.
**546111 dated Mar. 1, 1996.**

The antidumping duties to be deducted from the price actually paid or payable pursuant to 19 U.S.C. 1401a(b)(3) are the actual antidumping duties, which are determined at the time of liquidation based on the rate in effect for the subject entries. Therefore, the rate of antidumping duties deductible from the price actually paid or payable is $21.83 per metric ton. Post-importation price adjustments do not affect the transaction value of the imported merchandise.
**547612 dated Dec. 27, 2001.**

## identified separately requirement

CCC Technical Committee Advisory Opinion 3.1

The amount of a countervailing duty is separately identified on the consumption entry with respect to the imported merchandise. This provides sufficient identification of the countervailing duty and this amount is to be deducted from transaction value.
**543963 dated Sep. 11, 1987; modified by 544722 dated June 4, 1991.**

The specific amounts involved in the terms of sale, "DEQ duty and ADD paid," are considered part of the duty-paid price, provided they are identified separately from the price actually paid or payable. Therefore, they constitute Customs duties and/or other federal taxes and should not be included in the transaction value of imported merchandise under section 402(b) of the TAA.
**546191 dated Apr. 12, 1999.**

The importer paid internal Canadian taxes for the purchase of an automobile. These taxes were separately identified in the bill of sale. Assuming that the taxes were refunded to the importer, they are not considered a condition of sale. When taxes paid in the country of exportation are refunded to the importer, then those taxes are not included in the price actually paid or payable.
**548128 dated July 15, 2002.**

A United States resident purchased an automobile imported from Canada. The buyer paid the entirety of the purchase price, including the separately itemized amount for a "goods & services tax" (GST). The GST is not properly included in the transaction value as part of the price actually paid or payable, nor is it an addition to the price actually paid or payable.
**548161 dated Aug. 21, 2002.**

## offsetting overpayment of duties

An importer may not offset a current duty obligation based on a claim that excess duties were paid for mold charges attributable to prior shipments of past entries which all have been liquidated.
**545417 dated May 27, 1994.**

In accordance with 19 U.S.C. 1514 and 1520, Customs is without legal authority to reduce the importer's 1992 duty liability to account for overpayments of duties reflected through the cost reconciliations submitted from 1988 to 1991.
**545578 dated Sep. 13, 1994.**

The documentation presented was insufficient to establish the actual costs of the international shipment, and only actual expenses incurred for transportation, insurance, etc. are permissible exclusions from the transaction value. In addition, Customs does not have the legal authority to reduce the importer's current duty liability to account for prior duty overpayments that were not protested by the importer. In this case, the liquidation of the merchandise is deemed final and conclusive, in that over 90 days passed since notice of liquidation of the entries issued in the compliance assessment and the importer did not file a protest pursuant to 19 U.S.C. 1514.
**547037 dated July 12, 1999.**

Based on the evidence presented, the additional duties paid as a result of the EC Banana Regime Sanctions are included in, or form part of, the duty paid price for the subject merchandise and should be excluded from the price actually paid or payable pursuant to 19 U.S.C. 402(b)(4)(A) of the TAA. The 1.4 percent rate of duty was not the actual rate of duty applied to the merchandise; therefore, it was not the proper rate to use to determine the amount to be excluded from the price for duties. Rather, the actual rate of 100 percent should have been used to calculate the non-dutiable charges.
**547677 dated June 30, 2000.**

Royalty payments paid for patent and trademark rights, upon importation and subsequent resale benefiting the importer, are dutiable under the TAA as part of the price actually paid or payable. Royalties are dutiable when (1) the imported merchandise was manufactured under patent; (2) the royalty was involved in the production or sale of the imported merchandise; and (3) the importer could not buy the product without paying the fee. The fact that a company pays royalties as to both domestically produced and imported patented products does not vitiate the claim that payment of royalties is closely related to the sale of the imported product. Such royalty payments are included as statutory additions to the price actually paid or payable unless the buyer establishes that no portion of the proceeds accrues directly or indirectly to the seller. Additionally, the importer failed to account for future rebates determined by the fluctuation in market prices. If the rebates are not accounted for at the time of entry, this failure precludes the use of these rebates as reimbursements that may offset the duties owed on the royalty payments in a prior disclosure.
**548055 dated Mar. 14, 2002.**

Customs does not have the legal authority to reduce an importer's current duty liability to account for alleged overpayments that were not protested by the importer.
**548096 dated June 4, 2002.**

## special safeguard duties (SSG)

The United States imposes additional Special Safeguard (SSG) duties on certain agricultural goods pursuant to Article 5 of the Uruguay Round's Agreement on Agriculture. These duties are imposed if the price at which a product enters falls below a specified trigger price, or if the volume of such imports exceeds a specified trigger level. For the U.S., the schedule of agricultural goods and the SSGs for those goods are set out in supchapter IV of Chapter 99, HTSUS. Appraised value for imports into the U.S. is normally reported and calculated on an FOB basis, with freight reported separately. The procedures for assessment of price-based SSGs as set forth in Article 5 are based on CIF prices, both for the initial determination of trigger prices and for the price of each shipment. Therefore, Customs should use CIF prices in the administration of price-based Special Safeguard (SSG) duties.
**548367 dated Oct. 22, 2003.**

# FOREIGN TRADE ZONES

## INTRODUCTION

The Foreign Trade Zones Act provides that merchandise may be brought into foreign trade zones and "may be stored, sold, exhibited, broken up, repacked, assembled, distributed, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported, destroyed, or sent into Customs territory of the United States. . . ." 19 U.S.C. 81c (1982).

19 CFR 146.65(b) states the following:

(b) Valuation - (1) Total zone value. The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500). The total zone value shall be that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price paid or payable, the total zone value shall be the cost of all materials and zone processing costs related to the merchandise transferred from the zone.
(2) Dutiable value. The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value of recoverable waste or scrap provided for in [section] 146.42(b) will be the price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone.

**Judicial Precedent:**

Goodman Mfg., L.P. v. United States, 855 F.Supp. 1313 (Ct. Int'l Trade 1994), rev=d, 69 F.3d 505 (Fed. Cir. 1995).

This case involves the valuation of privileged merchandise (steel) transferred from Goodman's foreign trade subzone into Customs territory. Goodman used all of the 28,109 pounds of steel in its production of heating furnaces and from this production, resulting in 2,652 pounds of steel scrap, which was entered and appraised based on the transaction value of its transfer from the subzone and entry into domestic commerce. Customs calculated the value of the steel by subtracting freight, insurance and the sale price received from the scrap dealer who purchased the steel scrap from the full price

paid for all 28,109 pounds of steel admitted to the foreign trade zone. The Court held that Goodman did not overcome the presumption of correctness attached to Customs' valuation and upheld Customs' interpretation of 19 U.S.C. 81c.

Goodman Mfg., L.P. v. United States, 69 F.3d 505 (Fed. Cir. 1995), rev'g, 855 F.Supp. 1313 (Ct. Int'l Trade 1994).

The Court of Appeals for the Federal Circuit reversed the Court of International Trade's decision. At issue was the appropriate allowance to be made for waste or scrap when determining the dutiable value of privileged foreign merchandise entered from a foreign trade zone. The appellate court determined that the allowance to be made for the subject steel scrap should represent the difference between the market value of the privileged steel initially brought into the zone, i.e., the quantity of steel scrap multiplied by the value per pound of the privileged foreign steel, and the market value of the steel scrap, i.e., the transaction value of the steel scrap. The court indicated that the calculation of duties would be consistent with the language, or mandates, included in 19 U.S.C. 81c and 19 CFR '146.65(b)(2) concerning the dutiable value of such privileged foreign merchandise.

**Headquarters Rulings:**

**assists**

The value of assists provided by the importer must be included in the dutiable value of merchandise when the merchandise is withdrawn from a foreign trade zone.
**544250 dated July 26, 1991; 555053 dated July 26, 1991; 544572 dated Aug. 5, 1991**.

**design and development costs**

The importer purchased automobile components from its related party in Japan and brought them into its foreign-trade subzone (FTSZ). In the FTSZ, the components were combined with domestic components to produce finished automobiles that were subsequently sold to two related U.S. companies. The automobiles manufactured in the FTSZ by the importer were originally designed and developed by the related party in Japan. As part of the overall transaction, the two U.S. companies agreed to reimburse the importer's related party for the costs incurred in connection with the development of the vehicles produced by the importer. The dutiable value is based on the price actually paid or payable for merchandise in the transaction that caused the merchandise to be admitted into the zone. The payments in this case are made indirectly by the two U.S. companies, on behalf of their related party buyer, to the Japanese parent. The payments for the design and development of the imported components constitute part of the price actually paid or payable.
**544694 dated Feb. 14, 1995.**

### merchandise processing fee

The merchandise processing fee is assessed on the total zone value of motor vehicles produced in the foreign trade zone, which includes the value of domestic status merchandise and other U.S. origin value added in the foreign trade zone.
**545721 dated Feb. 27, 1995.**

### valuation

In the instant case, merchandise is not sold for exportation to the United States but rather, it is consigned to the importer until sold in the United States. The fact that the merchandise entered a foreign trade zone after importation does not in any way negate the proper application of section 402 of the TAA.
**542748 dated Mar. 31, 1982.**

Foreign steel coil is imported and admitted to a foreign trade zone (FTZ) in nonprivileged status. The steel coil is manufactured into steel body stampings. Incident to this manufacture, the coil must be cut to produce blanks, generating scrap. The complete body stampings are then entered for consumption, duty is paid, and the stampings are readmitted to the FTZ in privileged domestic status. The dutiable value of the body stampings includes the total cost of the steel coil used in the manufacture of the stampings, but a deduction is permitted for the value of the recoverable scrap generated as a result of the processing performed in the zone.
**543048 dated June 17, 1983; aff'd by 543197 dated May 23, 1984**.

There is no transaction value for parts withdrawn from a foreign trade zone in the same condition in which they were entered where the importer's accounting systems can only identify an average price for each part. Under such circumstances, the next legally available alternative method of valuation must be used.
**543095 dated Jan. 5, 1984.**

A U.S. company purchases bearings from a related manufacturer and admits the bearings into a FTZ in nonprivileged foreign status. The U.S. company resells the bearings to an unrelated purchaser who transfers the merchandise to another FTZ where nonprivileged foreign status is retained. The bearings are incorporated into finished automobiles and withdrawn from the FTZ. The automobiles are neither produced in nor sold for exportation from a foreign country and, therefore, transaction value, deductive value, and computed value cannot be satisfactorily determined. Resort must be made to an alternative value under section 402(f).
**543396 dated Aug. 23, 1984**.

With respect to programmed production equipment entering a foreign trade zone, the total zone value of the equipment includes the full value of the software, as reflected in the foreign manufacturer's commercial accounts, as well as programming costs incurred in the FTZ. This value is then reduced by international shipment and insurance costs as well as costs and expenses incurred in the zone (programming costs) to arrive at the final dutiable value.
**543391 dated Feb. 18, 1987**.

The zone value is the price actually paid or payable in the transaction that caused the generator to be transferred from one subzone to another. Pursuant to 19 CFR 146.65(b)(2), the dutiable value of the generator is the zone value, less any included zone costs of processing or fabrication, general expenses and profit and any costs related to international shipment and insurance costs, and U.S. inland freight costs. In the instant case, there are no adjustments to be made to the zone value.
**544818 dated Apr. 1, 1993**.

Leather or hide is admitted to a FTZ for cutting into shoe parts and manufactured into shoes. After cutting, some of the leather will not be used in the shoe production and is destroyed as scrap (due to flaws and irregularities). Some unused, extra leather will be used for a future cutting operation and is returned to inventory. When manufacturing the shoes from the shoe parts, more leather is rendered to scrap through the trimming process. Because the leather scrapped in both stages of production, as opposed to the leather returned to inventory, may be considered “used” in the manipulation or manufacture of the footwear, the former but not the latter would be included in the transaction value of the leather used in the manufacture of the footwear. The allowance made for the leather waste is calculated by taking the difference between the market value of the privileged leather initially brought into the zone and the market value of the leather scrap. In this case, because the leather was destroyed, with no market value, a full value allowance reflected by the market value of the privileged leather initially brought into the zone is appropriate.
**546190 dated July 31, 1996**.

The proper method of appraisement for merchandise entered into the Foreign Trade Zone (FTZ) consisting of non-privileged foreign status plastic housing, domestic status bulbs, and domestic status blister pack & carton should be appraised based upon the value of the foreign plastic housing and not the domestic packaging on the foreign status cartons which are crushed in the FTZ and entered into Customs territory separately as scrap or waste. Thus, non-privileged foreign status cartons which have been crushed and bundled in the FTZ, should be appraised pursuant to 19 CFR '146.65(b)(2) at the price actually paid to the importer for the recyclable waste as set forth on the commercial invoice or the price paid to the zone seller for the recyclable waste.
**547142 dated May 12, 1999**.

The importer claims it was unable to sell shirts after they were imported because there were no buyers at the time the merchandise was imported. Therefore, the shirts remained in storage at the FTZ several years during which time they became outdated and depreciated in value. Based on the information provided, the imported shirts do not qualify for an allowance for deterioration under 19 C.F.R.146.65(b)(3). The merchandise is subject to appraisement based on the transaction that caused the merchandise to be admitted to the FTZ.
**547936 dated June 19, 2001.**

The importer claims that merchandise deteriorated while stored in the FTZ because it depreciated in value as a result of age and changing fashions. The imported garments do not quality for an allowance of deterioration under 19 C.F.R. 146.65(b)(3), in that the claim of deterioration of the merchandise occurred after the date of importation and it did not involve moisture, impurities or perishable merchandise. Also, there is no indication that the importer suffered a casualty, loss or theft. Therefore, the merchandise is subject to appraisement based on the transaction that caused the merchandise to be admitted to the FTZ.
**547936 dated Aug. 3, 2001.**

# FORMULAS IN DETERMINING THE PRICE ACTUALLY PAID OR PAYABLE

## INTRODUCTION

In determining transaction value, the Customs regulations provide:

(a) Price actually paid or payable - (1) General. In determining transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word "payable" refers to a situation in which the price has been agreed upon, but actual payment has not been made at the time of importation. Payment may be made by letters of credit or negotiable instruments and may be made directly or indirectly. (19 CFR 152.103(a)(1))

**GATT Valuation Agreement:**

CCC Technical Committee Commentary 4.1 deals with Price Review Clauses, and states:

1. In commercial practice some contracts may include a price review clause whereby the price is only provisionally fixed, the final determination of the price payable being subject to certain factors which are set forth in the provisions of the contract itself.
2. The situation can occur in a variety of ways. The first is where the goods are delivered some considerable time after the placing of the original order (e.g., plant and capital equipment made specially to order); the contract specifies that the final price will be determined on the basis of an agreed formula which recognizes increases or decreases of elements such as cost of labour, raw materials, overhead costs and other inputs incurred in the production of the goods.
3. The second situation is where the quantity of goods ordered is manufactured and delivered over a period of time; given the same type of contract specifications described in paragraph 2 above, the final price of the first unit is different from that of the last unit and all other units, notwithstanding that each price was derived from the same formula specified in the original contract.
4. Another situation is where the goods are provisionally priced but, again in accordance with the provisions of the sales contract, final settlement is predicated on examination or analysis at the time of delivery (e.g., the acidity level of vegetable oils, the metal content of ores, or the clean content of wool).
5. The transaction value of imported goods, defined in Article 1 of the Agreement, is based on the price actually paid or payable for the goods. In the Interpretative Note to

that Article, the price actually paid or payable is the total payment made or to be made by the buyer to the seller for the imported goods. Hence, in contracts containing a review clause, the transaction value of the imported goods must be based on the total final price paid or payable in accordance with the contractual stipulations. Since the price actually paid or payable for the imported goods can be established on the basis of data specified in the contract, price review clauses of this type described in this commentary should not be regarded as constituting a condition or consideration for which a value cannot be determined (see Article 1.1(b) of the Agreement).
6. As to the practical aspects of the matter, where the price review clauses have already produced their full effect by the time of valuation, no problems arise since the price actually paid or payable is known. The situation differs where price review clauses are linked to variables which come into play some time after the goods have been imported.
7. However given that the Agreement recommends that, as far as possible, the transaction value of the goods being valued should serve as a basis for Customs value, even though it is not always possible to determine the price payable at the time of importation, price review clauses should not, of themselves, preclude valuation under Article 1 of the Agreement.

**Headquarters Rulings:**

**pre-determined formula agreed to between parties**

19 CFR 152.103(a)(1); CCC Technical Committee Commentary 4.1

The importer purchases generators on a C.I.F., duty-paid, installed price. The purchase price includes amounts for assembling the generators subsequent to their importation into the United States. An escalation provision contained in the contract sets forth a formula which allows the amount of escalation to be determined from certain indices when they are published by the Bureau of Labor Statistics. The escalation amounts are calculated monthly in proportion to the work performed and invoiced. The formula for determining the escalation amount was arrived at prior to the importation of the merchandise and, therefore, the escalation payments attributable to the dutiable portions of the contract price should be taken into account in determining the price actually paid or payable.
**542671 dated Mar. 15, 1982.**

In situations in which the price actually paid or payable is determined pursuant to a formula, a firm price need not be known or ascertainable at the time of importation, although it is necessary for the formula to be fixed at that time so that a final sales price can be determined at a later time on the basis of some future event over which neither the seller nor the buyer has any control.
**542701 dated Apr. 28, 1982 (TAA No. 47).**

In the event that the price actually paid or payable is to be ascertained according to a formula that is in existence prior to the exportation of the goods, the price has been set

prior to exportation. Even though it may not be possible at the time of exportation to ascertain an exact dollar amount owed for the goods, a price actually paid or payable has been established.
**543189 dated Oct. 19, 1983.**

In a contract for the sale of merchandise, the parties derive the price actually paid or payable from a formula based upon the importer's industrial engineering standards and actual production rates in the United States, subject to anticipated period adjustments. At the time of entry, duties are deposited based upon standard production costs. Subsequently, it is discovered that the actual costs are lower. The price actually paid or payable is represented by the price derived from the pricing formula, i.e., that which takes into account the subsequent adjustment for actual costs.
**543285 dated Mar. 20, 1984.**

A price that requires adjustment, either upward or downward, determined pursuant to a formula, represents transaction value. The formula must be in existence prior to the date of exportation. Because the formula is in existence prior to the date of exportation, there is no rebate effected after the date of importation, even though the price may not be ascertainable until after the date of importation.
**543352 dated Mar. 30, 1984.**

The final sales prices between the buyer and seller are determined pursuant to a formula that is fixed at the time of exportation. Because the formula from which the prices are determined is agreed to before the dates of importation, the currency exchange payments from the seller to the buyer do not constitute rebates or other decreases in the price actually paid or payable. Adjustments to the invoice prices resulting from currency exchange gains as well as from currency exchange losses are taken into consideration in determining transaction value.
**543089 dated June 20, 1984.**

Although a firm price is not ascertainable at the time of importation, a fixed formula or methodology exists which is determined prior to importation so that a final sales price can be subsequently determined. The adjustments made to the provisional price indicated on the invoice at the time of entry do not constitute either rebates or decreases in the price actually paid or payable. Duties are deposited based upon the provisional invoice price with an adjustment to be reported at the end of a six-month period.
**543917 dated Aug. 27, 1987.**

The amount owed to the foreign seller for magazines is calculated pursuant to a prearranged agreement between the buyer and seller taking into account the unit price, the quantity of the shipment, as well as other factors. The buyer has a right to return any unused magazines. An invoice is not provided to the buyer until reconciliation, during which time the amount of merchandise shipped and returned is taken into account. This method of calculating the price of the imported merchandise is not a formula that

determines the price actually paid or payable. The price actually paid or payable is decreased after the date of importation and the transaction value may not be reduced to take into account this reduced amount.
**543940 dated Nov. 4, 1987.**

An agreement entered into between the buyer and seller prior to exportation of the merchandise which includes the purchase price of a mold, the price of the goods, and the method by which the mold is repurchased by the seller, does not constitute a formula pursuant to section 152.103(a)(1) of the Customs regulations.
**543983 dated Dec. 2, 1987.**

The importer obtains samples from a manufacturer located in Hong Kong. Mutilated prototype samples are shipped to the importer for approval. Once approved, the importer instructs the manufacturer to produce additional samples in order for the importer to solicit orders. An amount paid on an annual basis, which totals the value set forth on the invoices for all the individual shipments of samples during the year, represents the transaction value of the imported samples.
**544317 dated Apr. 24, 1990.**

The importer receives a refund of one half of a mold purchase price if a minimum number of merchandise is ordered. The entire mold cost is refundable if 300,000 pieces are ordered. The arrangement contained in the mold purchase orders between the importer and manufacturer does not constitute a formula under 19 CFR 152.103(a)(1). The full amount of the mold cost, i.e., disregarding the subsequent refund, is part of the price actually paid or payable.
**544364 dated Oct. 9, 1990.**

Where the price actually paid or payable is not certain at the time of importation, appraisement under transaction value is still appropriate as long as a fixed formula or methodology exists for later determining the price. Such a formula must be determined prior to importation of the merchandise and also must be based on a future event over which neither the seller nor the buyer has any control. In this case, the price actually paid or payable is not ascertainable under the formula derived by the parties. The uncertainty regarding payment precludes appraisement of the merchandise under transaction value.
**545622 dated Apr. 28, 1994; <u>revokes</u> 544812 dated Mar. 3, 1994.**

Transaction value is rejected in this case as a means of appraisement because the price actually paid or payable cannot be determined. The alleged formula agreed to between the parties in determining the price actually paid or payable allows for adjustments that can be renegotiated and are within the control of the parties.
**544840 dated Sep. 29, 1994; <u>aff'g</u> 544707 dated July 16, 1991.**

The importer purchased caviar from a Russian seller and entered the merchandise in June 1992. In December 1992, the parties entered into a settlement agreement which

provided that in consideration of the payment terms in the settlement agreement, the parties agreed to discharge each other from any and all obligations arising from the contract for the purchase of the caviar. The terms in the settlement agreement created a lower sales price than that originally stated on the invoice. The terms outlined in the settlement agreement, to the extent that they represent a decrease in price that occurs subsequent to the importation of the merchandise, may not form the basis of transaction value.
**545532 dated Sep. 14, 1994.**

The parties' method for setting prices for the imported merchandise is based on a contract entitled the "supply agreement." The price equals the sum of certain costs incurred by the seller, plus an amount sufficient to reimburse the seller for any royalties paid to the manufacturer. The seller is required to pay patent royalties to the manufacturer, and the royalties are determined as a fixed percentage of the selling price in the United States. A supplementary agreement between the seller and the manufacturer reduces the amount of the royalty in specified circumstances. The method of payment described is not a formula upon which transaction value can be based. The amount of the royalty paid to the manufacturer is within the control of one of the parties, i.e., the seller. The decrease in price attributable to the lower royalty payment to the manufacturer is disregarded in determining transaction value.
**545388 dated Oct. 21, 1994.**

Customs has the authority to appraise merchandise pursuant to a formula using transaction value so long as a final sales price can be determined at a later time on the basis of some future event or occurrence over which neither the seller nor the buyer has any control. Where the future event is subject to the control of the seller or buyer, however, the formula is unacceptable under the transaction value. In this case, the actual final price for the imported merchandise is arrived at through negotiations that may continue after the merchandise is imported into the United States. These negotiations take into account any discounts, rebates or other sales price adjustments. The parties exercise control over whether and to what degree the price is adjusted. This control eliminates consideration of the pricing methodology as an acceptable formula, and transaction value is not appropriate in appraising the merchandise.
**545618 dated Aug. 23, 1996.**

The importer intends to import merchandise from its related party seller based on a provisional price. At a time specified in the contract, the actual price is determined through the application of an agreed-upon formula between the parties. The final sales price is determined based upon a set price that is published in a certain publication on a specified future date. This standard in determining the price is a future event over which neither the seller nor the buyer has any control, and the formula upon which to determine the price is agreed to prior to the exportation of the goods. The agreed-upon formula between the parties is sufficient to establish a price actually paid or payable for the imported merchandise pursuant to transaction value.
**546736 dated Mar. 31, 1998.**

At the time of importation, the price for the imported merchandise is subject to change based on formula pricing and currency fluctuations. The price at the time of importation is not a fixed price and it is subject to year-end adjustments, which may not result in a fixed price until fifteen months after importation. The ultimate purchase price of the merchandise is dependent upon the gross annual production of the product worldwide and the invoice between the parties is a good faith estimate submitted at the time of importation. Transaction value is not applicable as a method of appraisement in this case. This is not an acceptable formula as provided for in 19 CFR 152.103(a), as a means of determining the price actually paid or payable.
**546421 dated Mar. 27, 1998.**

A U.S. importer is importing workstations that may be divided into "split shipments." A "split shipment" occurs when components of the whole are divided into two or more shipments and processed as separate Customs entries. The formula proposed by the importer ascertains a value for an individual workstation trim unit, which, when all individual workstation values are combined, accounts for the total contract price paid from the buyer to the seller for the workstations. The proposed formula is an acceptable apportionment method for the split shipments. This assumes the results are reasonable, verifiable, and in accordance with generally accepted accounting principles.
**547313 dated July 19, 1999.**

## currency conversion

A price arrived at pursuant to a formula which takes currency fluctuations into account may represent the transaction value for imported merchandise.
**543094 dated Mar. 30, 1984; 543252 dated Mar. 30, 1984.**

The final sales prices between the buyer and seller are determined pursuant to a formula that is fixed at the time of exportation. Because the formula from which the prices are determined is agreed to before the dates of importation, the currency exchange payments from the seller to the buyer do not constitute rebates or other decreases in the price actually paid or payable. Adjustments to the invoice prices resulting from currency exchange gains as well as from currency exchange losses are taken into consideration in determining transaction value.
**543089 dated June 20, 1984.**

## price actually paid or payable

"Commissions" paid to the buyer by the seller for lost profits under a sales agreement and payments made by the seller to the buyer under a second agreement are not made pursuant to a formula for purposes of 19 CFR 152.103(a)(1). The payments cannot be deducted from the CIF price to arrive at the price actually paid or payable for the merchandise.
**544464 dated Apr. 30, 1991.**

A U.S. importer purchases frozen vegetables and mushrooms in jars from its wholly-owned Mexican subsidiaries. The invoices submitted for appraisement reflect transfer, or estimated, prices based on an "export invoice pricing policy." The importer effects payments via lump sum monthly transfers in response to the exporter's request for funds, without regard to specific entries. An aggregate average price, as opposed to an entry specific price, is derived from the prices set by the Mexican exporters and which fluctuate based on actual costs and shipping volume. This method of pricing does not represent a formula nor does it result in a fixed price for the merchandise. In addition, evidence has not been provided concerning the circumstances of sale between the related parties that would indicate that their relationship did not influence the price actually paid or payable. Transaction value is not applicable as a means of appraisement.
**546231 dated Feb. 10, 1997.**

## provisional price

The fact that the price actually paid or payable for purposes of transaction value may be unknown at the time of exportation does not prevent appraisement under transaction value where the price is subject to a formula. However, in this case, there is no price actually paid or payable for shipments of merchandise that are entered under the provisional price because the price is subject to adjustment after exportation without the benefit of a formula. The absence of a firm price for the merchandise imported under these entries prevents appraisement pursuant to transaction value.
**544666 dated Apr. 5, 1993.**

Under the terms of a "Purchase and Sale Agreement," the buyer purchases and imports from the seller in order to satisfy all of its requirements for the use of a certain chemical in the manufacture of a pesticide product. The agreement establishes a provisional price. This price represents the seller's full cost to produce the chemical at a fixed exchange rate, but does not include an amount for profit. At the end of each contract year, the provisional price is adjusted to reflect the seller's overall cost of production, which includes overhead and other costs. The agreement requires the seller to notify the buyer of the provisional price at the beginning of each contract year. The buyer is then obligated to generate statements, based on the provisional price, showing its anticipated profit on sales. If the profits are unsatisfactory for either party, the parties enter into good faith negotiations to arrive at new cost numbers on which to recalculate profit figures. The formula pursuant to which the price of the imported base chemical is determined is not acceptable for transaction value purposes because the price actually paid or payable is unknown at the time the merchandise is shipped. The final price for each contract year is not set until the seller determines its overall costs for that year.
**545609 dated Aug. 11, 1995.**

The contract between the seller and the buyer provided that invoice prices would be paid at the time of entry, based upon the expected prices for the forthcoming months. Actual revenues and costs incurred were calculated at the end of each month. The

amounts of the actual revenues and costs incurred were within the control of one of the parties. There was a difference between the estimated paid costs at the time of entry and the actual costs or "prices" calculated a month later according to the contract. The buyer seeks a refund from Customs for the portion of duty paid on the estimated cost "price." Although the contract specified a method that would be used to determine the price for the product and arguably could be viewed as a formula for such, it is not a formula upon which transaction value can be based. If a future event in the formula is subject to the control of either the seller or the buyer, then the formula fails to establish a "price actually paid or payable" pursuant to transaction value.
**547493 dated Mar. 14, 2002.**

## sufficient information available to determine price actually paid or payable

Where the invoice price to a buyer is based on standard costs, but variances from standards are known at the time of importation and reconciliation is made at reasonable intervals, the price actually paid or payable is the amount paid after adjustments for the variances.
**542975 dated Mar. 9, 1983 (TAA No. 60).**

A price that requires adjustment, either upward or downward, and determined by the application of a formula represents the transaction value. The formula must be in existence prior to the date of exportation. No rebate is effected after the date of importation, even though the price may not be ascertainable until after the date of importation.
**543352 dated Mar. 30, 1984.**

# GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

## INTRODUCTION

19 U.S.C. 1401a(g)(3) states:

For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term "generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding -
(A) which economic resources and obligations should be recorded as assets and liabilities;
(B) which changes in assets and liabilities should be recorded;
(C) how the assets and liabilities and changes in them should be measured;
(D) what information should be disclosed and how it should be disclosed; and
(E) which financial statements should be prepared.
The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

The parallel Customs regulation is 19 CFR 152.102(c)(1) through (3).

**GATT Valuation Agreement:**

Interpretative Notes, General Note, Use of generally accepted accounting principles, paragraph 1, is similar to 19 U.S.C. 1401a(g) (3).

In addition, paragraph 2 of the same General Note, with respect to generally accepted accounting principles, states:

For the purposes of this Agreement, the customs administration of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 [deductive value] would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 [computed value] would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in Article 8.1(b)(ii) [tools, dies, moulds and similar items used in the production of the

imported goods] undertaken in the country of importation would be carried out utilizing information in a manner consistent with generally accepted accounting principles of that country.

**Headquarters Rulings:**

## apportionment and depreciation of assists; 19 CFR 152.103(e)

General purpose machinery may be apportioned for Customs valuation purposes on a yearly basis at the depreciated cost as reflected on the books of the importer, assuming that the depreciation is determined in accordance with generally accepted accounting principles.
**542302 dated Feb. 27, 1981 (TAA No. 18).**

Assists may be depreciated and apportioned as desired if such is in accordance with generally accepted accounting principles.
**542302 dated Feb. 27, 1981 (TAA No. 18).**

In determining the value of fabric furnished without charge to an unrelated assembler, the cost of acquisition to the importer (from an unrelated party) must be used, and not the depreciated cost as reflected on the importer's books and records.
**542356 dated Apr. 13, 1981 (TAA No. 24); 542477 dated July 27, 1981.**

If the entire anticipated production using an assist is for exportation to the United States, the total value of the assist may be apportioned on the first dutiable shipment if the importer wishes to pay duty on the entire value at one time. The assist would not be added to the price actually paid or payable to form part of the transaction value of future shipments of articles produced from the assist.
**542361 dated July 14, 1981; overruled on other grounds by 544858 dated Dec. 13, 1991.**

The value of an assist must be apportioned reasonably in accordance with generally accepted accounting principles. The value of an assist may not be apportioned entirely over the first entry of merchandise where that entry is duty free.
**542519 dated July 21, 1981 (TAA No. 35).**

If a mold that is supplied free of charge to the foreign manufacturer is depreciated to zero on the books of the importer in a manner that is consistent with generally accepted accounting principles, then the value of the assist will be limited to the cost incurred in transporting the assist to the place of production.
**543233 dated Aug. 9, 1984.**

Assets having a useful life of more than one year are capital assets subject to depreciation over their useful lives. While generally accepted accounting principles allow expensing the cost of an asset in the year of acquisition when its cost is

insignificant and the asset is held for over one year, this should not be construed to mean that the asset has a zero book value. While the value of fully depreciated assists is limited to transportation costs to the foreign plant, capital assets (assists) which are permitted to be expensed by GAAP are not necessarily assets with a zero book value for Customs valuation purposes. Such assets require the determination as to what, if any, book value remains if being depreciated over their useful lives.
**543450 dated June 25, 1985.**

In a situation involving a patent, a reasonable method of apportioning the cost of development is the addition of a proportionate share of the development cost to the invoice price of each shipment until the entire development cost has been amortized. The amount added to each entry is based upon the number of units expected to be produced for sale to the United States according to available forecast. This method is reasonable in light of the circumstances and is in accordance with generally accepted accounting principles.
**543806 dated Mar. 12, 1987.**

Apportioning the value of an assist on the first entry, in a series of entries, and subsequently claiming drawback on that first entry is not in accordance with generally accepted accounting principles and not authorized by the TAA.
**544194 dated May 23, 1988; Cust. B. & Dec., Vol. 22, No. 25, June 22, 1988.**

If in accordance with generally accepted accounting principles, the value of an assist provided to the seller is fully depreciated according to the importer's records, then the value of the assist is limited to the cost of transporting the assist to the place of production.
**544243 dated Oct. 24, 1988; 544256 dated Nov. 15, 1988.**

If development, plans, sketches, etc., are used in the production of merchandise that is only partially for export to the United States, or if the assists are used in several countries, then the costs of these assists may be apportioned to the imported merchandise in accordance with generally accepted accounting principles.
**544337 dated Apr. 9, 1990.**

The importer claims that merchandise deteriorated while stored in the FTZ because it depreciated in value as a result of age and changing fashions. The imported garments do not quality for an allowance of deterioration under 19 C.F.R. 146.65(b)(3) because the claim of deterioration of the merchandise occurred after the date of importation and it did not involve moisture, impurities, or perishable merchandise. Also, there is no indication that the importer suffered a casualty, loss, or theft. Therefore, the merchandise is subject to appraisement based on the transaction that caused the merchandise to be admitted to the FTZ.
**547936 dated Aug. 3, 2001.**

## computed value

GATT Valuation Agreement, Interpretative Notes, Use of generally accepted accounting principles, Paragraph 2

Design department costs, not carried on a producer's books as a cost or value of materials and of fabrication, or a general expense, if in accordance with generally accepted accounting principles, are not part of computed value.
**542325 dated Apr. 3, 1981 (TAA No. 23).**

Plant rental and building depreciation costs not on the manufacturer's books are dutiable as a cost of fabrication pursuant to computed value, unless the costs are not included as such under generally accepted accounting principles of the producing country.
**542658 dated Jan. 12, 1982 (TAA No. 44); 542873 dated July 20, 1982 (TAA No. 44, Supplement No. 1).**

Under computed value, the amount for general expenses and profits is determined by information the producer supplies, provided such is in accordance with generally accepted accounting principles in the country of production. Currency conversion losses cannot be used for computed value purposes because, in this case, the losses have no direct relationship to the assembly process and are used only to balance the general ledger when accounts are converted from foreign currency to U.S. dollars.
**543276 dated May 15, 1984.**

In determining the computed value of imported merchandise, Customs relies upon information derived from the commercial accounts of the foreign assembler. If those accounts reflect a loss during a separate accounting period from that during which the merchandise under consideration is assembled, this loss may not be carried forward to offset profits, if any, realized during the latter period. Additionally, even if the account reflects that the loss is experienced during the same account period as the period during which the merchandise is assembled, it is necessary for the importer to establish that offsetting the loss against future profits is consistent with generally accepted accounting principles applied in the country of production.
**543857 dated Feb. 18, 1987.**

## interest expense

A loan interest expense incurred by the assembler prior to commencement of assembly operations appearing on the assembler's books of account is properly included in the amount for profit and general expenses under the computed value method of valuation.
**542849 dated Aug. 6, 1982.**

Interest expense is considered to be an organizational cost of doing business and a general expense in determining computed value. Generally accepted accounting

principles do not provide for a proration of interest expense merely because the asset acquired with the loan is utilized less than 100 percent in the production process.
**543031 dated Apr. 12, 1983.**

## rejection of accounting system

19 U.S.C. 1401a(g)(3); 19 CFR 152.102(c)(3)

If information submitted by an importer in regard to the appraisement of merchandise is prepared in accordance with generally accepted accounting principles, then such information may not be rejected by Customs on the basis of the accounting method by which that information is prepared. However, the transaction value derived from such value information may be rejected as not being in accordance with section 402(b).
**543095 dated Jan. 5, 1984.**

## repairs

When merchandise is returned to the United States for repair, adjustments to the original purchase price in accordance with generally accepted accounting principles are made in order to properly appraise the merchandise.
**543637 dated Dec. 2, 1985.**

## start-up costs

Start-up costs in excess of those amounts normally anticipated (excess costs) may be accounted for under transaction value through the use of an excess costs account which is periodically updated. The excess costs may then be amortized over the current and future production of goods and reflected in their transfer price in accordance with generally accepted accounting principles.
**543153 dated May 1, 1984.**

## zero-value assists

See this chapter, section on apportionment and depreciation of assists, supra.

# IMPORTER'S OPTIONS

## INTRODUCTION

With respect to the statutory hierarchy and what option the importer has regarding this hierarchy, 19 U.S.C. 1401a(a) states:

In General. (1) Except as otherwise specifically provided for in this Act, imported merchandise shall be appraised, for the purposes of this Act, on the basis of the following -
(A) The transaction value provided for under subsection (b).
(B) The transaction value of identical merchandise provided for under subsection (c), if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2).
(C) The transaction value of similar merchandise provided for under subsection (c), if the value referred to in subparagraph (B) cannot be determined.
(D) The deductive value provided for under subsection (d), if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).
(E) The computed value provided for under subsection (e), if the value referred to in subparagraph (D) cannot be determined.
(F) The value provided for under subsection (f), if the value referred to in subparagraph (E) cannot be determined.
(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to the imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary may prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1) (D).
(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

19 CFR 152.101(c) states:

Importer's option. The importer may request the application of the computed value method before the deductive value method. The request must be made at the time the entry summary for the merchandise is filed with the district director (see 141.a(b) of this chapter) [definition of entry summary]. If the importer makes the request, but the value of the imported merchandise cannot be determined using the computed value method,

the merchandise will be appraised using the deductive value method if it is possible to do so. If the deductive value cannot be determined, the appraised value will be determined as provided for in [section] 152.107.

**GATT Valuation Agreement:**

The importer's option regarding the use of computed value prior to deductive value is provided for in Article 4, and in Interpretative Notes, General Note, Sequential application of valuation methods, Paragraph 3.

**Headquarters Rulings:**

## computed value versus deductive value

19 U.S.C. 1401a(a); 19 CFR 152.101(c); GATT Valuation Agreement, Article 4 and Interpretative Notes, General Note, Sequential application of valuation methods, Paragraph 3

Unless the importer chooses at the time of entry to use computed value, deductive value is applicable as the means of appraisement.
**542765 dated Apr. 20, 1982.**

If transaction value and transaction value of identical or similar merchandise cannot be determined, then the Customs value will be based upon deductive value, unless the importer has elected computed value.
**543912 dated Apr. 19, 1988.**

## elimination of transaction value

19 U.S.C. 1401a(a); 19 CFR 152.101(b); GATT Valuation Agreement, Article 4

Imported merchandise must be appraised pursuant to transaction value if that value can be determined in accordance with the TAA. There is no option under the TAA to use the deductive value method of appraisement in situations where transaction value can be determined.
**542972 dated Jan. 6, 1983.**

# INDIRECT PAYMENTS

## INTRODUCTION

The price actually paid or payable is defined in 19 U.S.C. 1401a(b) (4) (A) as follows:

The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any 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) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.
(Emphasis added)

The corresponding Customs regulation defines the price actually paid or payable in 19 CFR 152.102(f) (same language as statute).

In addition, 19 CFR 152.103(a)(2) states:

Indirect payment. An indirect payment would include the settlement by the buyer, in whole or in part, of a debt owed by the seller, or where the buyer receives a price reduction on a current importation as a means of settling a debt owed him by the seller. Activities such as advertising, undertaken by the buyer on his own account, other than those for which an adjustment is provided in [section] 152.103(b), will not be considered an indirect payment to the seller though they may benefit the seller. The costs of those activities will not be added to the price actually paid or payable in determining the customs value of the imported merchandise.

Also, 19 CFR 152.103(a)(1), Example 4 states:

Company X in the United States pays $2,000 to Y Toy Factory abroad for a shipment of toys. The $2,000 consists of $1,850 for the toys and $150 for ocean freight and insurance. Y Toy Factory would have charged Company X $2,200 for the toys; however, because Y owed Company X $350, Y charged only $1,850 for the toys. What is the transaction value?
The transaction value of the imported merchandise is $2,200, that is, the sum of the $1,850 plus the $350 indirect payment. Because the transaction value excludes C.I.F. charges, the $150 ocean freight and insurance charge is excluded.

## GATT Valuation Agreement:

CCC Technical Committee Advisory Opinion 8.1 deals with credits in respect of earlier transactions, and states:

1. How are credits made in respect of earlier transactions to be treated under the Valuation Agreement when valuing goods that have received the benefit of that credit?
2. The Technical Committee on Customs Valuation expressed the following view:

The amount of the credit represents an amount already paid to the seller and accordingly is covered by the Interpretative note to Article 1 on "price actually paid or payable" which specifies that the price actually paid or payable is the total payment of the imported goods made, or to be made, to the seller. Thus the credit is part of the price paid and for valuation purposes must be included in the transaction value.
The treatment to be accorded by Customs to the previous transactions which gave rise to the credit must be decided separately from any decision on the proper Customs value of the present shipment. The decision whether adjustment may be made to the value of the previous shipment will depend on national legislation.

**Headquarters Rulings:**

## advertising expenses

19 CFR 152.103(a)(2)

The importer and the manufacturer have entered into an agreement for the purchase of vodka. The contract specifically provides for a minimum amount to be expended by the buyer on advertising. Although this may benefit the seller indirectly, the advertising costs are not part of the price actually paid or payable.
**544482 dated Aug. 30, 1990.**

## compensation for assists as indirect payments,

See also, chapter on PRICE ACTUALLY PAID OR PAYABLE, infra.

Payments made to the seller for expenses incurred for research and development are part of the price actually paid or payable rather than added on as an assist. However, the dutiable amount of the research and development is limited to that paid for products actually exported to the United States.
**543324 dated Aug. 8, 1984.**

Monies paid directly or indirectly by the buyer to the manufacturer of the imported merchandise for the purpose of defraying the manufacturer's tooling expenses are not included in any of the assist categories. Therefore, the tooling payments are not dutiable as assists. Moreover, in this case, the amount paid to the seller for tooling is not paid by the buyer but rather, is paid by the ultimate purchaser. This amount is not part of the price actually paid or payable by the buyer to the seller for the imported merchandise.
**543293 dated Jan. 15, 1985; overruled by 543574 dated Mar. 24, 1986.**

Payments made by the ultimate purchaser in the United States, through the importer, to the manufacturer are not considered assists. However, these payments are part of the price actually paid or payable as indirect payments.
**543574 dated Mar. 24, 1986; overrules 543293 dated Jan. 15, 1985.**

Payments made by the ultimate U.S. purchaser, through the U.S. subsidiary/importer, to the foreign manufacturer/seller for use in the production of tooling necessary to produce the imported merchandise are indirect payments and part of the price actually paid or payable.
**543882 dated Mar. 13, 1987; aff'd by 554999 dated Jan. 5, 1989.**

Payments made by the buyer to the seller for tooling are indirect payments and part of the price actually paid or payable for the imported merchandise.
**543951 dated Sep. 23, 1987.**

The foreign seller has agreed with the ultimate purchaser in the United States to be reimbursed for all tooling expenses. The importer will not receive or transmit to the related party foreign seller any of the funds used to pay for the tooling. This payment is furnished indirectly by the buyer and is part of the price actually paid or payable.
**543967 dated Dec. 17, 1987.**

In situations where the buyer pays the seller to provide a mold necessary for the seller to produce the imported merchandise, the buyer is not supplying the seller with the mold. The additional amount paid to the seller for producing the mold is dutiable as part of the price actually paid or payable.
**543983 dated Dec. 2, 1987.**

## part of the price actually paid or payable as an indirect payment,

See also, chapter on PRICE ACTUALLY PAID OR PAYABLE, infra.

Payment by a buyer to a corporation for services performed for the benefit of a seller may constitute an indirect payment to the seller that should be included in transaction value. Payment by a buyer for services not performed for the benefit of a seller does not form part of transaction value.
**542975 dated Mar. 9, 1983 (TAA No. 60).**

Payments for product liability insurance made by the buyer to a third party insurer are be part of the price actually paid or payable as indirect payments. A condition of the sale required the seller to obtain suitable insurance and bear the cost thereof.
**542984 dated Apr. 8, 1983.**

Advancement of funds by the buyer to the seller and which is repaid by the seller to the buyer by reducing the invoice price for the merchandise is part of the price actually paid or payable.
**543426 dated Mar. 15, 1985.**

Engineering work is obtained from either U.S. or Canadian vendors in order to manufacture tools for export to the United States. The manufacturer does not obtain the engineering work at a reduced cost. The cost of design and engineering work purchased by the manufacturer from vendors in the United States or Canada is dutiable only to the extent that such cost is included in the price actually paid or payable for the imported tools by the importer to the manufacturer.
**543584 dated Aug. 30, 1985.**

If the buyer of merchandise pays the seller/manufacturer to produce tooling necessary in the production of the imported merchandise, such payment is included in the price actually paid or payable as an indirect payment.
**543595 dated Apr. 17, 1986.**

## reduction in purchase price for settlement of a debt

19 CFR 152.103(a)(2); GATT Valuation Agreement, CCC Technical Committee Advisory Opinion 8.1

A credit for a preexisting debt owed by the exporter is deemed to be an indirect payment made by the buyer and is included in the transaction value of the imported merchandise.
**543152 dated June 6, 1984.**

The importer receives a markdown on future shipments to compensate for air freight charges that it paid collect on late delivery by the seller. This credit on the future shipments represents an indirect payment and is part of the price actually paid or payable.
**543771 dated July 11, 1986.**

The importer receives a credit on future shipments of merchandise in settlement of a claim for previously imported merchandise that was defective and/or second quality. The markdown represents an indirect payment and is part of the price actually paid or payable for the subsequent shipment.
**543772 dated July 11, 1986.**

Reductions in price for current shipments in satisfaction of a debt owed the buyer by the seller resulting from the previous shipment of defective goods constitute indirect payments and are part of the price actually paid or payable.
**543766 dated Sep. 30, 1986; 543830 dated Nov. 7, 1986.**

A reduction in the net price of merchandise sold to the importer due to a debt owed to the buyer by the seller does not preclude the use of transaction value but rather, the reduction in price represents an indirect payment and is included in the price actually paid or payable.
**543877 dated Mar. 17, 1987**.

The importer is owed a credit as a result of defects in a prior shipment and this credit is applied against a later shipment. Although it was not intended at the time the initial shipment was imported that a part of its purchase price would be applied to other goods, the overpayment on the initial shipment is an indirect payment for part of the later shipment.
**543830 dated Nov. 7, 1986**.

Cigarettes are imported into the United States. The importer submits an invoice to Customs that indicates a $320 per case price and a $319 per case discount. The importer alleges that the cigarettes should be appraised at $1 per case. The per case reduction in price represents a credit to the importer for a previous shipment involving slow-moving goods. The reduction in price is not to be considered in determining the price actually paid or payable for the current shipment. This claimed reduction in price represents satisfaction of a debt owed the buyer by the seller resulting from the previous shipment and constitutes an indirect payment which is part of the price actually paid or payable.
**546132 dated Apr. 10, 1996.**

The importer purchases fabric from its related party in Russia. A trade debt has developed between the parties with regard to shipments to the United States. The importer has received approximately sixty-seven percent of the amount of fabric that it has actually contracted for and has paid in full for the entire amount. The trade debt occurred because the importer paid the seller for the fabric faster than the seller was able to ship the fabric. In order to repay the debt, the parties have agreed to sign a contract for a certain amount of fabric at $1.50 per meter, but the importer will actually pay the seller only $1.30 per meter until the trade balance is repaid. The invoice price of $1.50 per meter represents the price actually paid or payable for the fabric. The difference in the invoice prices and the actual payments is part of the transaction value as indirect payments.
**546364 dated Dec. 19, 1996.**

# INSURANCE COSTS

## INTRODUCTION

The price actually paid or payable is defined in 19 U.S.C. 1401a(b)(4)(A) as the "total payment (whether direct or indirect, and exclusive of any 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) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller." (emphasis added)

The parallel Customs regulation is 19 CFR 152.102(f).

**GATT Valuation Agreement:**

Article 8, paragraph 2, states:

In framing its legislation, each Party shall provide for the inclusion or the exclusion from the customs value, in whole or in part, of the following:
(a) the cost of transport of the imported goods to the port or place of importation;
(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
(c) the cost of insurance.

CCC Technical Committee Advisory Opinion 13.1 limits the scope of the word "insurance" under Article 8.2(c) of the Agreement. The Technical Committee expressed the following opinion:

It is apparent from the context of paragraph 2 of Article 8 that paragraph concerned charges connected with the shipment of the imported goods (cost of transport and transport-related costs). Hence the word "insurance" used in subparagraph (c) should be interpreted as referring solely to insurance costs incurred for the goods during the operations specified in Article 8.2(a) and (b) of the Agreement.

**Headquarters Rulings:**

## deduction for cost of insurance from C.I.F. price

19 U.S.C. 1401a(b)(4)(A); 19 CFR 152.102(f)

Insurance premiums, incurred by a seller to insure against the non-payment of merchandise, passed through to the U.S. buyer as part of a CIF duty-paid price, are part of the price actually paid or payable.
**542857 dated July 14, 1982.**

If the amount paid by the buyer of imported merchandise for marine insurance differs from the amount paid by the seller to obtain the insurance, then the proper deduction from the price actually paid or payable in a C.I.F. transaction is the actual amount paid to the insurance company for the insurance coverage.
**543827 dated Mar. 9, 1987.**

## product liability insurance payments

As a condition of the sale for export, the seller is required to obtain product liability insurance and bear the cost thereof. Although the buyer pays the third party insurer directly, the insurance is in the seller's name and is required as a condition of the sale. The premium payments are indirect payments made to the seller and accordingly, are part of the price actually paid or payable.
**542984 dated Apr. 8, 1983.**

# INTEREST CHARGES

## INTRODUCTION

**Judicial Precedent:**

Luigi Bormioli Corp., Inc. v. United States, 24 Ct. Int'l Trade 1148 (2000), aff'd, 304 F.3d 1362 (Fed. Cir. 2002).

This case involves the assessment of duties on charges claimed to be bona fide interest charges excludable from transaction value. Based upon the criteria set forth in T.D. 85-111, Customs found and both courts agreed, that the plaintiff did not establish that the charge should be excluded from transaction value.

The CAFC affirmed the CIT's decision upholding the TD regarding interest charges., finding that the criteria set forth in the TD closely mirror the operative language of a decision by the Committee on Customs Valuation of the GATT. The CAFC found that the GATT decision is consistent with the statute and the TD is consistent with the GATT. The court concluded that the TD applied to Bormioli and that Bormioli did not meet at least one of the criteria for interest payments, i.e.. that the finance agreement be in writing. The court also was not persuaded by plaintiff's other arguments including the fact that the IRS had apparently concluded that the charges in issue were interest charges.

Skechers U.S.A., Inc. v. United States, 25 I.T.R.D. 2050 (Ct. Int'l Trade 2003).

The court in this case held that the plaintiff has failed to present evidence that its financing arrangements satisfied the written financing agreement requirement in T.D. 85-111. The court stated that the importer must establish that the claimed interest charges meet the requirements as set forth in T.D. 85-111. The court stated that to meet the requirements of T.D. 85-111, not only must there be a written financing agreement, but that it must govern the payments at issue. Except for three entries specifically mentioned by the court, the importer failed to present evidence that it complied with the terms of its written financing agreements. Thus, the requirements of T.D. 85-111 were not met, and the payments were dutiable since they were not *bona fide* interest payments, and Customs' motion for summary judgment was granted.

**Headquarters Rulings:**

## pre T.D. 85-111, July 17, 1985

Interest payments made by a buyer to a third party, unrelated to a seller, are not part of transaction value. Interest payments made by a buyer to a seller as part of the invoice transaction are part of transaction value.
**542275 dated June 11, 1981 (TAA No. 31).**

Where a buyer makes interest payments to a seller as part of an overall financing arrangement between parties, such payments are not part of the amount paid or payable for the merchandise, and are therefore not part of transaction value.
**542627 dated Dec. 17, 1981 (TAA No. 43).**

A financial arrangement between the importer and the exporter, under which the importer, in effect, loans the exporter resources necessary to enable the exporter to fulfill the importer's orders, is analogous to a financing system not related to the price actually paid or payable, and is not part of the transaction value of the imported merchandise.
**542666 dated Jan. 26, 1982 (TAA No. 45).**

The question of whether a financial arrangement between the buyer and seller is part of the price actually paid or payable is a question of fact which must be determined on the basis of evidence available with regard to that particular transaction.
**542703 dated Aug. 25, 1982 (TAA No. 50).**

Interest payments made by the buyer to the seller are not included in the price actually paid or payable where the payments are part of a separate, overall financing arrangement between the parties that bears no relationship to a particular sale.
**542869 dated Oct. 13, 1982.**

Payments for interest made by the buyer to the seller arranged as part of the invoice transaction are part of the total payment made to the seller and, therefore, are part of transaction value.
**543023 dated Mar. 17, 1983.**

## T.D. 85-111, dated July 17, 1985; treatment of interest charges

Interest payments, whether or not included in the price actually paid or payable for imported merchandise, should not be considered part of the dutiable value provided the following criteria are satisfied: (1) the interest charges are identified separately from the price actually paid or payable; (2) the financing arrangement in question is made in writing; (3) when required to do so by Customs, the buyer can demonstrate that: the goods undergoing appraisement are actually sold at the price declared as the price actually paid or payable, and the claimed rate of interest does not exceed the level for

such transaction prevailing in the country where, and at the time, the financing was provided.
**T.D. 85-111 dated July 17, 1985.**

Interest payments, whether or not included in the price actually paid or payable for imported merchandise, will not be considered part of dutiable value, provided the criteria set out in T.D. 85-111 are satisfied.
**543531 dated Apr. 30, 1985; 544082 dated Sep. 19, 1988; 544155 dated Dec. 16, 1988, aff'd by 544321 dated May 16, 1989.**

An amount paid by the importer to the foreign seller, which represents a reimbursement of the interest charges that the foreign seller paid to a third party, is a dutiable expense. This payment does not fall into the purview of T.D. 85- 111, which excludes interest from the dutiable value of goods.
**543765 dated Aug. 8, 1986.**

An amount paid by the importer to a foreign seller, which actually represents reimbursement for the interest charges that the foreign seller pays to a third party, is dutiable. Such a reimbursement does not fall within the purview of T.D. 85-111 (clarified by General Notice, Cust. B. & Dec., Vol. 23, July 26, 1989), which excludes interest from the appraised value of goods.
**544610 dated Dec. 23, 1991.**

The interest charges incurred by the supplier and paid by the importer are not the type of interest charges provided for in T.D. 85-111, which excludes interest from transaction value. T.D. 85-111 applies to interest charges incurred for the payment of imported merchandise, not for the financing of component materials included therein. In this case, the interest charges are incurred by the supplier in financing its acquisition of components for the merchandise to be manufactured. The payments made by the importer to the supplier to reimburse the supplier for the interest charges are part of the transaction value of the imported merchandise.
**545606 dated Nov. 30, 1994.**

No written agreement exists between the buyer and seller regarding the interest charges at issue. The price of the imported merchandise includes an amount for interest. In addition, the buyer did not book the interest charges as an interest expense in accordance with generally accepted accounting principles. Accordingly, the interest charges are included in transaction value as part of the price actually paid or payable.
**545984 dated May 16, 1995; clarified by 546030 dated June 13, 1995.**

The buyer purchases automobile tires from its related party seller. The price of the merchandise includes an amount for interest. There is a written financing agreement between the buyer and seller, dated August 5, 1994, and the buyer records the interest amounts on its books as interest expense in accordance with generally accepted accounting principles. The interest payments are identified separately from the price

actually paid or payable. Accordingly, the interest charges are not included in transaction value.
**546030 dated June 13, 1995; clarifies 545984 dated May 16, 1995 (the parties entered into a written agreement and followed the requirements of T.D. 85-111).**

There exists no written financing agreement between the related parties with regard to alleged interest paid by the buyer to the seller in the importation of merchandise. In addition, no evidence has been submitted to support a determination that the claimed interest rate did not exceed the prevailing rate for similar transactions in the country where the loan was made. The requirements of T.D. 85-111 have not been met and therefore, the finance charges paid by the buyer constitute part of the price actually paid or payable for the imported merchandise.
**545818 dated June 29, 1995.**

The criteria of T.D. 85-111 and the clarification have been met; therefore, the finance charges at issue are not included in the price actually paid or payable for the imported merchandise. The rate of interest is not excessive in light of the fact that the buyer is a relatively new company with no credit history and lacks substantial assets. The rate agreed to between the parties is appropriate, reasonable, and reflects the level for such transactions prevailing in the country where, and at the time, such financing was provided.
**546262 dated Nov. 29, 1997.**

An analysis regarding the dutiablity of interest payments pursuant to T.D. 85-111 is not warranted when neither the interest charges nor related service fees are paid directly or indirectly to the actual sellers of the imported merchandise. Since the parties do not have a buyer/seller relationship, and neither the interest payments or service fees inure directly or indirectly to the benefit of the unrelated, foreign seller-manufacturers, a review of T.D. 85-111 is not warranted. The interest payments and finance service charges paid to a lender that is not also the seller should not be included in the price actually paid or payable in determining transaction value.
**548316 dated July 16, 2003.**

## clarification regarding treatment of interest

**General Notice, Cust. B. & Dec., Vol. 23, July 26, 1989.**

Customs interprets the term interest to encompass only bona fide interest charges, not simply the notion of interest arising out of a delayed payment. Bona fide interest charges are those payments that are carried on the importer's books as interest expenses in conformance with generally accepted accounting principles. To demonstrate that the goods are actually sold at the price declared, the buyer must be able to prove that the price actually paid or payable for identical or similar goods sold without a financing arrangement closely approximates the price paid for the goods being appraised.
**544334 dated June 27, 1989; 544395 dated Nov. 2, 1990.**

Bona fide interest payments are considered to be payments that are carried on the importer's books as interest expenses in conformance with generally accepted accounting principles. In the present case, the importer does not book the payments to the seller as an interest expense and, therefore, does not meet the evidentiary requirements that are set out in the clarification regarding the treatment of interest.
**544580 dated Mar. 1, 1991.**

## assists

Interest free loans and other financial assistance are not considered to be assists within the meaning of the term under the Trade Agreements Act of 1979.
**542166 dated Feb. 12, 1981 (TAA No. 17).**

## computed value

A loan interest expense incurred by the assembler prior to commencement of assembly operations appearing on the assembler's books of account is properly included in the amount for profit and general expenses under computed value.
**542849 dated Aug. 6, 1982.**

Interest expense is considered to be an organizational cost of doing business and a general expense in determining the computed value of imported merchandise. Generally accepted accounting principles do not provide for a proration of interest expense merely because the asset acquired with the loan is utilized less than 100 percent in the production process.
**543031 dated Apr. 12, 1983.**

Interest on a loan is considered to be a general expense under computed value. Because general expenses are not considered to be direct costs of processing pursuant to 19 CFR 10.178, the interest expense in question in this case may not be included in computing the thirty-five percent requirement for GSP eligibility.
**543159 dated May 7, 1984.**

## financing arrangement

The interest payments made by the importer to the Korean bank are indirect payments to the seller; they are not part of an overall financing arrangement, nor are they provided

for in a written financing agreement. Therefore, they are to be included in the price actually paid or payable for the imported merchandise.
**545277 dated June 14, 1993.**

The importer reimburses one of its parent companies/seller for costs incurred due to the importer's delayed payment settlement. Interest accrues on the importer's books, and the parent makes the interest payments directly to the bank for the late payments. The payments are part of the total payment to the seller for the imported merchandise and therefore, part of the price actually paid or payable. The payments do not constitute bona fide interest charges, but rather the payments represent interest arising out of delayed payment. Even if the interest charges had been bona fide, they would have been included in transaction value because there is no written finance arrangement specifying the interest rate or the manner for determining such a rate.
**546056 dated Mar. 22, 1996; <u>modified</u> <u>by</u> 546399 dated Mar. 20, 1997.**

The importer purchases finished bicycles and bicycle parts from foreign suppliers for sale in the United States. A Taiwanese supplier negotiated with the importer regarding the supply of products. These negotiations resulted in a series of memoranda, which culminated in a "Memorandum of Intent." This memorandum contained provisions regarding the financing arrangements involved in purchasing products, including the rate of interest. Although the memorandum is unsigned, the evidence establishes that both parties agreed to the terms set forth. The informality of the written communication between the parties does not negate the existence of the written financial arrangement governing the transactions as long as the evidence shows that the parties agreed to the terms. Although T.D. 85-111 requires that the financing arrangement be in writing, there is no requirement that it must be in one document, signed by both parties, rather than in multiple documents. In this case, the evidence establishes that the parties agreed to a financing arrangement that was specified in writing in the "Memorandum of Intent" and other documents. The interest payments to the seller are not dutiable.
**546396 dated Nov. 29, 1996.**

Various documents may be considered as a whole to determine whether they constitute a bona fide written financing arrangement. The first document is the correspondence between the parties regarding the applicable interest rate for transactions within the specified time period and a formula utilized by the bank in calculating the interest rate. The second document is a letter between the parties explaining that the bank had increased the rate of interest applicable to overdue invoices during a certain time period. The third document is also the correspondence between the parties indicating the interest rate that is to be applied. Finally, the fourth document consists of additional correspondence that confirms the interest rate. These letters and documents set forth the applicable interest rate, as well as a methodology by which the interest is determined and under what circumstances interest accrues. Accordingly, there exists an arrangement put into writing in which the parties understand and agree to the interest rate charged for financing the transactions. In addition, the interest charges are identified separately from the price actually paid or payable, and the charges are

comparable to the prevailing rate for transactions in the same country where the financing is obtained. The interest charges are not to be included in the transaction value of the imported merchandise.
**546399 dated Mar. 20, 1997; <u>modifies</u> 546056 dated June 3, 1996 (additional evidence presented regarding the existence of a written financing arrangement).**

The importer submitted "interest invoices" and "declarations" regarding the alleged interest paid in lieu of a written financing arrangement as required by T.D. 85-111. The documents submitted were executed subsequent to the transactions at issue, and do not constitute documents from which a written financing agreement may be verified. It is our conclusion that these documents do not satisfy the requirement of T.D. 85-11 that the financing arrangement in question was made in writing. If a written financing arrangement did not exist at the time of the relevant transaction, the payments alleged to constitute interest must be included in the price actually paid or payable.
**548332 dated Oct. 31, 2003.**

## separately identified from price

The importer has provided a sample invoice that shows a C.I.F. price, inclusive of interest, from which interest of five percent is deducted in order to arrive at a C.I.F. price, net of interest. In T.D. 85-111 (provides that interest payments are not to form part of dutiable value if certain criteria are met), one of the requirements listed is that the interest charges must be identified separately from the price actually paid or payable. Here, the charges are distinguishable from the price and there is a written financing agreement. In addition, the interest rate does not appear to be excessive. Accordingly, the conditions imposed by T.D. 85-111 have been met, and the interest charges are not dutiable.
**545094 dated Apr. 1, 1993**.

The payments made by the buyer to the seller for the interest charges are not part of the transaction value of the imported merchandise, provided that the payment is charged to an interest expense account, and that, if required, the buyer can prove that the subject merchandise is actually sold at the price declared, and the claimed rate of interest does not exceed the level for such transaction prevailing in the country where and when the financing was provided.
**544970 dated Oct. 20, 1993.**

Although the seller's invoices separately identify interest charges from the price actually paid or payable, the interest payments are not recorded separately from the purchases on the importer's books in accordance with generally accepted accounting principles. The payments are not bona fide interest payments and, accordingly, are part of the price actually paid or payable for the imported merchandise.
**546070 dated Apr. 25, 1996.**

The importer has not provided any evidence to establish that the alleged interest charges are recorded on its books as interest expenses in conformance with generally accepted accounting principles. The importer does not carry the charges labeled as interest on the seller's invoices as interest expenses on its books, but rather, as part of the CIF price of the goods. In addition, the importer has not shown that the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time, the finance was provided. The claimed interest charges are included as part of the transaction value of the merchandise.
**546349 dated Aug. 23, 1996.**

# INVOICING REQUIREMENTS

## INTRODUCTION

Note: See, 19 CFR 141.81 through 141.92 for complete requirements regarding invoicing.

**Headquarters Rulings:**

### inconsistent documents presented at time of entry, T.D. 86-56

Imported merchandise entered or withdrawn from a warehouse for consumption is not to be accepted when documents are presented to Customs, which contain overstatements, understatements or omissions in price or value information.
**T.D. 86-56 dated Feb. 20, 1986.**

If an importer provides an acceptable explanation for differences in the price or value information in visas and invoices, then the entry may be accepted by Customs. Additional legitimate reasons for differences in the entry documentation may exist, and in these cases, Customs will act in accordance with the policy set forth in T.D. 86-56.
**543731 dated May 1, 1986.**

Any differences or inconsistencies in the documentation presented to Customs shall be considered as an indication that one or more of such documents contains false or erroneous information. Where a visaed invoice or document is presented to Customs containing erroneous price or value information, such invoice or document can only be corrected by the presentation to Customs of a new corrected document or invoice stamped with the visa of the country of origin.
**543792 dated Aug. 14, 1986.**

The visaed invoice submitted by the importer indicates the price for the merchandise. The commercial invoice indicates both the price of the goods and the quota (not a lump sum but, rather, an indication as to what portion of the total represents the price of the merchandise). The documentation is acceptable and entry of the merchandise is allowed.
**543825 dated July 7, 1987.**

The value of merchandise for appraisement purposes is represented by the manufacturer's invoice, i.e., the price actually paid or payable for the merchandise. The visaed invoice corresponds with the quota seller's invoice that represents both the price of the goods plus the cost of the quota. There is no indication on the visaed invoice as to what portion of the total represents the price of the merchandise or the amount of the quota. The importer has presented to Customs a visaed invoice, which contains

erroneous value information and is inconsistent with other documentation presented by the importer. Accordingly, the entries are rejected until a corrected visaed invoice is received.
**543809 dated Nov. 5, 1987; 543908 dated Apr. 19, 1988.**

Several middlemen purchased wearing apparel from manufacturers, located primarily in China, at various prices in order to fulfill contracts with a third-party purchaser. The third-party purchaser subsequently breached the contract and did not take delivery of the merchandise. In order to quickly relinquish themselves of this seasonal merchandise, the middlemen contracted with another importer for the purchase at a reduce rate. The transaction value is represented by the "settlement price." Furthermore, evidence of the original invoice price and the "settlement price" should be provided. Assuming the relevant commercial documentation is submitted, the entry may be made (T.D. 86-56 does not preclude entry) using the original visaed invoice price and transaction value as represented by the "settlement price."
**544432 dated Jan. 17, 1990.**

In the instant case, the values indicated on the visaed invoices are not always consistent with the C&F values on the commercial invoices. On the basis of the information submitted, the dutiable value of the imported merchandise is properly determined by using the total visaed invoice amounts less actual ocean freight charges.
**544581 dated Feb. 25, 1991.**

Visaed invoices, presented to Customs at the time of entry, indicate a specific price for imported merchandise. The United States purchaser, who had originally ordered the merchandise, subsequently canceled the order. The importer then purchased the merchandise at the "cancellation price," which is subsequently lower. The importer presented invoices with the "cancellation price" after entry. The merchandise should be appraised pursuant to the price that is indicated on the visaed invoice rather than at the "cancellation price" as indicated by the importer.
**544773 dated Apr. 3, 1992.**

A discrepancy between the visaed invoice price of imported merchandise and a renegotiated invoice price of the merchandise does not mandate rejection of the entry, provided that the importer supplies Customs with commercial documentation sufficient to show that the difference between the original purchase price and the renegotiated price is due to a late delivery.
**544911 dated Apr. 6, 1993.**

The buyer purchases garments manufactured in China, the price of which is negotiated with the provincial trade authorities, rather than with the actual manufacturer of the apparel. Once the price is set, the authorities issue a visaed invoice. Recently, the factories that produce the merchandise have requested that the buyer pay them a per garment fee in addition to the price negotiated with the provincial authorities. Unless the fee is paid, the garments may not be produced within the required time, if at all. The

fee is paid directly to the factory and is not included in the amount shown on the visaed invoice. Because the fee is paid directly to the factory, there is a discrepancy between the visaed invoice and the commercial invoice. The discrepancies between the visaed invoices and the entry documentation have been adequately explained for purposes of T.D. 86-56. A corrected invoice is not necessary.
**545239 dated June 30, 1993.**

The importer has submitted visaed invoices that differ from the commercial invoices and packing lists. The visaed invoices leave 19,600 dozen articles, weighing 1752 kilograms with a value of $18,717.89, unaccounted for on the entry summary. The importer states that the visaed invoice is incorrect and that the price paid for the merchandise is that shown on the commercial invoice. The importer claims that a corrected visa was requested, but through inadvertence, the value of the shipment was not corrected. In view of the inconsistencies between the visaed invoices and the commercial invoices and packing lists, and the failure of the importer to submit documentation to explain the inconsistencies, the appraised value is properly determined using the amount on the visaed invoices.
**544847 dated Sep. 3, 1993.**

The importer contracts with a company to supply luggage to be sold in the importer's stores. The supplier subsequently contracts with the seller to produce the luggage and export it to the United States. The importer establishes a letter of credit in favor of the supplier in the amount of the purchase price of the luggage. The supplier then assigns its right to the letter of credit to the seller. The seller subsequently pays a portion of the amount to the supplier as compensation for its role in the transaction. The supplier never takes title to the merchandise. Instead, the seller sends the merchandise to the port of export, at which point the importer takes title and assumes risk of loss. The visaed invoice accurately reflects the purchase price received by the seller, i.e., the total payment by the importer to the seller. The visaed invoice is acceptable under T.D. 86-56.
**545416 dated Dec. 10, 1993.**

Wearing apparel is imported from various countries. When a shipment is to be sent by air rather than by sea, the importer pays the costs of air freight, and the suppliers reduce the price of the merchandise accordingly. Neither the original nor the renegotiated price includes shipping costs. A new purchase order is used which reflects the renegotiated price. These arrangements are made prior to the exportation of the merchandise. However, it may not be possible to obtain revised visaed invoices. As long as the evidence submitted establishes that the price reductions are agreed to before the merchandise is exported to the United States, the renegotiated price constitutes the price actually paid or payable. In addition, the differences in the invoice values have been adequately explained in accordance with T.D. 86-56, and the documents need not be returned for correction.
**545628 dated July 29, 1994.**

A Canadian middleman sells wearing apparel of Romanian origin to customers in the United States. The merchandise is shipped directly from the Romanian supplier to the U.S. customers. Due to the fact that the Canadian middleman does not want to disclose to its U.S. customers the price it pays to the supplier, the visaed invoice presented to Customs does not state any price or value information. The commercial invoices reflect the price between the Canadian middleman and the U.S. customers. A visaed invoice that contains no value or price information is unacceptable under T.D. 86-56.
**546077 dated Aug. 22, 1995.**

There are discrepancies between the prices stated on the commercial invoices and those reflected on the visaed invoices. Customs liquidated the entries with ad valorem duties assessed on the basis of the greater of the amounts shown on the visaed invoices. In accordance with T.D. 85-86, the discrepancies between the commercial and visaed invoices raise the presumption that either or both of the documents contain false or erroneous information in regard to appraisement. Customs has made this presumption in the instant case and it is incumbent upon the protestant to establish, to the satisfaction of the Customs officer, that the price stated on the invoice was, in fact, the price actually paid by the importer. Merely stating that the importer paid the commercial price is insufficient. Instead, the protestant needed to provide documentation that supported its claimed value and an explanation of the discrepancy between the commercial invoice and the visaed invoice. Such documentation would have included but not been limited to a written agreement between the importer and seller/middlemen, a purchase order between the two, and/or, most importantly, proof of payment between the two parties.
**547842 dated May 7, 2002.**

## separately identified from the price actually paid or payable

See also chapter on POST-IMPORTATION CHARGES, infra.

19 U.S.C. 1401a(b) (3) (A) (i); 19 CFR 152.103(i) (1) (i)

Engineering and set-up fees in connection with the U.S. installation of imported equipment are not included in transaction value of the imported merchandise. The purchase contract or invoice must clearly establish the separate identity of these charges.
**542611 dated Sep. 22, 1981.**

On-site operating and training expenses incurred by the buyer, if identified separately on the sales invoice, are not included in the transaction value of the imported merchandise. These fees are considered as incurred for "the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States."
**543331 dated June 14, 1984.**

Payment made for performance bond insurance coverage which is included in the price actually paid or payable must be separately identified in order for the cost to be deducted pursuant to section 402(b)(3)(A)(i). Otherwise, it would remain part of the price actually paid or payable.
**543567 dated Jan. 17, 1986.**

# LEASE TRANSACTIONS

## INTRODUCTION

In 19 U.S.C. 1401a(b)(1), transaction value is defined as "the price actually paid or payable for the merchandise when sold for exportation to the United States. . . . " (emphasis added)

The parallel Customs regulation is 19 CFR 152.103(b).

**GATT Valuation Agreement:**

Article 1, paragraph 1, corresponds with 19 U.S.C. 1401a(b)(1).

In addition, CCC Technical Committee Study 2.1 discusses the treatment of rented or leased goods, and states the following:

1. Transaction value, the primary method of valuation under the Agreement, is based on the price actually paid or payable for the goods when sold for export to the country of importation.
2. Advisory Opinion 1.1 on "the concept of sale in the Agreement" states that hire or lease transactions by their very nature do not constitute sales, even if the contract includes an option to purchase the goods. Therefore for such cases, the transaction value method is precluded and it becomes necessary to determine the Customs value under other methods, in the order prescribed by the Agreement.
3. Where goods which are identical or similar to the rented or leased goods are sold for export to the country of importation, it would be possible to establish the Customs value on the basis of Articles 2 and 3.
4. However, in cases where these two Articles cannot be used, Article 5 [deductive value] must next be considered. Since by their nature rented or leased goods would not themselves be sold in the country of importation, Article 5 would apply only if identical or similar imported goods were sold in the country of importation. If not, it will be necessary to try to establish the Customs value under Article 6 [computed value].
5. Once the possibility of establishing the Customs value under Articles 2 to 6 has been exhausted, Article 7 [value if other values cannot be determined] must then be invoked under which various approaches are possible.
6. In the event of the goods being valued under Article 7, the methods laid down in Article 1 to 6 inclusive, applied with reasonable flexibility, should be used first . . .
7. If under Article 7 the Customs value cannot be determined by flexible application of Articles 1 to 6, it may be established using other reasonable means provided that they are not precluded by Article 7.2 and are consistent with the principles and general provisions of the Agreement and Article VII of the GATT.

8. For instance, valuation could be based on the use of valid list prices (for new or used goods) for exportation to the country of importation. In the case of goods which have been used, valuation may be based on a valid list price for new goods in the absence of a valid list price for used goods. However, since the goods would have to be valued with reference to their condition at the time of importation, such list prices for new goods must be adjusted to take into account the depreciation and obsolescence of the goods being valued.
9. Another possibility would be recourse to expert advice acceptable to both customs and importer. The value so determined should be in conformity with the provision of Article 7 of the Agreement.
10. In some cases, rental contracts include an option to buy. This option may be given at the beginning, during or at the end of the basis contract period. In the first case valuation should be based on the option price. In the last two cases, rental payments provided for in the rental contract plus the residual sum required may provide a basis for the determination of the Customs value.
11. In cases where there is no option to buy, valuation under Article 7 could also proceed on the basis of the rental charges paid or payable for the imported goods. To this end, the aggregate rental expectations during the economic life of the goods may serve as a basis. Care needs to be taken with respect to certain cases where the rental charges can be quoted higher in order to secure amortization of the goods within a period shorter than the economic life of the goods.
12. Determination of the economic life of the goods may at times create practical problems, such as in industries where the rate of technology change is rapid. While the past experience of the life of identical and similar goods might be useful, in most cases a solution is likely to be found by consulting with specialized firms in co-operation with the importer. It should also be noted that a distinction will have to be made with regard to economic life of new and used goods, such as using "the whole economic life" for new goods and "the remaining economic life" for used goods.
13. Once the total rental charges have been determined, certain adjustments may be necessary to establish the Customs value, in the form of either additions or deductions depending upon the terms of the contract and the principles underlying the Agreement. Where probable additions are concerned, dutiable elements not already included in the rental charges should be taken into account. In this respect, the factors listed in Article 8 could provide some guidance. In respect of deductions, any elements which are not part of the Customs value should be deducted.
14. The following example illustrates the determination of Customs value on the basis of rental charges payable. (For purposes of example, elements mentioned in Article 8 are ignored.) This approach could be applicable regardless of the duration of the contract. In cases of re-exportation of the goods before the expiration of the estimated economic life, the refund of Customs duties and taxes would be possible if the national legislation allows it.

<u>Facts of the transaction</u>

15. As a result of its expanding business, firm A of country X decides to rent a new machine from rental company B of country Y for a minimum duration of 36 months, renewable. According to the terms of the contract the erection and maintenance costs in

the country of importation incurred by the importer are 20,000 c.u. per annum for the first two years of operation and 30,000 c.u. per annum for the following years, payable to the rental firm. The machine is rented at 50,000 c.u. per month inclusive of these costs and of an interest charge of 10%.
16. In view of the specific nature of the machine, none of the valuation methods (Articles 1 to 6), even applied with reasonable flexibility are appropriate. As a result of consultation between Customs and the importer, it is decided to base the Customs value on the total amount of the rent payable for the whole economic life of the machine. For that purpose it has been established that the machine can be used for five years.
17. The total amount of the rent payable over five years would, therefore, be taken as a basis for valuation. Once so determined, it is necessary to deduct from this account the costs for erection and maintenance and the interest charges.
18. The following symbols are adopted for formulating the calculation:
R = total rent payable during the full economic life of the goods
M = costs of erection and maintenance I = interest
Customs value = R - (M + I)

Additional examples are provided for in CCC Technical Committee Case Study 4.1, Treatment of rented or leased goods.

**Headquarters Rulings:**

## elimination of transaction value

See, 19 U.S.C. 1401a(b)(1);19 CFR 152.103(b); GATT Valuation Agreement, Article1, paragraph 1.

Under circumstances where merchandise is imported pursuant to an agreement to lease with an option to purchase, the merchandise cannot be considered to be sold for exportation to the United States. Therefore, transaction value would be eliminated as a basis of appraisement.
**542996 dated Mar. 4, 1983.**

## reasonably adjusted transaction value

The U.S. company imports equipment leased from a related company. The leased equipment cannot be properly appraised under 19 U.S.C. 1401a(b)-(e) of the TAA. The equipment can be appraised pursuant to section 402(f), using the transaction value method reasonably adjusted to permit the rental value of the equipment over its full economic life to represent the value of the merchandise.
**545112 dated June 7, 1993.**

# NORTH AMERICAN FREE TRADE AGREEMENT

## INTRODUCTION

**Headquarters Rulings:**

### accumulation provision

The producer manufactures a good from originating and non-originating components. Costs associated with the production of the non-originating material are not recorded on the books of the material producer but rather on the books of the material producer's parent. The applicable rule of origin for the good requires both a tariff shift and a regional value-content (RVC) test. In regard to the RVC calculation, the producer of the good wishes to accumulate certain originating costs incurred in the production of the non-originating material pursuant to the accumulation provision set forth in section 14 of the NAFTA Rules of Origin Regulations. However, there is no authority under the accumulation provision to accumulate costs incurred by persons other than the producer of the material and therefore, the originating costs recorded on the books of the material producer's parent may not be accumulated.
**545676 dated Jan. 20, 1995.**

As long as the appropriate requirements are met, a Mexican producer of electrical wire harnesses may, under the net cost method, accumulate originating costs incurred in the U.S. by the importer to insulate bare, non-NAFTA originating, copper wire. In accordance with sections 14(1) and (2) of the Appendix to the final NAFTA Rules of Origin Regulations (ROR), an exporter or producer of a good may accumulate the production of materials incorporated in a good, for example, processing and overhead costs, provided they are part of the net cost incurred by the producer in the production of that material and are reflected as such on the books. It is also necessary to examine sections 6(11) and 2(6) of the ROR for a determination of "net cost" and "total cost," respectively. Ascertaining "net cost" involves a calculation of the producer's "total cost."
**546009 dated Dec. 4, 1995.**

The cost of packing cartons of U.S. origin are recorded on the books of the producer; therefore, they are included in the total cost, but excluded from net costs. Under the net cost method, the regional value content (RVC) of a good is determined in accordance with section 6(11) of the ROR, which provides generally that the net cost of a good is its total cost less any excluded costs. For purposes of determining RVC, the term "total cost" is defined as "all product costs, period costs and other costs that are recorded, except as otherwise provided in the books of the producer without regard to the location of the persons to whom payments with respect to those costs are made" under 19 CFR pt. 181, section 2(6). The NAFTA Rules of Origin Regulations section 7 allow for the exclusion of the value of non-originating packing materials in determining the value of non-originating materials. Based on the information presented, the packing costs are originating and, therefore, would not be included in the value of non-originating materials.
**546838 dated Apr. 9, 1999.**

Based on the evidence submitted, the bearings meet the definition of a light duty automotive good pursuant to section 2 of the NAFTA Rules or Origin Regulations. In this situation, pursuant to section 9(1) of the NAFTA Rules of Origin Regulations, none of the non-originating materials (cage, molded seal, grease, seal, outer ring and inner ring) are listed in the Schedule IV of the NAFTA Rules of Origin Regulations and, therefore, are not traced materials. Thus, the value of these non-originating materials is not included in the value of the non-originating materials when calculating the regional value content but they it is included in the net cost of the bearings. Therefore, the bearings in this situation meet the requirements of General Notice 12(t)/85.241(b), HTSUS, and are considered "originating goods" pursuant to General Notice 12(b)(ii), HTSUS.
**547073 dated Mar. 8, 2000.**

## change in tariff classification

The Appendix to section 181.131, Customs Regulations, (19 CFR 181.131; the NAFTA Rules of Origin Regulations (ROR)), sets forth, at Part IV, section 4, the bases for determining whether a good originates in the territory of a NAFTA country. Section 4(2)(B) of the ROR provides that a good originates in the territory of a NAFTA country where each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification, set forth in Schedule I of the ROR (Annex 401 of the NAFTA), as the result of the production occurring entirely in the territory of one or more of the NAFTA countries, and the good satisfies the applicable regional value content requirement. In this instance, the processing operation in Canada does not result in a change in subheading because benzyl chloride and benzyl peroxide are classified in subheading 2916.32. Accordingly, the benzyl peroxide does not qualify as an originating good under NAFTA. In addition, because the production process does not result in a change in classification, there is no need to undertake a regional value content calculation. The good does not qualify as an originating good under NAFTA.
**545761 dated Nov. 15, 1994.**

A ”cold box” is produced in Canada from both originating and non-originating materials, and is classified in subheading 8419.60.1000, HTSUS. The non-originating materials used in the production of the cold box consist of columns, classified in subheading 8419.90.3000, HTSUS, and heat exchangers, classified in subheading 8419.50.1000, HTSUS. Based upon the information submitted, the non-originating materials used in the production of the good do not undergo a change in classification. The cold box does not qualify as an originating good for purposes of NAFTA under sections 4(2)(a)-(b) of the Rules of Origin Regulations, nor, based on the information submitted, does it qualify as an originating good under any of the exceptions to the change in tariff requirement set forth in sections 4 and 5 of the Rules of Origin Regulations.
**546305 dated Apr. 29, 1996.**

A Canadian company produces laser-based, structured light products from both originating and non-originating materials. All non-originating materials used in the production of the goods are classified elsewhere than in heading 9013, HTSUS. All of the non-originating materials used in the production of the goods undergo a change in classification pursuant to the rule of origin set forth in General Note 12(t)/90.31(A). The goods qualify as originating goods under the NAFTA.
**546612 dated Jan. 10, 1997.**

The documentation submitted substantiates that the imported door handles qualify for preferential duty treatment under section 4(4)(b) of the NAFTA Rules of Origin Regulations (ROR) as the merchandise satisfies one of the NAFTA exceptions to the change in tariff classification requirement. According to the bill of materials submitted, the regional value content of the imported leversets under the net cost method appears to exceed fifty percent under the net cost method. However, this assumes that the value of the non-originating materials was determined in accordance with section 7 of the ROR, and that the total cost and net cost were determined in accordance with section 2(6) and/or section 6 of the ROR. In addition, Customs assumes that the manufacturer has in its possession valid certificates of origin in respect of all materials claimed as originating.
**547020 dated Apr. 9, 1999.**

Based on the information presented, the vehicles do not qualify as originating goods under General Note (GN) 12(t) and thus are not entitled to duty free entry under the Automotive Products Trade Act (APTA). In order to be entered as free of duty under APTA, an imported motor vehicle must qualify as an originating good in the territory of a NAFTA party, GN 12. Under the applicable rule of origin specified in GN 12(t)/87.7, the non-originating materials used in the production of the subject motor vehicles must undergo a change in classification and the vehicles must have a regional value content of not less than fifty percent under the net cost method. No information was submitted in respect of either of these requirements and no information was provided to support claims that the imported merchandise qualifies as Canadian articles.
**546515 dated July 7, 1999.**

The imported electric garlands do not satisfy the rule of origin set forth in GN 12(t)94.8(A) because, the designation of the intermediate material notwithstanding, not all the non-originating materials, viz., the light set, undergo a change in tariff classification. In addition, the electric garlands do not satisfy the rule of origin set forth in GN 12(t)(94.8(B) because while the rule requires, inter alia, that there be a change in tariff classification to subheadings 9405.10 through 9405.60 from subheading 9405.91 through 9405.99, none of the non-originating materials used in the production of the good are classified in subheading 9405.91 through 9405.99. The fact that a good may satisfy the regional value content component of the rule of origin does not exempt it from the requirement that there also be a change in tariff classification. Thus, the self-produced garland material qualifies as an intermediate material if so designated by the producer. The imported electric garlands do not qualify for preferential treatment under NAFTA.
**547199 dated Aug. 18, 1999.**

Pursuant to 19 CFR pt. 181, app., '7, the importer purchased non-originating heads to produce golf clubs from a Canadian company who imported the heads from China. The transaction value of each head constitutes its value for the purposes of calculating the regional value content (RVC) of each golf club. Therefore, the transaction value method to determine RVC of each golf club should be used, in that the RVC is above the sixty percent, as required. Complete golf clubs are classifiable under subheading 9506.31, HTSUS, and golf club parts (such as the subject heads, shafts, and grips) are classifiable under subheading 9506.39, HTSUS. Therefore, the RVC requirements have been met, and the heads should undergo the proper tariff shift to subheading 9506.31, HTSUS, as required by the General Notice 12(t)/95.6(B)(1), HTSUS. Based on these determinations, the golf clubs are eligible for preferential treatment under the NAFTA.
**547540 dated Dec. 30, 1999.**

The non-originating materials used in the production of the mixer assembly undergo a change in tariff classification as the result of the production process in Canada and, consequently, the mixer assembly qualifies as an originating good pursuant to General Notice 12(t)84.216(A). Assuming that the self-produced mixer assembly is designated in accordance with the NAFTA Rules of Origin Regulations (ROR), it will therefore qualify as an intermediate material for purposes of determining the regional value content of the imported good.
**547550 dated Dec. 30, 1999.**

Based upon the information provided, all of the materials in the production of the good (high definition digital televisions) undergo the applicable change in tariff classification, and satisfy the regional value content requirement of the good is greater than fifty percent under the net cost method. The merchandise qualifies as goods that originate in the territory of a NAFTA party.
**548364 dated Oct. 2, 2003.**

## de minimis rule

The importer purchases flexible lunch coolers from an unrelated producer in Mexico. The good, which is classified in subheading 4202.92, HTSUS, is produced in Mexico from originating and non-originating materials, including a non-originating nylon fabric imported from Korea and classifiable in heading 5407, HTSUS. Based upon estimates submitted by the importer, the value of the non-originating material, used in the production of the good, that does not undergo a change in tariff classification, is 6.97 percent of the transaction value of the good. Accordingly, the good qualifies as an originating good under section 5(1)(a) of the ROR. If the value of the non-originating material were to exceed seven percent of the transaction value of the good determined in accordance with Schedule II, then the good would not qualify as originating under the de minimis rule.
**545963 dated May 25, 1995.**

A ”Tautliner” tarpaulin system, classified in tariff item 8716.90.50, HTSUS, is designed to convert a flatbed trailer or semi-trailer into a van. The tarpaulin system is made from both originating and non-originating materials and is imported into the United States either separately, or as part of, and permanently mounted onto, a trailer or semi-trailer. In order for the “Tautliner” tarpaulin system, whether imported separately or as part of a trailer, to qualify as an originating good under section 5(1)(a) of the ROR, it is necessary to determine the transaction value of the good in accordance with Schedule II, and then determine, in accordance with Schedule VIII, whether the value of the non-originating materials used in the production of the good is not more than seven percent of the good’s transaction value. If the value of the non-originating materials used in the production of the good that do not undergo a change in classification is not more than seven percent of the transaction value of the tarpaulin system, determined in accordance with Schedule II, then the system qualifies as an originating good in accordance with section 5(1) of the ROR.
**545891 dated June 23, 1995; <u>modifies</u> 956604 dated Sep. 26, 1994; 546055 dated July 14, 1995 (revised information submitted regarding the transaction value; the good qualifies as an originating good under section 5(1)(a) of the ROR).**

A U.S. company imports broadcast receivers (Goods A and B) that are assembled by a producer in Mexico. Both Goods A and B are classified in tariff item 8529.90.99, HTSUS. With respect to Good A, three components, i.e., ceramic filters from Japan, do not undergo the required tariff shift. Regarding Good B, four components, i.e., ceramic filters and a ceramic lock, do not undergo the required tariff shift. There is no transaction value for the goods. Therefore, the de minimis calculation is based on the total cost of the good. Section 5(8) of the ROR provides for the calculating of “total cost” for the de minimis rules. From the worksheets submitted by the importer, Goods A and B qualify as originating goods under the de minimis rules. The value of the non-originating materials that do not undergo a tariff shift for Good A is approximately 4.5 percent of the total cost of the good. The value of the non-originating materials for Good B is approximately five percent of the total cost of the good.
**545677 dated June 30, 1995.**

An importer may use the applicable tariff shift rule, RVC requirement, or the de minimis rule, on a model by model basis, to determine whether various types of wire harnesses produced in Mexico qualify for NAFTA preferential treatment.
**547956 dated Mar. 22, 2002.**

## regional value content

A company produces looseleaf binders in Canada and sells them to customers in the United States. Five styles of binders are produced and information relating to the cost per unit of materials used in the production has been provided. Based upon the cost information submitted, the five styles of the good in question have a regional value content in excess of fifty percent. Accordingly, the good qualifies as an originating good under NAFTA.
**545693 dated Sep. 29, 1994.**

In calculating the total cost of the good for purposes of determining its net cost, the cost of the materials consigned to the producer and used in the production of the good is the customs value of the materials. The cost of indirect materials, research and development, engineering and salaries of U.S. personnel are not recorded on the producer's books and, therefore, are not included in the calculation of total cost.
**545635 dated Nov. 29, 1994.**

Two types of cruise control switches and two types of cruise and sunroof switches are imported after being produced by a Mexican company that is related to the importer. The importer consigns to the producer materials, components, tools and machinery used in the production of the goods. The cost of these items is recorded on the importer's books. In addition, the importer provides the Mexican company with purchasing, financial, sales and marketing support with respect to the goods. Because the goods at issue are provided for in a tariff provision listed in Schedule IV, the regional value content (RVC) is to be calculated under the net cost method. Based on the understanding that "total cost" consists of all product costs recorded on the books of the producer, the RVC exceeds the fifty percent required under the applicable rules of origin. In accordance with section 7(1) of the NAFTA Rules of Origin Regulations, several assumptions are made in reaching this outcome. First, it is assumed that the value of the materials purchased by the importer from the United States or non-NAFTA suppliers, and shipped directly to the producer, is based on their customs value, while the value of materials purchased from the Mexican supplier is based on their value determined in accordance with Schedule VIII. Furthermore, it is assumed that the cost of transportation, customs brokerage fees, and duties and taxes are included within the value of the materials insofar as they are recorded on the books of the producer.
**545675 dated Apr. 28, 1995.**

The good in question, i.e., deflection yokes, is produced entirely in Mexico. The non-originating materials consist of the ferrite core, liner, cross-arm and connector, and are provided for under the HTSUS as parts of the good, and the subheading for the good provides for both the good and its parts (subheading 8540.91). The good satisfies the first two requirements of the exceptions to the change in tariff classification requirement set forth in section 4(4)(b) of the ROR. However, the non-originating materials that do not undergo a change in tariff classification (because they are classified as parts of the good and the relevant subheading provides for both the good and its parts) and the good are both classified as parts of goods in subheading 8540.91,

HTSUS. Because section 4(4)(b)(iii) of the ROR requires that both the non-originating materials and the good not be classified as parts, the exception does not apply, and the good does not qualify as an originating good for purposes of NAFTA.
**545974 dated May 4, 1995.**

A company imports various models of wire harnesses, classifiable in the same HTS subheading, produced by its Mexican subsidiary from originating and non-originating materials. Pursuant to section 12 of the NAFTA Rules of Origin Regulations, because all of the harnesses manufactured by the producer are classifiable in a tariff provision listed in Schedule IV, the net cost and value of the non-originating materials can be averaged to determine the regional value content. However, in accordance with section 12, the producer can only use averaging to calculate the regional value content of a good produced entirely in a single plant.
**545890 dated May 22, 1995.**

Connector assemblies and switch modes are assembled by a producer in Mexico and imported into the United States. The connector assemblies are classified in tariff item 8536.61.0060, HTSUS. The switch modes are classified in tariff item 8537.10.90, HTSUS. The worksheets submitted by the importer indicate that the connector assemblies contain only one non-originating material that is classified in tariff item 8532.21.99. Therefore, the good qualifies as an originating good due to the fact that the non-originating material undergoes the applicable change in tariff classification. Similarly, with respect to the switch modes, the applicable rule of origin is a change to heading 85.37 from any other heading, except from U.S. tariff item 8538.90.00A or 8538.90.00C. Based on the submitted worksheets, all of the non-originating components used in the production change from other headings to heading 85.37. In addition, none of the non-originating materials fall into the excepted U.S. tariff items. Therefore, the goods qualify as originating goods because each of the non-originating materials used in the production of the goods undergoes the applicable change in tariff classification.
**545677 dated June 30, 1995.**

The cost of shipping tubs is recorded on the importer's books, rather than on the producer's books. Consequently, the value of the shipping tubs and pallets is not reflected in the total cost of the goods, and no adjustment to the total cost calculation is necessary. However, if the value of the shipping tubs and pallets were recorded on the producer's books, then, under section 7(13) of the NAFTA Rules of Origin Regulations, the shipping tubs and pallets would assume the same status as the good, i.e., originating or non-originating, and their value would be determined with respect to their customs value in accordance with Schedule VIII of the ROR.
**545680 dated July 31, 1995.**

A party related to the importer produces deflection yokes in Mexico. The yokes are classified in subheading 8540.91.20, HTSUS. A major component of the deflection yokes is a ferrite core classified in subheading 8540.91.50, HTSUS. The applicable rule

of origin provides that a good classified in subheading 8540.91 originates in the territory of a NAFTA country where there is a change to subheading 8540.91 from any other heading. However, because the ferrite core and deflection yoke are classified in the same subheading, the deflection yoke does not qualify as an originating good because the ferrite core does not undergo a change in classification. The requirements of section 4(4)(b)(i)-(ii) of the NAFTA Rules of Origin (ROR) are satisfied. However, section 4(4)(b)(iii) of the ROR contains a further requirement that, in order for the good to originate, the non-originating material that does not undergo a change in tariff classification and the good in which that material is used must not be classified as parts of goods under a heading or subheading that provides for both the goods and its parts. Here, this requirement is not met because the ferrite core does not undergo a change in classification and is classified with the deflection yoke in a subheading that provides for the goods and its parts. Because the deflection yokes do not meet all of the requirements of section 4(4)(b) of the ROR, the exception to the change in classification requirement does not apply. A regional value content test may not be used to determine the origin of the deflection yokes.
**546079 dated Nov. 22, 1995.**

The importer purchases leather footwear uppers produced by its related Mexican factory from originating and non-originating materials. Tanned leather hides from Uruguay, classified in subheading 4104.22, HTSUS, are the only non-originating material used by the producer in the production of the footwear uppers. In Mexico, the leather is sorted and graded. The leather and lining material are placed on a die-cutting machine and cut to shape. The die cut pieces include the tongue, quarter, foxing, saddle, vamp tip, out collar and eyestay. The die-cut pieces are skived on the edges and stitch marked, and the linings are stamped and sewn together. The cut pieces are assembled by sewing, and eyelets are inserted or saddles are sewn on. The completed footwear uppers are inspected and packed for shipment to the United States. The producer designates the die cut footwear parts as an intermediate material. The die-cut parts have a regional value content that is significantly less than fifty-five percent under the net cost method. Accordingly, they do not qualify as an originating material. Similarly, the footwear uppers do not have the requisite regional value content and consequently, the good is not an originating good.
**546373 dated May 21, 1996.**

The good in question originates under three specific scenarios set forth such that it is eligible for preferential tariff treatment under NAFTA. Subject to certain assumptions, the Mexican assembler's use of the accumulation method is acceptable for purposes of determining the regional value content of the good.
**546158 dated June 13, 1996.**

Where the material is imported by the producer of the good into the territory of the NAFTA country where the good is produced, the value of the material used in the production of the good is its customs value as defined in section 2(1), ROR, determined consistently with Schedule VIII of the ROR. GN 12(c)(vii); ROR, '7(1) and (2). Among

other things, the Customs value includes costs of freight, insurance, packing and all costs incurred in transporting the material to the producer=s location and waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product. These provisions, however, do not apply to indirect materials, intermediate materials, and packing materials and containers. Based upon the information provided, Customs cannot conclude that the imported bicycles satisfy the regional value content requirement under the net cost method to qualify as originating NAFTA goods.
**546437 dated Feb. 21, 1997.**

The importer is transferring part of its production of wire harnesses for the automotive industry to its Mexican subsidiary. In the manufacture of these wire harnesses, the importer will use both originating and non-originating materials. The Mexican subsidiary will manufacture the harnesses and export the finished wire harnesses into the United States. Based upon the facts presented, the wire harnesses are found to be “originating goods” in accordance with the NAFTA, provided all other applicable requirements are met.
**546674 dated Apr. 16, 1998.**

Ski poles assembled in Canada have a regional value content of not less than fifty percent under the net cost method such that the ski poles qualify as original goods for purposes of NAFTA. The ski poles meet all the requirements of subsections (i) - (iv) of section 4(4) of the Appendix to part 181, Customs Regulations, NAFTA Rules of Origin Regulations (ROR). Therefore, the only issue is whether the regional value content of the imported ski poles was not less than fifty percent under the net cost method. In this case, the imported ski poles are originating goods under the NAFTA.
**546534 dated Aug. 21, 1998.**

Automotive wire harnesses are assembled in Mexico from originating and non-originating materials and imported into the United States. The wire harnesses are classified in subheading 8544.30.0000, HTSUS. Some of the wire harnesses are designed for use in the assembly of heavy duty vehicles under heading 8701, HTSUS. The methods set forth in sections 9 and 10 of the NAFTA Rules of Origin Regulations (ROR) are inapplicable; therefore, the value of the non-originating materials used in the production of the imported wire harnesses should be determined in accordance with section 7 of the ROR.
**546834 dated Dec. 16, 1998.**

Based on the evidence presented, the finished brake shoe assemblies qualify for the section 4(4)(b)(ii) exception to the change-in-tariff requirement of GN 12(t)/87.21. These finished brake assemblies may be eligible for NAFTA preferential treatment provided the applicable regional value content (RVC) requirement is satisfied.
**547372 dated Aug. 10, 2001.**

The evidence submitted shows that the importer is not the actual producer of the imported merchandise. It is the manufacturer that is the business entity incorporated under the laws of Mexico, the enterprise within the definitions of section 2(1) of the Rules of Origin. The manufacturer has a separate corporate identity, which is distinct from its parent company, the importer. In this case, the expenses were not recorded on the producer/manufacturer's books, as required by the Rules of Origin for NAFTA in order for those expenses to fall under the calculation of total costs. Therefore, personnel, depreciation, travel and scrap costs recorded on the importer's books may not be included in the calculation of total cost for purposes of determining regional value content (RVC).
**547881 dated Aug. 27, 2001.**

The country of origin for the collected used engines, components and parts is unknown. The engine parts that are unsuitable for use in manufacturing rebuilt engines are treated as waste and scrap. To determine NAFTA preference, the value of the used engine parts that are sold for scrap is not included as originating materials in the calculation of the regional value content (RVC) of the remanufactured goods. Thus the scrap value of the parts and components that cannot be reused should be deducted from the value of the non-originating materials, i.e., the reclaimed used parts and components.
**547088 dated Aug. 29, 2002.**

The unassembled differential housing will qualify as an “originating good” if it satisfies the regional value content (RVC) requirement. In this case, the net cost value method must be used to determine the RVC. For purposes of calculating the RVC of a light duty automotive good under the net cost method, the value of the non-originating materials used by the producer in the production of the good shall be the sum of the values of the non-originating materials that are traced materials and are incorporated into the good. In this case, there is insufficient information upon which to reach a definite conclusion concerning the RVC of the differential covers. Thus, Customs cannot determine whether the unassembled differential covers qualify for preferential treatment under the NAFTA.
**547736 dated Sep. 29, 2002.**

Based upon the information provided, all of the materials in the production of the good (high definition digital televisions) undergo the applicable change in tariff classification, and satisfy the regional value content requirement of the good is greater than fifty percent under the net cost method. The merchandise qualifies as goods that originate in the territory of a NAFTA party.
**548364 dated Oct. 2, 2003.**

# NOTICE

## INTRODUCTION

19 U.S.C. 1401a(a)(3) states:

Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

In 19 CFR 152.101(d), the regulations state:

Explanation to importer. Upon receipt of a written request from the importer within 90 days after liquidation, the district director shall provide a reasonable and concise written explanation of how the value of the imported merchandise was determined. The explanation will apply only to the imported merchandise being appraised and will not serve as authority with respect to the valuation of importations of any other merchandise at the same or a different port of entry. This procedure is for informational purposes only, and will not affect or replace the protest or administrative ruling procedures contained in Parts 174 and 177, respectively, of this chapter, or any other Customs procedures. Under this procedure, Customs will not be required to release any information not otherwise subject to disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or any other statute (see Part 103 of this chapter).

In addition, 19 CFR 152.2 is relevant and states:

If the district director believes that the entered rate or value of any merchandise is too low, or if he finds that the quantity imported exceeds the entered quantity, and the estimated aggregate of the increase in duties on that entry exceeds $15, he shall promptly notify the importer on Customs Form 28, specifying the nature of the difference on the notice. Liquidation shall be made promptly and shall not be withheld for a period of more than 20 days from the date of mailing of such notice unless in the judgment of the district director there are compelling reasons that would warrant such action.

With regard to the rejection of transaction value and notice thereof, 19 CFR 152.103(m) states:

Rejection of transaction value. When Customs has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the district

director shall inform the importer of the grounds for rejection. The importer will be afforded 20 days to respond in writing to the district director if in disagreement. This procedure will not affect or replace the administrative ruling procedures contained in Part 177 of this chapter, or any other Customs procedures.

19 CFR 152.106(f)(2) regarding computed value states:

If information other than that supplied by or on behalf of the producer is used to determine computed value, the district director shall inform the importer, upon written request, of: (i) The source of the information,
(ii) The data used, and
(iii) The calculation based upon the specified data,
if not contrary to domestic law regarding disclosure of information. See also [section] 152.101(d).

**GATT Valuation Agreement:**

Article 16 states:

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of his imported goods was determined.

In addition, Article 11, paragraphs 1 and 2, provide for an initial right of appeal, without penalty, by the importer or any other person liable for the payment of duty, to an authority within the customs administration or to an independent body. Regarding notice of the decision on appeal, paragraph 3, states:

Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. He shall also be informed of his rights of any further appeal.

If Customs appraises the merchandise pursuant to 19 U.S.C. 1401a(f), i.e., value if other values cannot be determined, then Article 7, paragraph 3 provides:

If he so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

With respect to notice of a decision by Customs that the relationship between related parties has influenced the price of merchandise, Article 1, paragraph 2(a) states:

In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and seller are related within the meaning of Article 15 shall not itself be grounds for regarding the transaction value as unacceptable. In

such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

# PACKING COSTS

## INTRODUCTION

19 U.S.C. 1401a(b) (1) states:

TRANSACTION VALUE OF IMPORTED MERCHANDISE. (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to - the packing costs incurred by the buyer with respect to the imported merchandise . . . .
The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in paragraphs (A) through (E) [packing costs paragraph (A)] only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise shall be treated, for purposes of this section, as one that cannot be determined. (emphasis added)

Additionally, packing costs are defined in 19 U.S.C. 1401a(h)(3) as the "cost of all containers and coverings of whatever nature and of packing, whether for labor materials, used in placing merchandise in condition, packed ready for shipment to the United States.

In the Customs regulations, an addition to the price actually paid or payable for "packing costs incurred by the buyer with respect to the imported merchandise" is provided for in 19 CFR 152.103(b)(1)(i). The corresponding regulation regarding sufficient information of the addition is found in 19 CFR 152.103(b)(2) and 152.103(c).

"Packing costs" are defined in the Customs regulations, 19 CFR 152.102(e), as:

Packing costs. "Packing costs" means the cost of all containers (exclusive of instruments of international traffic) and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

### GATT Valuation Agreement:

In Article 8, paragraph I(a)(ii) and (iii), the following is provided:

1. In determining the customs value under the provisions of Article I [transaction value], there shall be added to the price actually paid or payable for the imported goods:

. . . (ii) the cost of containers which are treated as being one for customs purposes with the goods in question; (iii) the cost of packing whether for labour or materials.

**Headquarters Rulings:**

## addition to price actually paid or payable

19 U.S.C. 1401a(b) (1) (A); 19 CFR 152.103(b) (1) (i); GATT Valuation Agreement, Article 8, paragraph I(a)(ii) and (iii)

Packing costs incurred by a buyer with respect to imported goods are part of transaction value. In the case of a sale made on an ex-factory basis, packing costs may include: costs incurred in picking up the goods from the seller at the factory, environmental conditioning, vacuum packaging, and placement of goods in export cartons or on pallets. Likewise, costs incurred subsequent to the previously described operations, i.e., delivery of the goods to the agent of the exporting carrier, are not part of the transaction value.
**542834 dated July 20, 1982 (TAA No. 49).**

Packing materials consisting of cardboard resale containers are to be added to the price actually paid or payable for imported merchandise.
**542372 dated Mar. 3, 1981.**

Where charges for icing imported fruits are paid by the buyer directly to the seller as part of the price actually paid or payable, these charges are dutiable whether they are itemized separately on the invoice or paid to the seller under a separate invoice.
**542491 dated June 9, 1981; 542566 dated Nov. 18, 1981.**

The transaction value of imported merchandise includes the price actually paid or payable plus packing costs incurred by the buyer in shipping completely assembled items to the United States.
**543817 dated Mar. 20, 1987; aff'd by 544156 dated June 3, 1988.**

The retail packing operation undertaken in Mexico is included in the statutory definition of packing costs and is to be added to the price actually paid or payable. In this case, the merchandise is not packed ready for shipment to the United States until it has been packed in Mexico.
**544230 dated Dec. 22, 1988.**

Charges incurred by the buyer for hanging garments in containers are deemed to be packing costs. The service described is necessary to place the goods in seaworthy condition, packed ready for shipment to the United States. It is not relevant that the importer classifies the charges as "stuffing" or "GOH handling" (garments on hangers) expenses. The description is misleading and the expenses incurred are merely packing charges and are included in transaction value as packing costs.
**544993 dated Oct. 9, 1992.**

"Redipak" packing is a process undertaken after finished garments come off the assembly line and have been packed, twenty or more dozens, per carton. From the assembly line, the cartons containing the garments are taken to an adjoining location within the plant, and unpacked. The garments are then placed on hangers, wrapped with tissue paper, placed in polybags and packed in boxes holding between six and twelve garments. The cost of the "redipak" process is borne by the importer and is performed by the importer's related party seller. No documentation or evidence has been submitted to establish that the garments were packed ready for shipment prior to being submitted to the "Redipak" process. Therefore, the process, rather than being additional packing, is in fact the sole method of packing the garments for shipment to the United States. The packing costs are an addition to the price actually paid or payable.
**544662 dated Mar. 18, 1994; <u>modified</u> <u>by</u> 545917 dated Aug. 1, 1996.**

The seller attaches price tickets and hang tags to merchandise prior to its being exported to the United States. Although payment for the price tickets and hang tags is not made to the seller of the garment, the costs of the tickets and hang tags are added to the price actually paid or payable. The price tickets and hang tags constitute "packing costs" as they are used in placing merchandise in condition, packed ready for shipment to the United States. As such, the cost of these items is an addition to the price actually paid or payable.
**545154 dated June 3, 1994; <u>aff'g</u> 544708 dated Feb. 13, 1992.**

The container stuffing charges at issue are considered to be packing costs, and are properly added to the price actually paid or payable. The charges are packing costs incurred in placing merchandise in condition, packed ready for shipment to the United States. The fact that the payment is not made to the seller is irrelevant.
**545877 dated Mar. 23, 1995.**

Packing costs are additions to the price actually paid or payable when not otherwise included in the price. However, based upon the facts presented, the amounts at issue are part of the price actually paid or payable, that is, part of the total payment made by the buyer to the seller. The packing operations at issue, i.e., pressing, hanging, wrapping, bagging, and repacking of certain quantities for retail sale, represent more than just packing for purposes of shipment, but rather, retail packing specifically requested and required by the buyers for purposes of selling the goods.
**545917 dated Aug. 1, 1996; <u>modifies</u> 544662 dated Mar. 18, 1994 (additional facts presented).**

The importer uses the services of a foreign "Vac Pak facility" to perform vacuum packing operations for garments purchased from an unrelated vendor. The facility is not related to the seller of the imported garments. Based upon the description provided by the importer, the vacuum charges are performed after the merchandise is packed in a manner that meets industry standards for international transportation of the merchandise. The charges that the importer incurs to a party unrelated to the seller for vacuum packing the imported garments are not packing costs within the meaning of section 402(h)(3) of the TAA, and are not part of the transaction value of the imported merchandise.
**546479 dated Oct. 29, 1996.**

Assuming that transaction value is the appropriate basis of appraisement, the costs of opening, scanning, resealing and repacking are incurred in order to place the merchandise in condition, packed ready for shipment to the United States. Provided that the costs for these operations are not already included in the price actually paid or payable, they are considered an addition to the price actually paid or payable and are included in transaction value.
**546690 dated June 18, 1997.**

An importer purchases beer for import into the United States in reusable barrels on reusable pallets. In addition, the cans and bottles are imported on non-reusable pallets. The non-reusable pallets are packing materials, and as such the value of the non-reusable packing is included in the price actually paid or payable. A deposit for the reusable pallets and barrels is separately identified from the price of the imported beer on the invoice presented to Customs. The buyer remits the total invoice amount, including the deposit, to the seller. The related party seller receives the reusable barrels and pallets, and the deposit amount is credited to the importer. Each invoice bears a statement explaining that a deposit is paid to the supplier to guarantee return of the reusable barrels and pallets. Although the pallets and barrels are not of American origin, because the pallets and barrels are instruments of international traffic separately classifiable under subheading 9803.00.50, HTSUS, the value of the pallets and barrels should not be included in the appraised value of the imported beer. The deposit statement and handwritten clarification appearing on each invoice is satisfactory for purposes of identifying the amount of the deposit for the reusable items as separate from the price of the imported beer.
**548257 dated Mar. 19, 2003.**

## hang tags

The seller attaches price tickets and hang tags to merchandise prior to its being exported to the United States. Although payment for the price tickets and hang tags is not made to the seller of the garment, the costs of the tickets and hang tags are added to the price actually paid or payable. The price tickets and hang tags constitute "packing costs" as they are used in placing merchandise in condition, packed ready for

shipment to the United States. As such, the cost of these items is an addition to the price actually paid or payable.
**545154 dated June 3, 1994; aff'g 544708 dated Feb. 13, 1992.**

The buyer of imported merchandise supplies U.S.-made labels and hang tags, which are affixed to imported merchandise. In their condition as imported, the labels have a self-stick backing, while the hang tags are hung onto the merchandise. The labels are considered to be assists. The value of the labels is included as part of the transaction value of the merchandise. However, the labels, while part of the appraised value of the imported merchandise, are entitled to the 9802.00.80, HTSUS, partial duty exemption. With regard to the hang tags, Customs has considered hang tags as packing material which, because returned to the United States without having been advanced in value or improved in condition while abroad, are classifiable under subheading 9801.00.10. Accordingly, the hang tags are not part of the appraised value of the imported merchandise and are eligible for duty-free treatment.
**545970 dated Aug. 30, 1995.**

## packed ready for shipment to the United States, seaworthy condition

19 U.S.C. 1401a(h)(3); 19 CFR 152.102(e)

Vacuum packaging by a third party, which takes place subsequent to the time the merchandise is packed ready for shipment to the United States, is not added to transaction value.
**542897 dated Aug. 16, 1982; 542957 dated Nov. 26, 1982.**

Costs incurred in picking up goods from the seller's factory, environmental conditioning, vacuum packaging and placement of goods in export cartons are all part of packing expenses which are incident to placing the merchandise in condition packed, ready for shipment to the United States, and therefore, are added to the price actually paid or payable. Costs incurred subsequently are not dutiable charges.
**542834 dated July 20, 1982 (TAA No. 49).**

Expenses incurred for vacuum packaging merchandise packed in seaworthy containers prior to pick-up for vacuum packaging are not to be added to the price actually paid or payable.
**543026 dated Mar. 17, 1983.**

Expenses incurred for secondary packing, which is done solely to conform to the rules of the United Parcel Service (UPS), are not part of the price actually paid or payable. The merchandise is packed in condition ready for export to the United States prior to the additional packing performed only for compliance with UPS rules.
**543266 dated May 1, 1984.**

The fact that the importer opts to have the merchandise repacked in a second country to fit its particular needs is irrelevant to the determination that the original packing

places the merchandise in condition, packed ready for shipment to the United States. The subsequent packing costs are not added to the price actually paid or payable.
**543185 dated Sep. 13, 1984.**

Merchandise is purchased ex-factory from China and is shipped to the buyer's agent in Hong Kong. In Hong Kong, the goods are inspected and packages are, if necessary, repacked and rearranged. In each instance, the factory's original packing suffices for export; however, due to the factory's inexperience, many shipments are sloppy by U.S. standards. The expenses incurred by the buyer for repacking merchandise are not to be added to the price actually paid or payable.
**543985 dated Feb. 1, 1988.**

The importer supplies the foreign vendor with a machine that consists of a compressing unit and a conveyor system to aid in the loading of tires into containers. The machine presses down on stacks of tires allowing for 2 – 3 extra layers of tires to be loaded. The importer provides the machine to the seller free of charge. The machine is not incorporated, used or consumed in the production of the tires, nor is it engineering or design work. Therefore, the machine does not fall within the any of the enumerated definitions of an assist. However, the machines are used in the packing of the tires for exportation to the United States. The tires are not ready for shipment to the United States until placed in a container, and the machine is used to pack the merchandise in a certain condition for its shipment to the United States. The cost of the machine should be added to the price actually paid or payable of the imported tires as it is considered part of the packing costs for the imported merchandise within the meaning of section 402(h)(3) of the TAA.
**548286 dated Mar. 17, 2003.**

## packing costs unavailable

Where packing costs are unavailable, the computed value may not be used to determine the value of the subject merchandise. Instead, a fallback method, pursuant to section 402(f), using a modified computed value should be applied. Subsequently, Customs may make adjustments and estimations for unknown packing costs. The importer erred in a number of ways, including the following: (1) the packing costs submitted by the importer were inconsistent with the manufacturer's records; (2) the importer was not able to substantiate the reporting method; and (3) the importer could not provide invoices to support the purchase of foreign packing bags. In light of these shortcomings, it was reasonable for Customs to base the value of foreign packing on the cost of the most expensive packing bags used by the importer.
**545611 dated Jan. 2, 2002.**

## U.S. packing

If packing material of U.S. origin is separately classified as U.S. goods returned, no authority exists for treating the packing as part of the appraised value of the imported merchandise.
**544667 dated July 30, 1991; aff'g 544294 dated July 7, 1989.**

In a prior decision, HQ 545224 dated Sept. 19, 1994, Customs classified both the imported merchandise and the U.S. origin packing, plastic containers in the appropriate HTSUS heading for toys, pursuant to GRI 1. Because the containers placed the toys in condition, packed ready for shipment to the United Sates, the cost of the containers was considered an addition to the price actually paid or payable. Upon reconsideration, Customs determines that the U.S. origin packing materials (or containers) are classified under subheading 9801.00.10, HTSUS, separately from the imported toys. Accordingly, the value of the U.S. packing materials is not included in the appraised value of the imported toys.
**546043 dated Nov. 30, 1995; Cust. B. & Dec., Vol. 29, No. 51, Dec. 20, 1995; <u>modifies</u> 545224 dated Sep. 19, 1994.**

The cost of packing materials and containers incurred by the buyer is included in the statutory definition of packing costs in section 402(h) of the TAA, and generally, these costs are added to the price actually paid or payable. However, if packing material of U.S. origin is classified under subheading 9801.00.10, HTSUS, then there is no legal authority to treat the packing as part of the appraised value of the imported merchandise because items that are separately classified must be separately appraised. In this case, the value of the U.S. packing materials or packing containers is not included in the appraised value of the imported merchandise, which consists of frozen vegetables.
**546287 dated Apr. 25, 1996.**

If packing material of U.S. origin is classified under subheading 9801.00.10, HTSUS, then there is no legal authority to treat the U.S. origin packing as part of the appraised value of the imported merchandise. The packaging and the merchandise are separately classified, and items that are separately classified must be separately appraised. Therefore, the value of the U.S. packing materials or packing containers is not to be included in the appraised value of the imported merchandise.
**547352 dated July 8, 1999.**

# POST-IMPORTATION CHARGES

## INTRODUCTION

19 U.S.C. 1401a(b)(3) states:

The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1): (A) Any reasonable cost or charge that is incurred for - (i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or (ii) the transportation of the merchandise after such importation.

This same provision is found in section 152.103(i)(1)(i) and (ii) of the Customs Regulations (19 CFR 152.103(i)(1)(i) and (ii)).

### GATT Valuation Agreement:

Interpretative Notes, Note to Article 1, Price actually paid or payable, corresponds with 19 U.S.C. 1401a(b)(3).

### Judicial Precedent:

Samsung Electronics America, Inc., v. United States, 904 F.Supp. 1403 (Ct. int'l Trade 1995).

In this case, Samsung Korea sold televisions, stereos, and other electronic equipment to its related party, Samsung America. In addition to the purchase agreements, the parties entered into a Servicing Agent Agreement where Samsung Korea agreed to pay for any inspection, repair, refurbishing, or other customer requested services that Samsung America performed on the merchandise. Samsung America claimed that approximately 4.7 percent of the articles contained latent defects detected some time after importation. Samsung America then received compensation from Samsung Korea pursuant to its rights under the agreement. The Court held that Samsung was not entitled to a value allowance pursuant to 19 CFR 158.12. The Court indicated that when the merchandise arrived in the United States, Samsung received no less than that for which it had contracted, i.e., it did not contract only for defect-free merchandise. In addition, the Court found it inappropriate to grant relief in accordance with 19 U.S.C. 1401a(b)(3)(A)(i), which authorizes a deduction for post-importation costs incurred for construction, assembly, and maintenance of the imported merchandise. Samsung America did not incur, and consequently could not identify, the alleged post-importation maintenance costs as part of the total payment made for the imported merchandise.

The Court concluded that Customs correctly determined the transaction value of the merchandise using the price that Samsung America paid, and that section 402(b)(3)(A)(i) of the TAA does not apply.

Samsung Electronics America, Inc. v. United States, 106 F.3d 376 (Fed. Cir. 1997).

In this case, the appellate court held that the lower court misinterpreted the sales contracts for the Samsung electronic equipment by incorrectly concluding that Samsung had ordered both defect-free and defective merchandise. Rather, the agreements between the parties show that Samsung "ordered only perfect merchandise and contracted specifically to address the inevitability that, despite its order, 'occasionally' some of the merchandise delivered would contain latent manufacturing defects." The Court held that duties are to be assessed on the value of the goods as imported, and the value added to the goods via repair in the U.S. is added subsequent to importation. The case is remanded for a determination of the allowance to be made in the value to the extent of the damage.

Samsung Electronics America, Inc., vs. United States, 35 F.Supp.2d 942 (Ct. Int'l Trade 1999), aff'd, 195 F.3d 1367 (Fed. Cir. 1999).

In the Court of Appeals' second review of this case, the Court held that in order to qualify for an allowance in appraised value under 19 CFR 158.12(a), an importer must prove that a specific entry contained defective merchandise and what the allowance in appraised value should be for each entry. The Court of Appeals agreed with the Court of International Trade that Samsung proved that some of the merchandise contained latent defects at the time of importation. However, the court held that Samsung failed to establish which of the subject entries contained merchandise with latent defects at the time of importation and what was their reduced value. The Court indicated that it was legally insufficient for an importer to show repair costs for a calendar year without connecting the repair costs to particular entries. Thus, the Court concluded that Samsung did not prove that the repair costs were related with adequate specificity to particular entries as required by 19 CFR 158.12(a).

**Headquarters Rulings:**

## construction, erection, assembly, or maintenance charges subsequent to importation

19 U.S.C. 1401a(b) (3) (A) (i); 19 CFR 152.103(i) (1) (i); GATT Valuation Agreement, Interpretative Notes, Note to Article 1, Price actually paid or payable

Engineering and set-up fees in connection with the U.S. installation of imported equipment are not included in transaction value of the imported merchandise. The purchase contract or invoice must clearly establish the separate identity of these charges.
**542611 dated Sep. 22, 1981.**

Expenses incurred by the importer in reimbursing the manufacturer in obtaining approval and certification of a machine by a testing facility in the United States is not a dutiable expense. The fee is a charge for technical assistance provided after the merchandise is imported into the United States.
**543107 dated Oct. 14, 1983.**

On-site operating and training expenses incurred by the buyer, if identified separately on the sales invoice, are not included in the transaction value of the imported merchandise. These fees are considered as incurred for "the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States."
**543331 dated June 14, 1984.**

A state sales tax is deductible from the selling price of goods as a cost of erection and installation where the party responsible for the goods' erection and installation pays such a tax.
**542451 dated June 4, 1981 (TAA No. 27).**

A state sales tax which is based upon the value of foreign materials and engineering is dutiable under transaction value since the tax is not a federal tax nor is it part of erection or installation costs. No authority exists to exclude the sales tax from the transaction value of the merchandise.
**543161 dated Jan. 3, 1984.**

State sales taxes are deductible from the selling price of goods as a cost of erection and installation when the party responsible for the goods' erection and installation pays such taxes.
**543263 dated Sep. 5, 1985.**

Payment made for performance bond insurance coverage which is included in the price actually paid or payable for imported merchandise must be separately identified in order for the cost to be deducted pursuant to section 402(b)(3)(A)(i). Otherwise, it remains part of the price actually paid or payable.
**543567 dated Jan. 17, 1986.**

The parties entered into a contract to provide and erect concrete panels for a building being constructed in New York. A provision for repair costs is separately identified in the contract. These costs are properly deducted from the transaction value of the imported merchandise.
**544005 dated Aug. 16, 1988; aff'd by 544247 dated Feb. 28, 1989.**

Engineering costs associated with the purchase of equipment from a related seller, if identified separately on the sales invoice, are not included in the transaction value of the imported merchandise. These costs are considered as incurred for the "construction, erection, assembly or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States."
**544693 dated Sep. 10, 1991.**

A contract between a foreign seller and a U.S. buyer separately identifies a New York state sales tax from the price actually paid or payable for imported merchandise. In addition, evidence is submitted to indicate that the buyer paid this amount in sales taxes to the State of New York. The amount of the sales tax shown in the contract should be deducted from the price actually paid or payable to determine the transaction value of the imported merchandise.
**545731 dated Feb. 3, 1995.**

The total contract price paid by the importer included amounts for warranties, installation and administration costs, and selling commissions. Although transaction value does not include any reasonable cost associated with the construction, erection, assembly or maintenance of merchandise after its importation into the United States, these costs must be separately identified from the price. The costs associated with installation and administration were not separately identified from the price and, therefore, they constitute part of the price actually paid or payable. With respect to the warranty and commission expenses, they were also included in the total contract price and are properly part of the price actually paid or payable. (Note: Customs has determined that warranty payments are an integral part of the price actually paid or payable).
**545843 dated May 11, 1995.**

Based upon the evidence submitted concerning various types of engineering and services included in the contract price between the parties, such services pertain to construction, assembly, or technical assistance provided with respect to the merchandise after its importation into the United States. These amounts should be excluded from transaction value.
**546012 dated May 6, 1996.**

A Service Agreement between the buyer and the seller in connection with the planned assembly of vehicles in a Foreign Trade Zone (FTZ) provides for the development of production technology and methods to be used at the buyer's plant in the manufacture of the vehicles. In return for these services, the Agreement provides that the buyer will make payments to the seller. The payments made for consultation and advice under phases I-III of the Agreement are included in transaction value as part of the price actually paid or payable to the extent that they relate to the imported merchandise. The payments should be apportioned to the value of the imported machinery and equipment in accordance with the method proposed by the buyer, subject to the calculation of a revised allocation factor. Payments made by the buyer pursuant to the term of the Agreement with respect to phase IV activities are not included in transaction value as an addition to the price actually paid or payable for the imported merchandise. The phase IV activities relate entirely to post-importation activities; therefore, in accordance with section 402(b)(3)(A)(i) of the TAA, these amounts relate to the "construction, erection, assembly or maintenance of, or the technical assistance provided with respect to, the imported merchandise."
**546697 dated Aug. 26, 1999.**

A contract is between a U.S. subsidiary of a Japanese corporation and a U.S. business is for the manufacture of a hot strip and plate rolling mill in Kentucky. The U.S. subsidiary sub-contracted its manufacturing duties to the Japanese corporation and component parts for the mill were imported into the United States. The United States manufacturer invoked the liquidated damages clause of the contract, due to a scheduling delay. The appraised value of the goods procured abroad should be prorated based on the value of the imported goods as a portion of the entire contract. The law only permits Customs to assess duties on the value of imported merchandise. Customs is not entitled to assess duties on the full contract price, thus it would be inappropriate to allow the United States subsidiary to make a deduction equal to the full amount of liquidated damages.
**547924 dated Mar. 21, 2002.**

## post-importation services

The cost of printing and packaging T-shirts in the United States after their importation but prior to delivery to the buyer, is not part of transaction value. Likewise, in a transaction made on a C.I.F. duty brokerage paid basis, international freight, U.S. freight, brokerage and duty are not to be included in determining the transaction value of the imported merchandise.
**543059 dated May 5, 1983 (TAA No. 62).**

A Service Agreement between the buyer and the seller in connection with the planned assembly of vehicles in a Foreign Trade Zone (FTZ) provides for the development of production technology and methods to be used at the buyer's plant in the manufacture of the vehicles. In return for these services, the Agreement provides that the buyer will make payments to the seller. The payments made for consultation and advice under phases I-III of the Agreement are included in transaction value as part of the price actually paid or payable to the extent that they relate to the imported merchandise. The payments should be apportioned to the value of the imported machinery and equipment in accordance with the method proposed by the buyer, subject to the calculation of a revised allocation factor. Payments made by the buyer pursuant to the term of the Agreement with respect to phase IV activities are not included in transaction value as an addition to the price actually paid or payable for the imported merchandise. The phase IV activities relate entirely to post-importation activities; therefore, in accordance with section 402(b)(3)(A)(i) of the TAA, these amounts relate to the "construction, erection, assembly or maintenance of, or the technical assistance provided with respect to, the imported merchandise."
**546697 dated Aug. 26, 1999.**

## post-importation transportation

See also, chapter on TRANSPORTATION COSTS, infra.
19 U.S.C. 1401a(b) (3) (A) (ii); 19 CFR 152.103(i) (1) (ii); GATT Valuation Agreement, Interpretative Notes, Note to Article 1, Price actually paid or payable

Transaction value of imported merchandise does not include any reasonable cost or charge that is incurred for the transportation of the merchandise after its importation into the United States.
**543267 dated Mar. 16, 1984.**

The buyer pays a handling charge to a subsidiary of the seller. The handling charge is paid for the following duties: processing purchase orders, selecting a customs broker, arranging for the unloading of the vessel and delivery of the merchandise to the inland carrier, preparing delivery instructions for the end-users in the United States, and processing insurance claims for damage incurred during transportation and unlading of the merchandise. While this fee is for services *related* to the post-importation transportation of the merchandise, it is not for the actual cost of the transportation itself. This fee is not deductible under section 402(b)(3)(A)(ii) of the TAA, which allows for a post-importation transportation cost deduction. Accordingly, the fee is part of the price actually paid or payable for the imported merchandise.
**544332 dated Nov. 19, 1990.**

The transaction value of imported merchandise does not include reasonable costs incurred for post-importation transportation of the merchandise that is identified separately from the price actually paid or payable. However, in this case, inadequate evidence is submitted and it is unclear whether the invoiced amount is for foreign inland freight or for post-importation freight costs. Because sufficient evidence is not available

to make the adjustment, no adjustment to the price actually paid or payable is made in this case.
**544501 dated Oct. 18, 1991.**

## price actually paid or payable

The buyer's payments to the seller for mold costs, reimbursement for unused materials and components, and cutting dies are considered to be part of the price actually paid or payable for the imported merchandise. The fact that the payments occur post-importation does not preclude their being considered part of transaction value because the parties agreed at the outset of the transaction, prior to production of the merchandise, that reimbursement would occur if the required number of goods were not ordered.
**544615 dated Sep. 11, 1991; modified by 544820 dated Oct. 18, 1991.**

# PRICE ACTUALLY PAID OR PAYABLE

## INTRODUCTION

In 19 U.S.C. 1401a(b), transaction value is defined as the following:

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to -
(A) the packing costs incurred by the buyer with respect to the imported merchandise;
(B) any selling commission incurred by the buyer with respect to the imported merchandise;
(C) the value, apportioned as appropriate, of any assist;
(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and
(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.
The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

In addition, 19 U.S.C. 1401a(b)(4)(A) defines the price actually paid or payable as:

The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any 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) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

The corresponding regulations are 19 CFR 152.103(b) and (c) and 19 CFR 152.102(f), respectively.

Regarding sufficiency of information, 19 CFR 152.103(c) states:

<u>Sufficiency of information.</u> Additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and the extent to which they are not included in the price.

In addition, 19 CFR 152.103(a)(3) provides:

Assembled merchandise. The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler.

The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value.

The regulations cite the following examples:

Example 1. The importer previously has supplied an unrelated foreign assembler with fabricated components ready for assembly having a value or cost at the assembler's plant of $1.00 per unit. The importer pays the assembler 50 [cents] per unit for the assembly. The transaction value for the assembled unit is $1.50.

Example 2. Same facts as Example 1 above except the U.S. importer furnishes to the foreign assembler a tooling assist consisting of a tool acquired by the importer at $1,000. The transportation expenses to the foreign assembler's plant for the tooling assist equal $100. The transaction value for the assembled unit would be $1.50 per unit plus a pro rata share of the tooling assist valued at $1,100.

## GATT Valuation Agreement:

Article 8, paragraph I(a) through (d), of the Agreement provides for the additions to the price actually paid or payable. Paragraphs 2 through 4 state the following:

2. In framing its legislation, each Party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:
(a) the cost of transport of the imported goods to the port
or place of importation;
(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
(c) the cost of insurance.
3. Additions to the price paid or payable shall be made under this Article only on the basis of objective and quantifiable data.
4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

The Interpretative Notes, Note to Article 1, Price actually paid or payable, states:

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly.

An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.
Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods;
(a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment; (b) the cost of transport after importation; (c) duties and taxes of the country of importation. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

**Judicial Precedent:**

Moss Mfg. Co., Inc. v. United States, 13 Ct. Int'l Trade 420 (1989); aff=d, 896 F.2d 535 (Fed. Cir. 1990).

The plaintiff (importer) filed suit against the Customs Service, claiming that Customs improperly included commissions paid for alleged buying agent services. The importer paid the commissions directly to the seller of the imported merchandise, for later disbursement to the alleged agent by the seller. The Court framed the issue as follows: whether monies which were disbursed by the buyer to the seller with directions from the buyer to remit the payment to the buyer's agent, who assisted in bringing about the sale, were properly included in the dutiable value of the imported merchandise.

After discussing the factors to consider in determining whether a buying agency relationship is in fact bona fide, the Court determined that the agent in this case was a bona fide buying agent. However, the Court found that the payment was properly part of the price actually paid or payable. The Court held that where a payment for goods is made by the buyer to the seller with instructions to the seller to remit a portion of the payment to the buyer's agent, where the agent assisted in bringing about the sale, such a payment is a disbursement for the benefit of the seller within the meaning of 19 U.S.C. 1401a(b) and therefore, is properly part of the price actually paid or payable.

Generra Sportswear Co. v. United States, 905 F.2d 377 (Fed. Cir. 1990).

In Generra, the U.S. Court of Appeals for the Federal Circuit was presented with the issue of whether quota charges were properly included in the transaction value of imported merchandise. The importer purchased cotton knit blouses from the seller in Hong Kong at a price of $6.00 each. The seller agreed to obtain type A transfer quota at

$0.95 per unit. The importer paid the seller an amount for the shirts, exclusive of quota. The seller then billed the importer's buying agent for the quota charges under a separate invoice and the importer's buying agent paid for this amount. The Customs Service appraised the merchandise at $6.95 per unit by combining the amounts stated on the two invoices.

The importer filed a protest, which was denied by Customs. The importer filed suit in the Court of International Trade (CIT), challenging the denial of the protest. The CIT held the payments to be non-dutiable and ordered Customs to refund excess duties collected. The United States subsequently filed an appeal with the U.S. Court of Appeals for the Federal Circuit, which reversed the lower court's decision. The Court determined that, because the statutory language does not specifically address quota payments, the appraisal by the Customs Service was based upon a permissible construction of the statute. The Court stated that it is reasonable to conclude that the quota charges are properly part of the "total payment . . . made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller." The court further stated:

"As long as the quota payment was made to the seller in exchange for merchandise sold for export to the United States, the payment properly may be included in transaction value, even if the payment represents something other than the per se value of the goods. The focus of transaction value is the actual transaction between the buyer and seller; if quota payments were transferred by the buyer to the seller, they are part of transaction value."

In addition, the Court stated that it is irrelevant that the buyer did not pay for the quota charges directly to the seller. The payment was made on behalf of the buyer by its buying agent.

Chrysler Corp. v. United States, 17 Ct. Int'l Trade 1049 (1993).

The importer purchased engines from a foreign manufacturer. The agreement between the two parties required a minimum number of engines to be purchased, otherwise the importer would be obligated to pay shortfall and special application charges to the manufacturer. The Court stated that the shortfall fees were in the nature of a contractual "penalty," and the financial responsibility was triggered by the failure to purchase engines. The fees were not part of the price actually paid or payable for the imported engines. In addition, the importer made payments to the manufacturer for tooling expenses and claimed these payments as assists. The Court agreed with Customs, finding that the payments made for tooling expenses are not assists but rather, are part of the price actually paid or payable. The Court held that the statutory requirements for an assist were not met because the manufacturer was not supplied with the actual tooling. The tooling expense was allocated over the number of engines intended to be produced rather than the actual number of engines imported.

Caterpillar Inc. v. United States, 20 Ct. Int'l Trade 1169 (1996).

Caterpillar Inc., purchased truck components from a British company. The merchandise was not exported immediately following payment, but remained in the seller's inventory for up to five months. The British government assessed a value added tax (VAT) upon the sale of the merchandise. The invoice from the seller to Caterpillar included an amount for the merchandise and a separate amount for the VAT. At the time the parties entered into the contract, Caterpillar anticipated full refunds of the VAT and, in fact, received refunds directly from the British government of all VAT sums. Customs determined that the separately invoiced VAT amounts paid by Caterpillar were part of the price actually paid or payable in determining transaction value. The Court held that Customs may not include refunded foreign VAT payments in the transaction value of the imported merchandise.

Tikal Distrib. Corp. v. United States, 24 Ct. Int'l Trade 149 (2000), aff'd, No. 00-1342 (Fed. Cir. Apr. 5, 2001) (decision without published opinion).

In Tikal, the issue was whether additional "exclusivity" payments made by the buyer to the seller were dutiable as part of the price actually paid or payable under transaction value. In addition to paying the invoice price, Tikal had an "exclusive distributorship arrangement" with the seller whereby Tikal would pay the seller an additional five percent of its retail sales of the imported shoes. The importer argued that the additional payment was for "exclusive selling rights" and not for imported merchandise.

In ruling in the government's favor, the CIT held that Customs' interpretation was reasonable and supported by the rationale of judicial precedent. The court found Customs' consideration of the relationship between the parties a reasonable basis for analyzing the payments. The court stated:

> While not a critical requirement for inclusion in transaction value, the existence of a contractual relationship between the exporter and importer inextricably linking the sale of the goods to the importer with additional payments by the latter as a *quid pro quo* for exclusive distributorship rights on resale provides a very reasonable basis for Customs to find that the additional payments are part of the total price paid for the imported merchandise within the purview of the transaction value statute.

Tikal, 93 F. Supp. 2d at 1271. The CIT also repeated the point made in Generra Sportswear Co. v. United States, that transaction value may include payments representing something other than the per se value of the goods or charges that are not imposed as a condition of sale. The CIT decision also contains language suggesting that Customs should review bifurcated payments to a seller to determine whether the arrangements circumvent the law by simply disguising a portion of the total price paid as a payment for something else.

**NOTE: Based upon Generra Sportswear Co. vs. U.S., 905 F.2d 377 (Fed. Cir. 1990), U.S. Customs and Border Protection presumes that all payments made to the seller, or a party related to the seller, by the buyer are part of the price actually paid or payable. The importer may rebut this presumption by providing evidence that clearly establishes that the payments are completely unrelated to the imported merchandise. Therefore, the analysis regarding the price actually paid or payable in Headquarters Rulings issued *prior* to Generra, may not accurately reflect the current position of CBP.**

**Headquarters Rulings:**

## additional payments made by the buyer to the seller; total payment

The duty to be deducted from a C.I.F. duty-paid price is the actual duty due on the transaction. The excess estimated duty is an additional payment to the seller, as this amount inures to his benefit and, therefore, is part of the price actually paid or payable.
**542401 dated May 21, 1981.**

Additional amount paid by the buyer of specific merchandise to the manufacturer to produce tools necessary to produce that merchandise constitutes part of the price actually paid or payable.
**542812 dated July 19, 1982.**

Payments made on a period basis from the buyer to the seller as compensation for delivery and inspection of fabric are made pursuant to a service agreement not directly related to the imported merchandise. These payments are not part of the transaction value of the imported merchandise.
**542831 dated Sep. 21, 1982 (TAA No. 52).**

Although payments made by the buyer to an independent fumigator are not dutiable, payments for fumigating merchandise made by the buyer to the seller of imported merchandise are properly part of the price actually paid or payable.
**542905 dated Jan. 28, 1983.**

If a cancellation occurs prior to any importation, no dutiable consequences arise. Charges paid by an importer to cancel a production order do not constitute part of the price actually paid or payable for merchandise already imported, so long as such charges are incurred for a legitimate business purpose, and are treated separately from the imported merchandise on the importer's accounting records.
**543088 dated June 28, 1983.**

Assembly costs for an offshore drilling platform are part of the price actually paid or payable because the assembly preceded the importation of the merchandise.
**543117 dated Sep. 2, 1983.**

The buyer and seller of imported merchandise agree that transformers are to perform at a specified level of efficiency. If the transformers' actual efficiency exceeds that agreed-upon level, then the buyer pays an additional amount or bonus to the seller. This additional bonus is part of the price actually paid or payable for the imported merchandise.
**543183 dated July 17, 1984.**

Amounts paid by the importer to the seller in connection with the failure of the importer to purchase *any* diesel engines during the relevant model year are not dutiable because the diesel engines were subject to a purchase agreement in which no engines were imported.
**543445 dated Oct. 23, 1985.**

If charges incurred by an importer are truly charges for the termination of a contract, and merchandise is not imported as a result of the terminated contract, then the payments made to the seller are not to be included in the price actually paid or payable for merchandise imported subsequent to the terminated contract.
**543770 dated Feb. 10, 1987; 544205 dated Dec. 12, 1988.**

Maintenance payments for the seller's out-of-pocket costs resulting from underutilized capacity are not part of the price actually paid or payable for imported merchandise. Rather, the payments are made to compensate the seller for expenses incurred in preparation for production of merchandise contracted for by the imported but never imported. These payments are not dutiable under transaction value.
**543882 dated Mar. 13, 1987; aff'd by 554999 dated Jan. 5, 1989.**

Delay payments are a separate undertaking from the payment of the purchase price of imported merchandise. These payments are in the nature of a penalty and are to be excluded from the price actually paid or payable.
**543812 dated Apr. 20, 1987.**

If the buyer of merchandise requests termination of an order and the supplier has in its inventory excess fabric which is then sold to recoup the loss, then the buyer is to reimburse the supplier for the loss incurred. This payment is not part of the price actually paid or payable for the imported merchandise because these payments are made to compensate the supplier for losses incurred from the sale of the unused fabric.
**543924 dated May 29, 1987.**

An agreement between the buyer and seller provides for a payment to the seller resulting from the buyer's decision not to place new orders with the seller. The buyer is not breaching an ongoing contract and no merchandise is imported as a result of the payment. The payment is excluded from the price actually paid or payable for merchandise imported prior to the payment.
**544031 dated Jan. 19, 1988.**

An additional payment that is made by the buyer to the seller represents a payment made for merchandise which was ordered but not manufactured nor ever imported. This payment is not to be construed as part of the price actually paid or payable for merchandise previously imported into the United States.
**544121 dated June 24, 1988.**

The buyer and seller are obligated to a "service agreement" contract. The agreement states that the seller shall be responsible for receiving and inspecting materials, insuring delivery to the correct assembly plant, and various other administrative duties. The seller receives a commission based on the purchase price of the merchandise. The payments are tied to specific merchandise and are part of the price actually paid or payable. The commission payments are included in the dutiable value of the merchandise.
**544235 dated Nov. 25, 1988.**

The importer supplies the manufacturer with fabric and trim to use in producing the final imported product sold to the importer. During the manufacturing process, it is discovered that a portion of the fabric is defective and the defective portion is not used to produce the finished garments. Rather than claim an allowance with respect to the discarded fabric in determining the value of the assist, the manufacturer adds an amount (approximately five or ten percent of the actual fabric cost) to the price paid by the buyer. There is no authority to exclude that additional amount from the price actually paid or payable.
**544082 dated Sep. 19, 1988**.

The importer purchases fabric to utilize in the production of samples. A minimum quantity purchase is required. When the importer does not order the minimum quantity specified, a charge is imposed. In this case, it is unlikely that the importer will ever order the minimum quantity because only fifty to seventy-five yards are required for the production of the samples. Because there is little likelihood that the minimum quantities will be purchased, the total payment for the imported merchandise usually includes the surcharge. Accordingly, this amount is part of the price actually paid or payable.
**544340 dated Sep. 11, 1990.**

It is the position of the Customs Service that all monies paid to the foreign seller, or a party related to the seller, are part of the price actually paid or payable for the merchandise under transaction value.
**544640 dated Apr. 26, 1991.**

The buyer makes bonus payments to the seller, and these payments are related to delivery timing and procedures after the merchandise is manufactured. These bonus payments are part of the price actually paid or payable for the imported merchandise and are to be included in the transaction value of the goods.
**544690 dated Aug. 5, 1991.**

The buyer's payments to the seller for mold costs, reimbursement for unused materials and components, and cutting dies are considered to be part of the price actually paid or payable for the imported merchandise. The fact that the payments occur post-importation does not preclude their being considered part of transaction value because the parties agreed at the outset of the transaction, prior to production, that reimbursement would occur if the required number of goods were not ordered.
**544615 dated Sep. 11, 1991; modified by 544820 dated Oct. 18, 1991.**

The importer purchases samples and swatches of fabric from the manufacturer for a book used to illustrate available fabrics. Newly woven fabrics are purchased, often with the manufacturer requiring the importer to pay a "trial weaving charge" in addition to the price of the actual fabric. The cost is associated with stopping a loom and setting up a new warp beam. This additional charge is part of the price actually paid or payable for the imported merchandise.
**544654 dated Dec. 23, 1991.**

The buyer makes bonus payments to the seller. The payments are made pursuant to a shipping agency arrangement whereby the buyer pays the bonus to the seller for meeting specified shipping criteria. These bonus payments are part of the price actually paid or payable for the imported merchandise and are included in the appraised value of the merchandise.
**544787 dated Feb. 20, 1992.**

The importer pays additional money to the seller for certain warehousing, storage costs, and related insurance charges. These payments are part of the price actually paid or payable. If the importer pays the warehousing, storage and related insurance costs to an unrelated third party, then the charges are not part of the price actually paid or payable.
**544758 dated Feb. 21, 1992.**

Amounts paid by the buyer to the seller for "type" tests performed by the seller on the imported merchandise are part of the price actually paid or payable, and are included in the transaction value of the merchandise.
**544884 dated Apr. 15, 1992.**

The evidence submitted is insufficient proof that the described fees paid to the seller are actually warehousing charges or that they should be deducted from the price actually paid or payable. There is no authority to deduct such payments from the price actually paid or payable.
**545061 dated Nov. 4, 1992.**

The buyer purchases garments manufactured in China, the price of which is negotiated with the provincial trade authorities, rather than with the actual manufacturer of the apparel. Once the price is set, the authorities issue a visaed invoice. Recently, the factories that produce the merchandise requested that the buyer pay them a per garment fee in addition to the price negotiated with the provincial authorities. Unless

the fee is paid, the garments may not be produced within the required time, if at all. The fee is paid directly to the factory and is not included in the amount shown on the visaed invoice. The fee is part of the total payment made to, or for the benefit of, the seller. The fee is determined by the seller and is for the imported merchandise. It is part of the price actually paid or payable for the merchandise.
**545239 dated June 30, 1993.**

The importer purchases merchandise from the foreign seller and that merchandise is not immediately exported after manufacture. As a result, the seller is required by the British tax authority to pay a "value added tax" (VAT) on the goods that are stored. The VAT is itemized separately on the commercial invoice. The buyer pays the invoiced total to the seller, including an amount for the VAT. Subsequent to the exportation of the merchandise, the foreign governmental authority refunds the amount of the tax to the importer. The VAT payments included in the price actually paid or payable are properly included in the transaction value of the imported merchandise.
**544644 dated Sep. 29, 1993.**

The importer is anticipating importing equipment made in Switzerland by the seller. To date, the seller has been selling the merchandise in U.S. dollars and has met the risk of currency exchange fluctuations by hedging the contracts, i.e., placing a forward contract on currency. The cost to the seller of the hedging has been included in both the offered price of the merchandise and in the value declared for duty. The seller is now offering the importer the option of purchasing the merchandise in U.S. dollars or in Swiss francs. If the importer pays in dollars, it will be charged a separate amount to cover the cost of hedging. If the importer pays in francs, the importer hedges for its own account, in the United States, also incurring a fee. The hedging costs paid by the importer to the seller are included in the price actually paid or payable. With respect to the costs incurred by the importer hedging for its own account, those payments are not made to or for the benefit of the seller and are not included in the price actually paid or payable.
**544971 dated Oct. 20, 1993.**

The invoice value of imported machinery includes an amount for an extended two-year warranty. The warranty payment is included in the total price for the merchandise. The warranty costs in question form an integral part of the merchandise upon importation. Consequently, the cost of the warranty is part of the price actually paid or payable and is dutiable under transaction value.
**545153 dated Dec. 21, 1993.**

The importer is a distributor of lock assemblies. Participating in a "shelter operation," the importer contracts for the assembly of locks with a "shelter," the U.S. parent of a Mexican assembler. "Pass-through" payments are made by the importer to the shelter for reimbursement to the shelter for expenses that the assembler incurs to third parties in Mexico. To the extent that the "pass- through" payments are made to the shelter, or a party related to the shelter, even though the payments may represent something other than the per se value of the assembled merchandise, all of the payments to the shelter are part of the price actually paid or payable. Even if the payments are made directly to

the third party supplier for services provided by the third party, they are nonetheless part of the price actually paid or payable. Such payments are for the benefit of a party related to the shelter, and are included in the price actually paid or payable.
**544764 dated Jan. 6, 1994.**

The seller produces sample garments for the buyer and, on a periodic basis, issues debit notes for the design, development, and production costs associated with the samples. The sample garments are used to design wearing apparel and solicit sales orders. Included in the total cost of the samples are the cost of the fabric, the acquisition and development costs of rollers used to print the fabric, the cost of trim, labor, overhead and profit. The periodic payments covering design, development, and production costs are part of the price actually paid or payable for the imported samples. In addition, the costs associated with the samples that are selected for full production should be amortized in the price of the production garments, or otherwise reflected in the transaction value of subsequently imported merchandise.
**545110 dated Mar. 11, 1994.**

The payments made by the buyer to the seller include amounts for engineering, assembling, testing and dismantling. These amounts are part of the purchase order price for the entire friction roller conveyor system in question. Accordingly, they are part of the price actually paid or payable for the imported merchandise.
**545264 dated Aug. 12, 1994.**

The seller invoices the U.S. buyer separately for imported denim goods and certain "finishing" services performed by the seller. The services include labeling, pressing, stone wash treatment, bleaching, softening, quality control and delivery. Notwithstanding the separating invoicing, the "finishing" services performed are part of the price actually paid or payable for the imported merchandise.
**545490 dated Aug. 31, 1994.**

In addition to the transfer price of merchandise, the buyer sends regular weekly payments to the seller which are used to pay the seller's operating expenses, including labor, overhead and administrative costs. While the amounts in question are related to the imported merchandise, they are not identified with specific shipments. The additional payments constitute part of the price actually paid or payable for the imported merchandise.
**545456 dated Oct. 21, 1994; aff=d by 545995 dated Oct. 12, 1995.**

Funds transferred by the buyer to the seller are advanced by letters of credit. The letters of credit are issued on behalf of the buyer as consideration for imported merchandise purchased from the seller. The amount of these payments exceeds the invoice value of the merchandise. Neither the financial statements of the buyer nor those of the seller support the view that the "excess" amounts of the payments are loans, and the company's books do not support this view. The payments by the buyer to the seller in excess of the invoice amount constitute payments for the imported merchandise and should be added to the price actually paid or payable.
**545147 dated Nov. 4, 1994.**

The buyer purchased machinery and equipment from the seller. The seller tested the machinery and equipment. The testing involved setting up and running the assembly line before the machinery was exported to the United States. The testing was conducted pursuant to a separate and subsequent agreement. Three months to a year after the merchandise was exported, the buyer received a debit note informing the buyer of the charges for the testing. The test run charges were payments made from the buyer to the seller in connection with imported merchandise. The amount paid for the post production tests performed by the seller are part of the price actually paid or payable and are included in the transaction value of the imported merchandise.
**545724 dated Nov. 30, 1994.**

The importer contracted with its foreign subsidiary for research, development, and engineering services for an engine design project in the United States. The subsidiary was reimbursed, on a monthly basis, by the importer for the full cost of the R&D services conducted in the United Kingdom. As part of the research and design of the project engine, the foreign subsidiary produced numerous prototype hardware items for testing. Of the sixty prototypes produced by the foreign subsidiary, only twenty prototypes were imported into the United States. The importer claims that it paid the subsidiary for services, and not for merchandise. Due to cost inefficiency, the project was abandoned and no final product was ever produced. There is no authority to exclude the R&D payments from the appraised value of the imported prototypes. The payments made by the importer are part of the price actually paid or payable. In addition, without evidentiary support for apportionment of the payment, Customs cannot determine what portion of the total payment was for the imported prototypes. Unless the importer provides documentation in support of allocating the R&D costs over the sixty prototypes, then the total payment is considered part of the price actually paid or payable for the imported prototypes.
**545320 dated Feb. 28, 1995.**

A related-party buyer purchases merchandise from its parent on a FOB basis, freight prepaid. The seller invoices the buyer a fixed price and deducts estimated expenses for freight charges. The price does not change if these estimated costs are ultimately different from the actual cost. The seller subsequently receives freight rebates from certain carriers. Regardless of the statutory exemption for freight costs, if payments are made to the seller for merchandise sold for export, even though not for the value of the goods themselves, they are part of the price actually paid or payable. Accordingly, if the

buyer of imported merchandise pays the seller more than the actual cost of prepaid freight charges, the overpayment is part of the "total" payment for the imported merchandise and, therefore, part of the dutiable value of the merchandise.
**545349 dated Mar. 24, 1995.**

The importer purchased automobiles from a foreign manufacturer. Pursuant to an agreement between the parties, before production of any automobiles began, the importer paid the manufacturer $2 million in consideration for the development, engineering, and volume production of the imported automobiles. Although the payment may have been made prior to the production of any automobiles, or the importer's commitment to purchase any automobiles, the payment is part of the price actually paid or payable. Also, "production overrun" expenses, which were payments made by the importer in settlement of a dispute regarding delays allegedly caused by the importer, are part of the price actually paid or payable. In addition, a payment made by the importer to the manufacturer for design and development costs associated with a particular engine developed for the automobiles is part of the price actually paid or payable for the imported automobiles.
**545500 dated Mar. 24, 1995.**

The total contract price paid by the importer included amounts for warranties, installation and administration costs, and selling commissions. Although transaction value does not include any reasonable cost associated with the construction, erection, assembly or maintenance of merchandise after its importation into the United States, these costs must be separately identified from the price. The costs associated with installation and administration were not separately identified from the price and, therefore, they constitute part of the price actually paid or payable. With respect to the warranty and commission expenses, they were also included in the total contract price and are part of the price actually paid or payable. (Note: Customs has held that warranty payments are an integral part of the price actually paid or payable).
**545843 dated May 11, 1995.**

The importer sends fabric to El Salvador for manufacturing into apparel. When the fabric and trim reach El Salvador, they are placed in a warehouse facility, located in the same commercial complex as the factory of production, where they are stored until the manufacturer is ready to move specific lots into production. The warehouse owner issues separate invoices to the importer and those invoices are paid separately from invoices issued by the manufacturer. The importer is not related to either the manufacturer or the warehouse proprietor. However, the manufacturer and warehouse proprietor are related parties. The fees paid to the warehouse proprietor, a party related to the manufacturer, are part of the price actually paid or payable for the imported merchandise.
**545663 dated July 14, 1995.**

In addition to the transfer price, the importer sends regular weekly payments to its related-party seller, which are used to pay the seller's operating expenses, including labor, overhead, and administrative costs. In view of the fact that there are no loan

documents establishing a loan or any repayment obligation, and the financial records of the companies do not establish that the payments are loans as alleged by counsel, the cash payments in question are part of the price actually paid or payable. In fact, these payments are used to cover the seller's operating expenses, i.e., the costs incurred to assemble the imported merchandise.
**545995 dated Oct. 12, 1995; aff'g 545456 dated Oct. 21, 1994.**

The importer purchased and paid for yarn used to produce imported sweaters. The importer's broker erroneously added an amount to the invoiced value to account for payment for the yarn used in making the sweaters. The importer has provided sufficient evidence to indicate that the payment should not have been added to the price actually paid or payable because the payment was already included in the price.
**546078 dated Jan. 30, 1996.**

A related party seller is supplied with certain assists, the value of which is included in the transaction value. The seller performs testing on these assists before incorporating them into the imported merchandise. The cost of the testing, i.e., whether it is included as part of the price of the imported merchandise or if the importer is separately billed for the testing costs, is included in transaction value as part of the price actually paid or payable.
**545753 dated Mar. 8, 1996.**

The importer reimburses one of its parent companies (the seller) for costs incurred due to the importer's delayed payment settlement. Interest accrues on the importer's books and the parent makes the interest payments directly to the bank for the late payments. The payments are part of the total payment to the seller for the imported merchandise and are, therefore, part of the price actually paid or payable. The payments do not constitute bona fide interest charges, but rather the payments represent interest arising out of delayed payment. Even if the interest charges had been bona fide, they would have been included in transaction value because there is no written finance arrangement specifying the interest rate or the manner for determining such a rate.
**546056 dated Mar. 22, 1996.**

Cigarettes are imported into the United States. The importer submits an invoice to Customs that indicates a $320 per case price and a $319 per case discount. The importer alleges that the cigarettes should be appraised at $1 per case. The reduction in price represents a credit to the importer for a previous shipment involving slow-moving goods. The reduction in price is not to be considered in determining the price actually paid or payable for the current shipment. This claimed reduction in price represents satisfaction of a debt owed the buyer by the seller resulting from the previous shipment, and constitutes an indirect payment which is part of the price actually paid or payable.
**546132 dated Apr. 10, 1996.**

The importer has agreed to supply a U.S. company with a three-stand cold mill for the manufacture of aluminum sheets. In order to meet its contractual obligations, the

importer placed two contracts with its parent company in Germany to supply certain components for the mill and to provide various engineering services. A "mill modeling charge" incurred by the importer is essentially a research and development cost associated with the operation of the mill, and only a specific amount has any relationship to the imported mill components. Only the portion of the charges that has been identified as related to the imported mill components is part of the price actually paid or payable for the components. In addition, general engineering charges that relate solely to the installation, set-up, and operation of the mill are not properly part of the transaction value of the imported merchandise.
**546000 dated Sep. 6, 1996.**

An importer of garments intends to enter into a quality assurance incentive program and pay an inspection fee in the importation of merchandise. The importer will purchase garments from various factories and make arrangements with individual employees of the factories. The importer will pay these employees an inspection fee of $1 per dozen if the importer is satisfied upon receiving the merchandise that they are of first quality and meet specification. The payments to the employees of the factories (sellers) are direct payments to the sellers and are part of the price actually paid or payable in the determination of transaction value.
**546439 dated Sep. 30, 1996.**

The importer entered into an agreement with a foreign seller to modify and adapt an automobile engine. The agreement provided that the importer would pay the seller a fee for the design and development of the engine. In addition, the agreement provided that any prototypes of the modified engines would be purchased under separate purchase orders. If the modifications proved successful, the parties would enter into a contract for the purchase and supply of production engines. The seller then produced prototypes, which were purchased by the importer. The payments for the design and development are part of the price actually paid or payable for subsequently imported production engines. In addition, payments for all the prototypes manufactured by the seller constitute part of the price actually paid or payable. The cost of the prototypes is inextricably linked to the design and development process of the subsequently imported production engines. The price actually paid or payable for the production engines, i.e., the total payment, includes all payments for the imported merchandise.
**545907 dated Oct. 11, 1996; aff'g 545278 dated Apr. 7, 1994.**

Payments are made from the importer/buyer to the licensor of a pharmaceutical product for pre-clinical studies pertaining to the safety of the imported product. The licensor is related to the seller. The importer pays the licensor for the results of studies conducted by the licensor and pays for all costs incurred for certain long-term toxicity and/or carcinogenicity studies performed by the licensor. The payments are related to the imported merchandise and are part of their total payment. The pre-clinical studies to test the safety of an imported pharmaceutical product are crucial steps in the production and sale of the product. The clinical studies facilitate the subsequent production and sale for exportation of the imported product. The payments are included in the transaction value of the imported product as part of the price actually paid or payable.
**545998 dated Nov. 13, 1996.**

The seller bills the importer a FOB price, which is based on the manufacturer's (importer) invoice and consists of amounts for fabric assists, including that attributable to fabric waste. The amount attributable to fabric waste is subsequently deducted from the total price to arrive at the entered value. No information has been presented to rebut the presumption that such payments (fabric waste) are part of the price actually paid or payable. The payments comprise the total payment for the goods and there can be no deduction for the fabric waste; the amounts are part of the transaction value of the merchandise.
**546015 dated Dec. 13, 1996.**

The importer purchases textile products from a Russian factory. Recently, the importer purchased a controlling interest in the factory. There are documents indicating that there were three wire transfers in the total amount of $220,100 to the factory. Based on copies of the contracts and the wire transfers, the payments were made for the purchase of the stock and are not related to the purchase of the imported merchandise. Accordingly, the payments are not part of the transaction value of the imported merchandise.
**546364 dated Dec. 19, 1996.**

The importer purchases fabric from its related party in Russia. A trade debt has developed between the parties with regard to shipments to the United States. The importer has received approximately sixty-seven percent of the amount of fabric that it had actually contracted for and has paid in full for the entire amount. The trade debt occurred because the importer paid the seller for the fabric faster than the seller was able to ship the fabric. In order to repay the debt, the parties have agreed to sign a contract for a certain amount of fabric at $1.50 per meter, but the importer will actually pay the seller only $1.30 per meter until the trade balance is repaid. The invoice price of $1.50 per meter represents the price actually paid or payable for the fabric. The difference in the invoice prices and the actual payments is part of the transaction value as indirect payments.
**546364 dated Dec. 19, 1996.**

The importer purchases apparel from both related and unrelated foreign suppliers. The buyer makes charges for screening and development to the suppliers. The evidence

submitted supports the importer's position that the charges are not connected to or associated with the imported garments. Statements from the foreign suppliers and affidavits from foreign mills state that there were separate charges for screening and development of sample fabric yardage, which was never manufactured into actual production fabric. These costs were not absorbed into the costs of the production of the fabric and were separately charged to the foreign supplier and the importer. The screening and development charges paid to the foreign suppliers are not part of the price actually paid or payable for the garments.
**546207 dated Dec. 20, 1996.**

The product liability insurance payments at issue should be included in the price actually paid or payable in determining the transaction value of the imported merchandise. The payments for the insurance attaches to and forms an integral part of the merchandise upon its importation, and are thus related to the imported merchandise. The payments are included in the price, and Customs has no authority to exclude them from the price actually paid or payable.
**546584 dated Sep. 10, 1997.**

The information submitted is insufficient to substantiate counsel's claim that the distributorship fee is not related to the price paid for the imported merchandise. The seller and the distributors are related parties. The distributorship fee is tied to the exportation of the merchandise to the United States. Therefore, the fee is included in the price actually paid or payable.
**546835 dated Jan. 11, 1999.**

The delivery bonus is identified under the terms of the letter agreement in which the buyer agrees to pay the seller a specified amount for each complete week the equipment was completely delivered prior to a specified date. The term equipment, as defined in the purchase agreement, refers generally to the finished product plus certain additional terms referenced in various annexes of the purchase agreement. Thus, the delivery bonus is not linked to the imported goods, but to the completion of the finished product. Accordingly, the delivery bonus paid by the buyer to the seller is not part of the price actually paid or payable for the imported merchandise.
**567376 dated Feb. 8, 1999.**

A Service Agreement between the buyer and the seller in connection with the planned assembly of vehicles at a Foreign Trade Zone (FTZ) provides for the development of production technology and methods to be used at the buyer's plant in the manufacture of the vehicles. In return for these services, the Agreement provides that the buyer will make payments to the seller. The payments made for consultation and advice under phases I-III of the Agreement are included in transaction value as part of the price actually paid or payable to the extent that they relate to the imported merchandise. The payments should be apportioned to the value of the imported machinery and equipment in accordance with the method proposed by the buyer, subject to the calculation of a revised allocation factor. Payments made by the buyer pursuant to the term of the Agreement with respect to phase IV activities are not included in transaction value as an addition to the price actually paid or payable for the imported merchandise. The phase IV activities relate entirely to post-importation activities; therefore, in accordance with section 402(b)(3)(A)(i) of the TAA, these amounts relate to the "construction, erection, assembly or maintenance of, or the technical assistance provided with respect to, the imported merchandise."
**546697 dated Aug. 26, 1999.**

Pursuant to an agreement between the importer and the unrelated seller, the importer paid the seller advance royalties and the seller agreed that the importer would purchase the necessary drug to be shipped to the seller for use in the manufacture of the time release product. The payments made to the seller constitute part of the price actually paid or payable for the imported merchandise, as counsel has not demonstrated that the subject payments are unrelated to the imported merchandise. Therefore, based upon the evidence and information provided, the advance payments made by the importer against future royalties, in consideration for the seller's provision of contracted plant capacity, are included within the transaction value as part of the price actually paid or payable for the imported merchandise.
**546638 dated Oct. 4, 1999.**

In this case, the price is determined using the prices on three invoices, i.e., the cut, make, and trim (CMT); the material purchase recovery (MPR); and the appropriate costs on the warehousing and expense allocations (WEA). Also, the total price paid by the buyer to the related seller is adequate to ensure the recovery of all costs plus a profit. Thus, the evidence presented indicates that the relationship between the parties does not influence the price actually paid or payable. Therefore, based on the evidence available, the transaction value between the related parties is represented by the sum total of the three invoices as identified above.
**547108 dated Mar. 28, 2000.**

The U. S. manufacturer pays a fee to the foreign manufacturer for the preparation of bid specifications and blueprints for the design and development of imported tools and gauges. The fee paid for the preparation of the items is not related to the imported tools and gauges, and the fee is not related to the design and development of the tools and gauges. Also, the U.S. manufacturer does not provide any item for use in connection

with the production or the sale for export to the United States of imported gauges and tools. Therefore, based on the information provided, the fee paid for the preparation of bid specifications and blueprints is not part of the price actually paid or payable for the imported tools and gauges; nor does it constitute an assist to be added to the price actually paid or payable.
**547175 dated Apr. 21, 2000.**

The importer made payments to related and unrelated manufacturers to cover an increase in the cost of plastics used in the manufacture of the imported merchandise. The importer's payments to the manufacturers representing retroactive material price adjustments are considered to be part of the price actually paid or payable for the imported merchandise. However, Customs erred when it value advanced the value of the merchandise in one entry to cover other entries that had long since been liquidated.
**547395 dated June 30, 2000.**

The importer pays a fee to the seller for the storage of merchandise in a warehouse in the country of exportation prior to importation into the United States. The importer has not met its burden under Generra—the importer failed to overcome the presumption that the payments by the importer to the seller for warehouse services are completely unrelated to the goods and excludable from the price actually paid or payable. Therefore, the charges are dutiable as part of the price actually paid or payable for the merchandise. In addition, the payments are not eligible for treatment as charges for services incident to international transport.
**547534 dated Jan. 19, 2001.**

For purposes of this ruling request, we are assuming that two bona fide sales exist, the first between the middleman and the foreign suppliers and the second between the U.S. importer and the middleman. However, the merchandise is not clearly destined for the United States, in that there is no evidence to refute the possibility that a contingency of diversion may exist. Also, under a cost sharing agreement, the U.S. importer reimburses its sister company in Canada for services associated with the merchandise ordered. Accordingly, the presumption in this matter is that all monies remitted by the importer to its sister company in Canada pursuant to the cost sharing agreement, shall constitute part of the transaction value of the imported merchandise. This presumption may be rebutted by evidence that clearly establishes that payments are completely unrelated to the imported merchandise. The imported merchandise should be appraised under transaction value based on the transaction between the U.S. importer and its sister company in Canada, provided the relationship between the parties did not influence the price.
**547825 dated July 16, 2001.**

Under an agreement, the importer may only sell the trademark merchandise to specialty and department stores and men's stores of high standing. Based on the information submitted, the trademark owner acts as an independent seller in the transactions with the importer. Therefore, the amounts paid by the importer for alleged buying commissions and handling/marketing/advertising fees are part of the transaction value for the imported merchandise, because they are paid directly to the seller of the merchandise.
**547585 dated Sep. 28, 2001.**

An addition to the actual price paid or payable will be made for any royalty or license fee paid by the buyer to the seller unless the buyer can establish that such payment is distinct from the price actually paid or payable for the imported merchandise. The presumption that all payments made by the buyer to the seller are part of the price actually paid or payable may be rebutted. The burden of establishing that the payments are totally unrelated to the imported merchandise rests with the importer. Although designated by the importer as "royalties," these payments are actually indirect payments to the seller.
**547608 dated Feb. 21, 2002.**

An addition to the actual price paid or payable will be made for any royalty or license fee paid by the buyer to the seller unless the buyer can establish that such payment is distinct from the price actually paid or payable for the imported merchandise. In this case, there is no link between the licensing agreement and the importer's payments to the middleman. Nothing in the record obligates the importer to make payments related to trademark rights. On the contrary, payments relate precisely to sales for exportation of the merchandise because they are based upon a percentage of the price paid by the importer to the middleman for each importation. The payments, although identified as royalties, are part of the price actually paid or payable for the imported merchandise and, consequently, are to be included in the transaction value of the imported merchandise. In addition, a handling charge appears on internal accounting documents and the charge is for the tracking and equalization of landed costs. The cost appears only on the importer's purchase order and does not represent a payment to other parties. The handling charge is not to be included in the appraised value of the merchandise
**547623 dated Feb. 21, 2002.**

The license fee at issue in this case is related to license rights, technical assistance, basic support and product design and development of the finished product, not the imported merchandise. There is a rebuttable presumption that all payments made by a buyer to a seller, or a party related to a seller, are part of the price actually paid or payable. As in the instant case, an exception exists when the buyer demonstrates that such payments are completely unrelated to the merchandise. Therefore, the payments are not part of the price actually paid or payable. In addition, the payment of the royalty

is not a condition of sale. The payment should not be added to the price actually paid or payable provided under section 402(b)(1)(d) of the TAA.
**547761 dated Mar. 14, 2002.**

The buyer pays the seller certain fees to compensate the seller for the costs associated with obtaining the permit needed to export softwood lumber to the United States. These fees are closely related to the imported merchandise and they are included in the seller's price. The described permit and service fees paid to the seller to cover costs associated with the procurement of the requisite export permit are included in transaction value as part of the price actually paid or payable for the imported merchandise.
**548003 dated July 16, 2002.**

Counsel did not provide sufficient information to demonstrate that the payments made by the importer to a related seller, or a third party related to the seller, were independent and unrelated costs not associated with the imported merchandise. Counsel provided copies of the relevant license, trademark, and technical service agreements, and a short narrative for each, explaining the transactions involved. This information, by itself, is insufficient to rebut the presumption that the payments were made in exchange for merchandise sold for export to the United States. The payments made to the seller or the seller's related third parties are therefore dutiable as part of the price paid or payable.
**547662 dated Sep. 20, 2002; modified by 548305 dated Aug. 11, 2003.**

The buyer pays the foreign supplier a set amount for each article and a tooling/mold charge. Because the buyer paid the seller for the cost of the mold, there was a rebuttable presumption that the payment was part of the price actually paid or payable. Based on the information provided by the importer, the mold cost paid by the buyer is part of the price paid or payable. The cost of the mold should be apportioned over the value of the total number of items to be produced.
**548196 dated Dec. 13, 2002.**

The seller purchases U.S. design and engineering work, and includes these costs in its price of the imported merchandise. There is no basis to deduct these costs included in the price paid by the buyer. Therefore, these costs remain part of the price actually paid or payable for purposes of determining transaction value. The assist provision is not relevant because the U.S. design and engineering work is not provided to the seller free of charge or at a reduced cost. In addition, the provider of the U.S. design and engineering work is not the buyer of the imported merchandise.
**548276 dated Apr. 29, 2003.**

The buyer is a U.S. subsidiary of the foreign parent company, and purchases merchandise from the parent seller. The parties entered into an agreement entitled a "Cost Sharing Research Agreement" which encompasses research and development expenses paid by the importer. The appraised value of the merchandise sold by the foreign parent to the related party subsidiary should include the costs incurred pursuant to the "Cost Sharing Research Agreement" for research and development of the merchandise imported into the United States.
**548306 dated July 9, 2003.**

The contract price between a seller and U.S. buyer includes certain fees that are included in the price and become a part of the total payment for the imported merchandise. The buyer and seller agreed that the buyer would pay a portion of the contract price to a third party. These payments are indirect payments to the seller and are paid for the benefit of the seller, and as such, are part of the price actually paid or payable. The fact that the buyer did not pay the fees directly to the seller is immaterial. They were indirect payments for the benefit of the seller.
**548298 dated July 25, 2003.**

The importer imports merchandise for which the foreign vendors have been reimbursed by the importer for materials and/or production equipment procured by the foreign vendors and used in the production of the imported merchandise. The reimbursement payments made to the foreign vendors covers merchandise imported over numerous entries and over an extended period of time. The importer may structure the arrangements with its foreign vendors so that the reimbursement payments that are properly part of the total payment of the price actually paid or payable for the imported merchandise may be included in the dutiable value of the first entry. (Note: This proposed transaction is acceptable provided it does not violate other provisions of Customs laws, results in no revenue reduction to the United States, does not impact the classification of the merchandise and the importer does not seek drawback).
**548375 dated Oct. 30, 2003.**

The appraised value of merchandise sold by foreign subsidiaries to a U.S. subsidiary buyer, all of whom are parties to a research and development expense sharing agreement, should include the research and development costs incurred for the development of the merchandise imported into the U.S. Sound corporate accounting can provide the importer with a basis for determining the percentage of research and development pool payments that were devoted to a specific project, and which percentage of pool payments are part of the price paid or payable for the developed, imported merchandise. The precise determination for the appropriate allocation of research and development payments to specific merchandise should be decided on a

case-by-case basis. The payments are sufficiently direct to conclude that they be included in the price actually paid or payable.
**548331 dated Oct. 31, 2003.**

The royalty payments are part of the price actually paid or payable. The payments are made annually, during the term of the license agreement, and for as along as the importer uses the equipment in question. Assuming the agreement remains in force, and the equipment is used throughout its useful life, then the amount of the future royalty payments can reasonably be determined taking into account the life of the equipment and the length of the contract. In so doing, Customs may look to the importer's books and records, and the manner in which the equipment is depreciated, provided these are in accordance with generally accepted accounting principles.
**548373 dated Nov. 24, 2003.**

The importer makes remittances to its related party seller pursuant to a corporate transfer pricing policy. A portion of its remittance relates to purely domestic purchases unrelated to the imported merchandise. An additional portion relates to foreign purchases from unrelated sellers. As such, the remittances reflect income that is unrelated to the purchase of imported merchandise. Accordingly, subject to acceptable documentation prepared in accordance with generally accepted accounting principles, only the amount attributable to the purchase of imported merchandise needs to be reported for purposes of reconciliation since it is that portion that is subject to duties and fees.
**548386 dated Nov. 26, 2003.**

## advertising/marketing costs

Amounts paid by an importer of vodka pursuant to an agreement between the importer and foreign vendor to share U.S. marketing costs, i.e., advertising, merchandising, promotion, market research, public relations, are not part of the price actually paid or payable. No legal authority exists to treat these advertising expenses as part of the price actually paid or payable, providing such expenditures are, in fact, for advertising and marketing. (See 19 CFR 152.103(a)(2), which excludes activities such as advertising, undertaken by the buyer on his own account, from the price actually paid or payable.)
**544638 dated July 1, 1991.**

## allowance in price actually paid or payable

Ceiling fans are imported into the United States by the importer from various vendors, and are accompanied by invoices that list an original as well as an adjusted price. The importer pays the adjusted price that is determined by a set percentage, labeled as a "defective allowance," and is deducted from the original price. The method described is used by the foreign vendors to reimburse the importer for damaged or defective goods

in a current shipment. The figure ranges from one to seven percent, depending upon the vendor and its prior two-year history of shipping defective goods. The defective allowance is not part of the price actually paid or payable.
**544762 dated Jan. 17, 1992; 544841 dated Jan. 17, 1992.**

The buyer and seller agree that merchandise is to be exported on a specified date. The merchandise is shipped subsequent to that date and the importer refuses to pay for the goods at the negotiated price. Rather then cancel the contract, the parties agree to a reduction in price. The price actually paid or payable in this case is represented by the original contract price. These prices were in effect when the merchandise was sold for exportation. Nothing in the original agreement between the parties allowed for a price reduction due to the seller's late delivery. The price was not reduced prior to exportation and the discount is disregarded in determining transaction value.
**544628 dated Mar. 11, 1992.**

No allowance is made in the value of merchandise when it is claimed that the merchandise is defective but no evidence is presented to support that claim. Despite being asked by Customs for information regarding the claim that the merchandise was defective, the importer failed to provide any documentation.
**544879 dated Apr. 3, 1992.**

No allowance can be made in the appraised value of imported merchandise when it is claimed that a portion of the merchandise was lost or stolen prior to importation. No documentation was submitted to substantiate the allegation that the price paid by the importer was less than the invoice price. Documentation from the seller, the shipper, or its insurer acknowledging and providing compensation for the loss of the merchandise may have been sufficient to substantiate the importer's claim.
**545013 dated Oct. 8, 1992.**

The merchandise invoice contains a number of additions and deductions, such as varietal premium, market adjustment, customer discount, and commitment incentive. The deduction at issue is called a “duty allowance.” It is the responsibility of the buyer to arrange for the payment of customs duties upon entry. Further, the actual customs duties payable could, therefore, be above or below the value of the duty allowance calculated using this method. The duties are not included in the price actually paid by the buyer to the seller and, therefore, are not deductible pursuant to 19 U.S.C 1401 a(b)(3)(B). In addition, the duty allowance is not equivalent to the actual customs duties. Thus, the “duty allowance” may not be deducted from the price actually paid or payable pursuant to 19 U.S.C. 1401a(b)(3)(B).
**546626 dated Nov. 9, 2001.**

The foreign seller supplies wearing apparel to the U.S. market exclusively through its sales to the importer. Additionally, the foreign seller provides certain technical services to the importer. The importer alleges that these services include such activities as visual merchandising, store planning, retail personnel training, etc. Pursuant to a

technical services agreement, the importer compensates the seller for the services with payment in an amount equal to a fixed percentage of the importer's net retail sales of the merchandise. The importer submitted a copy of the technical services agreement to Customs. Customs cannot conclude that the fees are payments for technical services that are unrelated to the sale of the merchandise simply on the basis of the language of the technical services agreement. Without further substantiation, Customs cannot determine whether adherence to a technical services agreement was a condition for the sale of the merchandise. The fee paid by the importer is dutiable as part of the price paid or payable or, alternatively, as a proceed of a subsequent resale.
**548014 dated Sep. 13, 2002.**

## assembly of merchandise

19 CFR 152.103(a)(3)

The appraisement of wearing apparel under transaction value includes the costs of cut, make and trim, and of odd-lot fabric, the latter to be valued at the cost of acquisition.
**542181 dated Oct. 15, 1980 (TAA No. 8).**

A U.S. importer purchases oil well tubing from an unrelated manufacturer in Japan. The tubing is shipped to Canada, where another unrelated party applies a plastic protective coating to the tubing. The importer makes separate payments to the Japanese manufacturer and to the Canadian company that performs the further processing. The transaction between the importer and the Canadian processor represents a "sale for exportation to the United States." The transaction value is represented by the price paid by the importer to the Canadian processor, plus the value, as an assist, of the tubing furnished without charge by the importer to the Canadian processor. The value of the assist equals the sum of the price paid to the Japanese manufacturer and the transportation and related costs incurred in shipping the merchandise from Japan to the processing site in Canada.
**543737 dated July 21, 1986; <u>modifies</u> 542516 dated Oct. 7, 1981 (TAA No. 39).**

The proper method of appraisement in this case is transaction value, as represented by the price paid by the importer to the foreign refinery, plus the value, as an assist, of copper concentrate furnished to the foreign refinery free of charge. The transaction between the importer and the refinery represents a sale for exportation to the United States even though the price actually paid or payable to the refinery relates solely to the processing of the merchandise.
**543971 dated July 22, 1987.**

The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller merely acts as assembler. The fact that the importer supplies materials for imported garments and is billed for the cut, make and trim operation does not preclude the use of transaction value.
**545550 dated Sep. 13, 1995.**

An article entered under subheading 9802.00.80, HTSUS, is subject to duty upon the full value of the imported assembled article, less the cost or value, within the meaning of section 10.17, Customs Regulations (19 CFR 10.17), of the U.S. components assembled therein. 19 CFR 10.17 provides that the "[v]alue of fabricated components to be subtracted from the full value of the assembled article is the cost of the components when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers, or, if no purchase was made, the value of the components at the time of their shipment for exportation, f.o.b. United States port of exportation or point of border crossing, as set out in the invoice and entry papers . . . ." It is Customs position that the "cost of components when last purchased," refers to the price in effect at the date of exportation. In this case, the submitted documentation reflects the cost for the U.S.-produced radios when last purchased, f.o.b. U.S. port of export, as set out in the invoice and entry papers.
**547489 dated Mar. 20, 2000.**

The transactions appear to be analogous to shelter operations, which involve a U.S. corporation that is established for the sole purpose of facilitating assembly operations for third party clients in the United States. In some cases, the importer supplies the foreign assembler with either fabric cut in the United States or cut and assembled fabric sourced outside of the United States. The price declared by the U.S. importer appears to include the cost of assembly, the cost for the fabric assists, and the costs for southbound freight, which is presumptively the cost of transporting the fabric to the foreign supplier for assembly. Accordingly, the use of transaction value is appropriate so long as the relationship between the importer and the supplier did not influence the price.
**547729 dated Sep. 20, 2002.**

## benefit of seller

19 U.S.C. 1401a(b) (4) (A); 19 CFR 152.102(f); GATT Valuation Agreement, Interpretative Notes, Note to Article 1, Price actually paid or payable; See also Moss Mfg. Co., Inc. v. United States, 13 Ct. Int'l Trade 420 (1989), aff'd, 896 F.2d 535 (Fed. Cir. 1990).

Payment by a buyer to a corporation for services performed for the benefit of a seller may constitute an indirect payment to the seller that is included in determining transaction value. Payment by a buyer for services not performed for the benefit of a seller does not form part of transaction value.
**542975 dated Mar. 9, 1983 (TAA No. 60).**

A financing profit between the price of merchandise and the selling price of imported merchandise by a third party is not part of the price actually paid or payable because it does not accrue to the benefit of the seller. Therefore, it is not dutiable under transaction value.
**543118 dated July 29, 1983.**

Fees incurred in hiring an on-site inspection agent to verify quantities of components and assembled garments returning to the United Sates are not paid to or for the benefit of the seller, but, rather, the fees are paid to an independent company acting as the buyer's agent. These inspection fees are neither part of the price actually paid or payable, nor do they constitute assists.
**543365 dated Nov. 1, 1984.**

Payments are made to an unrelated Hong Kong company for consultation services in locating quota holding companies. The payments are not made to the seller of the imported goods. The payments are made pursuant to an arrangement which is separate and apart from the transactions vis-a-vis the manufacturers of the imported goods. These payments are not to be added to the price actually paid or payable in determining transaction value.
**544143 dated July 5, 1988.**

The importer uses the services of a foreign quasi-governmental organization, located in the United States, which advises U.S. importers on the sourcing of products in China. In consideration for these services, the importer agrees to make monthly payments to defray a portion of the organization's operating expenses, and the services rendered will never result in the importation of merchandise. These payments are not dutiable pursuant to transaction value.
**544264 dated Feb. 24, 1989.**

A payment is made by the buyer to its overseas plant to compensate for management services rendered in negotiating the termination of a licensing agreement. The licensing agreement granted one of the importer's wholly owned subsidiaries the exclusive right to manufacture, sell, and distribute wearing apparel under a particular trademark. The payment is made well after the importation of the wearing apparel and is not made to the actual sellers of the imported merchandise. In addition, the payment cannot be linked to any imported goods. This payment is not included in the transaction value of the merchandise.
**544276 dated Oct. 24, 1989.**

Administrative services, quality control services, and supervisory functions are performed by a party related to the importer, and are under the supervision of the importer. The services include assisting the importer in determining what types of garments the manufacturers can economically make, accounting and billing services, and administrative services on an as-needed basis. The fees paid for these services are not included in the transaction value of the imported merchandise.
**544396 dated May 14, 1990.**

The importer and the manufacturer have entered into an agreement for the purchase of vodka. The contract specifically provides for a minimum amount to be expended by the buyer on advertising. Although this may benefit the seller indirectly, the advertising costs are not part of the price actually paid or payable. The costs of these activities will not be added to the price actually paid or payable in determining the customs value of the imported merchandise.
**544482 dated Aug. 30, 1990.**

The buyer included the buying agent's commission in the transaction value of the merchandise that it imported from the seller. The buying agent's commission is considered dutiable as part of the transaction value of the goods, because it constitutes a disbursement "to, or for the benefit of, the seller" under section 402(b)(4)(A) of the TAA, regardless of whether the seller's billing invoice identified separately the buying commissions from the per se value of the goods.
**547098 dated Feb. 2, 1999.**

The contract price between a seller and U.S. buyer includes certain fees that are included in the price and become a part of the total payment for the imported merchandise. The buyer and seller agreed that the buyer would pay a portion of the contract price to a third party. It is our conclusion that these payments are indirect payments to the seller and are paid for the benefit of the seller, and as such, are part of the price actually paid or payable for the imported merchandise. The fact that the buyer did not pay the fees directly to the seller is immaterial. They were indirect payments for the benefit of the seller.
**548298 dated July 25, 2003.**

## cancellation payments

See chapter on CANCELLATION PAYMENTS, supra.

## charges identified separately from the price actually paid or payable

Engineering and set-up fees in connection with the U.S. installation of imported equipment are not to be included in the transaction value of the imported merchandise. The purchase contract or the commercial invoice must clearly establish the separate identity of these charges.
**542611 dated Sep. 22, 1981.**

On-site operating and training expenses incurred by the buyer, if identified separately on the sales invoice, are not included in the transaction value of the imported merchandise. These fees are to be considered as fees incurred for "the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States."
**543331 dated June 14, 1984.**

Payment made for performance bond insurance coverage, which is included in the price actually paid or payable for imported merchandise, must be separately identified in order for the cost to be deducted pursuant to section 402(b)(3)(A)(i) of the TAA. Otherwise, it remains part of the price actually paid or payable for the imported merchandise.
**543567 dated Jan. 17, 1986.**

The amount of a countervailing duty is separately identified on the consumption entry with respect to the imported merchandise. This documentation provides sufficient identification of the countervailing duty, and the duty is to be deducted from transaction value.
**543963 dated Sep. 11, 1987; modified by 544722 dated June 4, 1991.**

The parties entered into a contract to provide and erect concrete panels for a building being constructed in New York. A provision for repair costs is separately identified in the contract. These costs are properly deducted from the transaction value of the imported merchandise.
**544005 dated Aug. 16, 1988; aff'd by 544247 dated Feb. 28, 1989.**

Assuming transaction value is applicable as a means of appraisement, a refundable security deposit (an amount to cover the cost of the German value added tax (VAT)), that is returned to the U.S. customer by the importer upon the arrival of the merchandise into the United States, is not added to the price actually paid or payable. The VAT payment is separately stated on the invoice, and is paid to the German government by the seller only if the merchandise is not imported into the United States within six months.
**546798 dated July 31, 1998.**

A value added tax (VAT) is levied on an automobile bought in Germany, in the event that the car is not exported to the United States or Canada. However, if the car is not exported to the United States or Canada, within six months of the date of the delivery, the deposit is forfeited and paid over the German governmental authorities as the VAT. In this case, the amount deposited was refundable to the customer upon the arrival of the vehicle into the United States. Therefore, assuming transaction value is the appropriate method of appraisement, and based on the evidence available, neither the refundable security deposit nor a VAT should be included in the transaction value of the imported vehicle.
**547686 dated May 31, 2000; modification of 546798 dated July 31, 1998.**

The cost of the license fee is included in the negotiated price actually paid or payable for the imported merchandise. Nothing in the statute or regulations allows for a deduction for an amount representing the license fee where that fee is already included in the price. Due to the license fees being included in the price actually paid or payable, it is not necessary to also determine whether they could be regarded as additions to the price actually paid or payable, within the meaning of 19 U.S.C. 1401a(b)(1)(D). Accordingly, the amounts representing the license fees may not be deducted from the price actually paid or payable for the imported merchandise.
**547958 dated July 23, 2001.**

A U.S. resident purchased an automobile imported from Canada. The buyer paid the entirety of the purchase price, including the separately itemized amount for a "goods & services tax" (GST). The GST is not properly included in the transaction value as part of the price actually paid or payable, nor is it an addition to the price actually paid or payable.
**548161 dated Aug. 21, 2002.**

## charges incident to the international shipment of the imported merchandise

See chapter on TRANSPORTATION COSTS, infra.

The importer pays a fee to the seller to store merchandise in a warehouse in the country of exportation, prior to importation into the United States. The importer has not met its burden, under Generra presumption, to prove that the payments by the importer to the seller for warehouse services are completely unrelated to the goods and excludable from the price actually paid or payable. Therefore, the charges are dutiable as part of the price actually paid or payable for the merchandise. In addition, the payments are not eligible for treatment as charges for services incident to international transport.
**547534 dated Jan. 19, 2001.**

## direct or indirect payments

19 U.S.C. 1401a(b)(4)(A); 19 CFR 152.102(f); GATT Valuation Agreement, Interpretative Notes, Note to Article 1, Price actually paid or payable; See also chapter on INDIRECT PAYMENTS, supra.

As a condition of the sale for export, the seller is required to obtain product liability insurance and bear the cost thereof. Although the buyer pays the third party insurer directly, the insurance is in the seller's name and is required as a condition of the sale. The premium payments are indirect payments made to the seller and, accordingly, are part of the price actually paid or payable.
**542984 dated Apr. 8, 1983.**

Payments made to the seller for expenses incurred for research and development are part of the price actually paid or payable rather than an addition thereto (as an assist). However, the dutiable amount of the research and development is limited to that paid for products actually exported to the United States.
**543324 dated Aug. 8, 1984.**

A payment made to a Japanese manufacturer whereby the manufacturer designs and develops a prototype industrial robot is not an assist. However, the payment is dutiable as part of the part actually paid or payable to the seller as a direct payment.
**543376 dated Nov. 13, 1984.**

The advancement of funds by the buyer to the seller, which is repaid by the seller to the buyer by reducing the invoice price for the merchandise, is part of the price actually paid or payable.
**543426 dated Mar. 15, 1985.**

Engineering work is obtained from either U.S. or Canadian vendors in order to manufacture tools for export to the United States. The manufacturer does not obtain the engineering work at a reduced cost. The cost of design and engineering work purchased by the manufacturer from vendors in the United States or Canada is dutiable only to the extent that such cost is included in the price actually paid or payable for the imported tools by the importer to the manufacturer.
**543584 dated Aug. 30, 1985.**

Payments made by the ultimate purchaser in the United States, through the importer, to the foreign manufacturer are not considered assists. However, these payments are part of the price actually paid or payable as indirect payments.
**543574 dated Mar. 24, 1986; <u>overrules</u> 543293 dated Jan. 15, 1985.**

The importer receives a markdown on future shipments to compensate for air freight charges which it paid collect on late delivery by the seller. This credit on the future shipments represents an indirect payment and is part of the price actually paid or payable.
**543771 dated July 11, 1986.**

The importer receives a credit on future shipments of merchandise in settlement of a claim for previously imported merchandise, which was defective and/or of second quality. The markdown represents an indirect payment and is part of the price actually paid or payable of the subsequent shipment.
**543772 dated July 11, 1986.**

Payments made by the ultimate U.S. purchaser, through the U.S. subsidiary/importer, to the foreign manufacturer/seller for use in the production of tooling necessary to produce the imported merchandise are indirect payments and part of the price actually paid or payable.
**543882 dated Mar. 13, 1987; aff'd by 554999 dated Jan. 5, 1989.**

In situations where the buyer pays the seller to provide a mold necessary for the seller to produce the imported merchandise, the buyer is not supplying the seller with the actual mold. The additional amount paid by the buyer to the seller for producing the mold is properly part of the price actually paid or payable and dutiable under transaction value.
**543983 dated Dec. 2, 1987.**

The payment of money from the buyer to the foreign manufacturer/seller for tooling and research and development testing does not constitute an assist. It is part of the price actually paid or payable for the imported merchandise. Consequently, no authority exists to "apportion" these payments over the anticipated number of units produced, as there would be available if the expenditures were assists.
**544381 dated Nov. 25, 1991.**

The importer purchased automobile components from its related party in Japan and brought them into its foreign-trade subzone (FTSZ). In the FTSZ, the components were combined with domestic components to produce finished automobiles that were subsequently sold to two related U.S. companies. The automobiles manufactured in the FTSZ by the importer were originally designed and developed by the related party in Japan. As part of the overall transaction, the two U.S. companies agreed to reimburse the importer's related party for the costs incurred in connection with the development of the vehicles produced by the importer. The dutiable value is based on the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted to the zone. The payments in this case are made indirectly by the two U.S. companies, on behalf of their related party buyer, to the Japanese parent. The payments for the design and development of the imported components constitute part of the price actually paid or payable.
**544694 dated Feb. 14, 1995.**

The importer purchases consumer electric products, including color televisions and chassis, from its parent company in Japan. The importer is also a domestic manufacturer of color televisions. The importer has entered into a "Design and Other Services Agreement" with the parent company seller. Under the terms of the agreement, the parent company agrees to perform certain functions affecting the importer's production of the color televisions. The agreement allows the importer the option to receive consulting and/or training services from the seller. The agreement further provides that the seller may provide such services directly to a third party (related to both seller and importer) from which the importer also purchases completed color televisions. The importer agrees to reimburse the parent company for the costs and expenses incurred in rendering the services, including those provided by the third

party related seller. The payments made by the importer to the parent for these services are indirect payments to the third party related seller and are part of the price actually paid or payable for the imported merchandise purchased from the third party related seller.
**545848 dated Sep. 1, 1995.**

Notwithstanding the fact that the payments in question are referred to by the parties as "license fees," they are actually part of the total payment for the imported merchandise. The alleged license fees paid by the importer are not paid to the licensor. Instead, they are paid either to the buying agent or the licensees. The seller's invoices refer specifically to the fact that license fees are to be paid by the importer. The payment of the fees is related to the imported merchandise, and the fees are based upon the importer's purchase price for the imported merchandise. These fees paid to a party related to the seller constitute indirect payments to the seller.
**545194 dated Sep. 13, 1995; aff'd by 546513 dated Feb. 22, 1998 and 547134 dated July 27, 1999.**

The importer purchases merchandise from its related party in Japan. The importer pays the seller for the merchandise. In addition, the foreign seller receives additional payments from the ultimate U.S. purchaser, through the importer. The payments are described as the following: tooling costs; price adjustments when sales do not reach a specified volume; and currency rate adjustments. The payments made by the ultimate purchaser in the United States, through the importer, to the foreign manufacturer are part of the price actually paid or payable as indirect payments.
**546007 dated Sep. 21, 1995.**

The contract price between a seller and U.S. buyer includes certain fees that are included in the price and become a part of the total payment for the imported merchandise. The buyer and seller agreed that the buyer would pay a portion of the contract price to a third party. It is our conclusion that these payments are indirect payments to the seller and are paid for the benefit of the seller, and as such, are part of the price actually paid or payable for the imported merchandise. The fact that the buyer did not pay the fees directly to the seller is immaterial. They were indirect payments for the benefit of the seller.
**548298 dated July 25, 2003.**

## discounts

19 CFR 152.103(a)(1), Statement of Administrative Action (deferred quantity discounts); see also chapter on DISCOUNTS, supra.

A discount will be considered in determining transaction value as long as the discount is actually taken so as to reduce the net amount "actually" paid or payable for the goods undergoing appraisement, when sold for export to the United States.
**542559 dated Aug. 18, 1981.**

The importer receives a quantity discount, i.e., the inclusion of an additional piece of merchandise when a specific number of items have been purchased (one extra with the purchase of ten). The price actually paid or payable is based upon the entire shipment, and not upon the value of each individual article. The quantity discount is disregarded in determining transaction value.
**542741 dated Mar. 30, 1982.**

When a seller discounts its price for certain merchandise to a buyer, and the discount is agreed to and effected prior to importation of the merchandise, the discounted price constitutes the price actually paid or payable.
**543302 dated Nov. 1, 1984.**

A retroactive volume discount received after the importation of the merchandise is not considered in determining the transaction value of goods.
**543662 dated Jan. 7, 1986.**

The importer and its related party manufacturer have agreed to a .75 percent discount, which is given on every shipment to cover any defective merchandise. This discount is deducted from the FOB Hong Kong value of the merchandise and is reflected on the commercial invoice. Because the price actually paid or payable reflects the discount, this discount should be taken into account in determining the transaction value of the imported merchandise.
**544371 dated June 11, 1990.**

The importer and the foreign vendor/seller agree to a volume discount program prior to importation of the merchandise where the seller discounts its price for certain merchandise. The discount is agreed to and effected prior to the importation of the merchandise. The discounted price constitutes the price actually paid or payable for the imported merchandise.
**547210 dated Mar. 25, 1999.**

In this case, the related foreign supplier grants various discounts based on established criteria from a price list. A bona fide sale occurs between the importer and the foreign supplier, in that the importer assumes title and risk of loss for the imported merchandise from the foreign supplier's factory and the importer is not functioning as a selling agent. The discounted price constitutes the price actually paid or payable. The importer and related foreign supplier transact business as if they are unrelated. The same discounts are given to both related buyers and unrelated buyers. Transaction value is acceptable as a means of appraisement.
**547019 dated Mar. 31, 2000.**

## inspection charges

Fees incurred in hiring an on-site inspection agent to verify quantities of components and assembled garments returning to the United Sates are not paid to or for the benefit of the seller, but, rather, the fees are paid to an independent company acting as the buyer's agent. These inspection fees are not part of the price actually paid or payable, nor do they constitute assists.
**543365 dated Nov. 1, 1984.**

An inspection fee is not included in the price actually paid or payable for imported merchandise. Therefore, no statutory authority exists to include such amount in the transaction value of the imported merchandise.
**544681 dated July 29, 1991.**

Inspection fees, to the extent they are paid for services generally performed by buying agents, are not added to the price actually paid or payable. However, where the inspection services entail quality control along the lines of production related to design or development and intimate involvement in the nature of the goods produced, the inspection fees may be dutiable as part of the price actually paid or payable, or as an addition to the price, i.e., an assist. In this case, the inspection agent's activities appear to be of the kind typically performed by a buying agent, and do not amount to quality control that is intimately involved with the nature of the merchandise produced. In addition, the inspection services are relatively limited with respect to involvement in production. There is no indication that the agent supplies the seller with "development," in any manner. Therefore, the inspection fees are not added to the price actually paid or payable as assists.
**547006 dated Apr. 28, 1998.**

## insufficient information to determine the price actually paid or payable

19 U.S.C. 1401a(b)(1); 19 CFR 152.103(c); GATT Valuation Agreement, Article 8, Paragraph 3

Lump-sum payments from the buyer to the seller which cannot be linked to individual invoices or importations will not suffice to establish the price actually paid or payable for merchandise when sold for exportation to the United States.
**543698 dated June 11, 1986.**

The price actually paid or payable from the buyer to the seller in this case is not ascertainable from the contract. Even though the contract purportedly contains all of the terms, the importer later revealed that a $200,000 cash advance is provided to the seller. In the absence of specific information pertaining to the cash advance and any other amounts exchanged between the parties, Customs is not able to confirm the total payment made for the imported merchandise. Therefore, no authority exists to appraise the merchandise pursuant to the transaction value method.
**545032 dated Dec. 14, 1993.**

Where the price actually paid or payable is not certain at the time of importation, appraisement under transaction value remains appropriate as long as a fixed formula or methodology exists for later determining the price. Such a formula must be determined prior to importation of the merchandise and also must be based on a future event over which neither the seller nor the buyer has any control. In this case, the price actually paid or payable is not ascertainable under the formula derived by the parties. The uncertainty regarding payment precludes appraisement of the merchandise under transaction value.
**545622 dated Apr. 28, 1994; revokes 544812 dated Mar. 3, 1994.**

As provided for in 19 CFR 152.103(c), additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and to the extent to which they are not included in the price. In this case, there is insufficient information to establish the accuracy of the proposed ten percent addition. Therefore, the addition to the price actually paid or payable is not proper.
**544987 dated July 18, 1994.**

The seller provides the importer with technical information needed to create a beet sugar molasses processing plant, as well as chromatographic separation resin (CSR) for use in the process of desugarization of beet sugar molasses. The contract sets forth one price, with no itemization, and for payment in four installments. An invoice accompanies the entry of the CSR, however the invoice is made for customs purposes only. The importer is purchasing a complete system under a single contract price. There is no purchase order specifically for the CSR, as payment is made by means of progress payments based upon a specified percentage of the entire contract price, and no one payment is specifically for the CSR. The price actually paid or payable for the CSR is not quantifiable; therefore, the imported merchandise cannot be appraised on the basis of transaction value.
**545505 dated Aug. 9, 1994.**

An importer enters into a contract with an unrelated shelter operation to produce window cable assemblies. The shelter provides the building space, utilities, personnel, transportation, and other production-related costs. The importer provides materials and machinery along with two employees. Pursuant to the shelter contract, the shelter bills the importer for its labor, shelter service, and purchases made on behalf of the importer. Although the transaction between the parties represents a sale for exportation to the United States, insufficient information is available concerning the total payment and, therefore, the price actually paid or payable is not ascertainable. Transaction value is not applicable as a means of appraisement.
**546161 dated May 7, 1996.**

A U.S. importer purchases frozen vegetables and mushrooms in jars from its wholly-owned Mexican subsidiaries. The invoices submitted for appraisement reflect transfer, or estimated, prices based on an “export invoice pricing policy.” The importer effects payments via lump sum monthly transfers, in response to the exporter’s request for

funds, without regard to specific entries. An aggregate average price, as opposed to an entry specific price, is derived from the prices set by the Mexican exporters (which fluctuate based on actual costs and shipping volume). This method of pricing does not represent a formula, nor does it result in a fixed price for the merchandise. In addition, evidence has not been provided concerning the circumstances of sale between the related parties that would indicate that their relationship did not influence the price actually paid or payable. Transaction value is not applicable as a means of appraisement.
**546231 dated Feb. 10, 1997.**

Transaction value may not be used as a method of appraisement because there is insufficient information to ascertain the price actually paid or payable. Although it appears as though an assist is being provided, there is insufficient information available to accurately value the assist. Accordingly, it is necessary to proceed sequentially through the valuation statute to properly appraise the imported merchandise, beginning with the transaction value of identical or similar merchandise.
**547168 dated Apr. 12, 1999.**

## interest charges

See chapter on INTEREST, supra.

## invoice price

The transaction value of doorskins ordered in quarter-inch sizes, but shipped in half-sizes, is their actual invoice price.
**542613 dated Nov. 11, 1981 (TAA No. 42).**

In this case, the best evidence available as to the price actually paid or payable is the actual invoice price. There is no evidence that a lesser amount was actually paid due to the shortfall in the quantity of merchandise delivered. The transaction value is properly represented by the total invoice price for the imported merchandise.
**543428 dated Apr. 26, 1985.**

The seller of imported merchandise unilaterally raised the price of twenty robot sets, and invoices reflecting these increased prices were submitted. The importer refused to agree to the increased prices and the seller subsequently cancelled the increase in price and corrected the invoices. The price reflected on the corrected invoices reflects the proper transaction value with respect to the merchandise. The corrected price on the invoices was agreed to prior to exportation of the goods and this amount was actually paid to the seller.
**543526 dated Sep. 17, 1985; modified by 543664 dated Oct. 21, 1987.**

The invoice price submitted at the time of entry represents the proper price actually paid or payable in the determination of transaction value. The importer submitted a second invoice, dated after entry, which indicates a lower price. However, the appraising officer correctly appraised the imported merchandise based upon the original invoice price.
**545716 dated Jan. 31, 1995.**

The U.S. company purchases and imports products from its affiliate in Japan. The Japanese government levies a tax on Japanese goods sold for consumption in Japan. However, when articles are sold in Japan for consumption abroad, one may pay the consumption tax and apply for a refund, by presenting export documentation, because the articles are exempt from the tax. The documentation submitted indicates that the consumption tax is not included in either the invoice price or the entered value. The importer was not charged for and did not pay the consumption tax at any time. Therefore, based on the documentation presented, the refundable consumption tax is not part of the price actually paid or payable for the imported merchandise.
**547056 dated Feb. 8, 1999.**

Jewelry was appraised under the transaction value method based on prices set forth in an invoice submitted by the importer. The evidence submitted is insufficient to support the finding that the price actually paid or payable is properly represented by the first invoice submitted to Customs. The evidence is also insufficient to prove that the amount reflected in the fourth invoice is not the price actually paid or payable for the subject merchandise. Thus, Customs fixed the final appraisement in accordance with 19 U.S.C. 1500 and determined that the last invoice submitted reflected the price actually paid or payable for the imported merchandise and, therefore, was the proper basis for the determination of transaction value.
**547368 dated June 28, 2000.**

## payments to a third party

Payments made by the buyer to an independent tester of merchandise are not made to, or for benefit of, the seller. These payments are not part of the price actually paid or payable.
**542946 dated Jan. 27, 1983.**

Fees incurred in hiring an on-site inspection agent to verify quantities of components and assembled garments returning to the United Sates are not paid to or for the benefit of the seller but, rather, are paid to an independent company acting as the buyer's agent. These inspection fees are neither part of the price actually paid or payable, nor do they constitute assists.
**543365 dated Nov. 1, 1984.**

Warehousing charges paid separately to a third party that is unrelated to the seller are not part of the price actually paid or payable.
**543569 dated July 16, 1985.**

Payments are made to an unrelated Hong Kong company for consultation services in locating quota holding companies. The payments are not made to the seller of the imported goods. The payments are made pursuant to an arrangement which is separate and apart from the transactions vis-a-vis the manufacturers of the imported goods. These payments are not to be added to the price actually paid or payable in determining transaction value.
**544143 dated July 5, 1988.**

Payments made by the importer to individuals in the Philippines for services rendered in providing bonds and safeguarding fabric and raw materials constitute payments to third parties and, therefore, such payments are not part of the price actually paid or payable.
**544423 dated June 3, 1991.**

The importer pays additional money to the seller for certain warehousing costs, storage costs, and related insurance charges. These payments are part of the price actually paid or payable. If the importer pays the warehousing, storage and related insurance costs to an unrelated third party, then the charges are not part of the price actually paid or payable.
**544758 dated Feb. 21, 1992.**

The importer has hired employees in India, all of whom are engaged in activities that are normally associated with a buying agent, yet no written agreement exists. The employees work exclusively for the importer, and they neither manufacture nor buy and sell merchandise independently. Because the payments made to these employees are not payments made to the seller or a party related to the seller, they are not part of the price actually paid or payable.
**544684 dated July 31, 1992.**

In this case, the payment for quota charges is part of the price paid by the importer to the middleman. However, the middleman does not pay quota charges to the factory. Once received from the importer, the middleman pays the quota charges to an unrelated third party quota broker. Based on the fact that the importer cannot obtain the contract between the middleman and the factory as well as the price, the transaction value cannot be based on the sale between the middleman and the factory. Thus, transaction value is based on the transaction between the middleman and importer, with the quota payments included in the price actually paid or payable.
**547635 dated Nov. 7, 2001.**

The contract price between a seller and U.S. buyer includes certain fees that are included in the price and become a part of the total payment for the imported merchandise. The buyer and seller agreed that the buyer would pay a portion of the contract price to a third party. It is our conclusion that these payments are indirect payments to the seller and are paid for the benefit of the seller, and as such, are part of the price actually paid or payable for the imported merchandise. The fact that the buyer

did not pay the fees directly to the seller is immaterial. They were indirect payments for the benefit of the seller.
**548298 dated July 25, 2003.**

## payments unrelated to the imported merchandise

Payments from the buyer to the seller relating to the imported merchandise are dutiable as part of the price actually paid or payable, while payments unrelated to the imported merchandise are not part of the price actually paid or payable.
**542703 dated Aug. 25, 1982 (TAA No. 50); 543387 dated Sep. 7, 1984.**

Payments made on a periodic basis from the buyer to the seller as compensation for delivery and inspection of fabric are made pursuant to a service agreement not directly related to the imported merchandise. These payments are not part of the transaction value of the imported merchandise.
**542831 dated Sep. 21, 1982 (TAA No. 52).**

A separate fee paid to a related party seller for the following services is not part of the price actually paid or payable because the fee is unrelated to the manufacture of the imported merchandise: management services, accounting, finance, planning, and clerical activities.
**543512 dated Apr. 9, 1985.**

A separate agreement entered into between the buyer and seller provides for the buyer to compensate the seller for services rendered in connection with the purchase of fabric. These services include checking production, scheduling delivery, and conducting inspections. The amounts due under the service agreement are paid on a periodic basis rather than against particular shipments of merchandise. These payments to the seller pursuant to the service agreement are not part of the transaction value of the imported goods because they are not directly related to the imported merchandise.
**543551 dated Aug. 27, 1985.**

The importer enters into a service agreement with its related party seller. The agreement provides the importer with information relating to the steel trade, including market reports, forecasts, and steel trade statistics. In return for these services, the importer agrees to pay $.10 per metric ton of steel purchased by the importer from unrelated companies. Although the importer purchases steel from its parent company, the parent is not the seller in any of the transactions that are the basis for determining the amount of the payments under the service agreement. The payments to the parent company pursuant to the service agreement are unrelated to the purchase of steel by the importer from the related parent. The payments are not dutiable as part of transaction value.
**543768 dated July 23, 1986.**

Payments are made to an unrelated Hong Kong company for consultation services in locating quota holding companies. The payments are not made to the seller of the

imported merchandise. The payments are made pursuant to an arrangement which is separate and apart from the transactions vis-a-vis the manufacturers of the imported goods. These payments are not to be added to the price actually paid or payable in determining the transaction value of the merchandise.
**544143 dated July 5, 1988.**

## post-importation services

The cost of printing and packaging T-shirts in the United States after their importation, but prior to delivery to the buyer, is not part of transaction value. Likewise, in a transaction made on a C.I.F. duty brokerage paid basis, international freight, United States freight, brokerage and duty are not part of transaction value.
**543059 dated May 5, 1983 (TAA No. 62).**

The buyer pays a handling charge to a subsidiary of the seller. The handling charge is paid in exchange for the following duties: processing purchase orders, selecting a customs broker, arranging for the unloading of the vessel and delivery of the merchandise to the inland carrier, preparing delivery instructions for the end-users in the United States, and processing insurance claims for damage incurred during transportation and unlading of the merchandise. While this fee is for services *related* to the post-importation transportation of the merchandise, it is not for the actual cost of the transportation itself. This fee is not deductible under section 402(b)(3)(A)(ii) of the TAA, which allows for a post-importation transportation cost deduction. Accordingly, the fee is part of the price actually paid or payable for the imported merchandise.
**544332 dated Nov. 19, 1990.**

A Service Agreement between the buyer and the seller in connection with the planned assembly of vehicles at a foreign trade zone (FTZ) provides for the development of production technology and methods to be used at the buyer's plant in the manufacture of the vehicles. In return for these services, the Agreement provides that the buyer will make payments to the seller. The payments made for consultation and advice under phases I-III of the Agreement are included in the transaction value as part of the price actually paid or payable to the extent that they relate to the imported merchandise. The payments should be apportioned to the value of the imported machinery and equipment in accordance with the method proposed by the buyer, subject to the calculation of a revised allocation factor. Payments made by the buyer pursuant to the term of the Agreement with respect to phase IV activities are not included in the transaction value as an addition to the price actually paid or payable for the imported merchandise. The phase IV activities relate entirely to post-importation activities; therefore, in accordance with section 402(b)(3)(A)(i) of the TAA, these amounts relate to the "construction, erection, assembly or maintenance of, or the technical assistance provided with respect to, the imported merchandise."
**546697 dated Aug. 26, 1999.**

## price renegotiation

A contract for sale of seasonal goods contains a clause obligating the vendor to reduce the cost of the merchandise by an amount equal to the difference between straight ocean shipment and ocean/air shipment for failure to meet delivery schedules. This price reduction is effected prior to shipment of the goods and it is invoiced as such. The price actually paid or payable is the invoiced unit price that reflects the reductions due to late delivery.
**542933 dated Oct. 13, 1982.**

Where a seller fails to deliver merchandise to a buyer on a specified delivery date, and the contract for the merchandise provides for a reduction in the invoice price of the goods prior to their shipment, the reduced price becomes the price actually paid or payable.
**543014 dated Feb. 15, 1983.**

An export deposit refunded to the buyer by the seller, which is also received by the buyer *prior* to the date of exportation of the imported merchandise, is not part of the price actually paid or payable.
**543277 dated Apr. 30, 1984.**

Due to a drastic change in the exchange rate between the dollar and the German mark, the seller has received windfall profits and has agreed to lower its price to the related party buyer. Assuming that the lower price, which the parties have negotiated, is acceptable, i.e., due to the relationship between the parties, the lower price is the transaction value. However, any rebate or decrease in the price actually paid or payable effected *after* the date of importation is disregarded in determining transaction value.
**543457 dated Apr. 9, 1985.**

The buyer and seller tentatively agree to a price for the goods, prior to exportation of the merchandise to the United States. Also prior to the actual exportation of the merchandise, the parties then negotiated and agreed to a final price. However, the invoices were not changed to reflect the new price until two months later. The importer has established that the negotiated lower prices had been agreed to prior to the exportation of the merchandise and that this price represents the price actually paid or payable.
**544645 dated July 16, 1991**.

The buyer and seller agreed to a price for imported merchandise pursuant to an initial contract. Subsequently, they entered into a late delivery agreement whereby the delivery terms would change to C&F by air for goods shipped fifteen days later than the agreed upon completion date. Although it was entered into prior to exportation, the late delivery agreement does not support the finding that the price actually paid or payable was ever changed. It would, therefore, be inappropriate to make an adjustment for freight charges because these charges do not appear to have been reflected in the price for the merchandise.
**544646 dated Dec. 23, 1991.**

The merchandise is originally purchased for a C&F price, to be shipped by ocean vessel. However, the price was renegotiated prior to exportation resulting in a higher C&F price, to be shipped by air. The renegotiated price did not represent a value for the goods and a value for the supposedly included air freight costs. In this particular case, transaction value was inappropriate because the renegotiated price subjected the merchandise to a condition for which a value could not be determined.
**544620 dated Dec. 23, 1991.**

The buyer and seller agree that merchandise is to be exported on a specified date. The merchandise is shipped subsequent to that date and the importer refuses to pay for the goods at the negotiated price. Rather then cancel the contract, the parties agree to a reduction in price. The price actually paid or payable in this case is represented by the original contract price. These prices were in effect when the merchandise was sold for exportation. Nothing in the original agreement between the parties allowed for a price reduction due to the seller's late delivery. The price was not reduced prior to exportation and the discount is disregarded in determining transaction value.
**544628 dated Mar. 11, 1992.**

When the price of imported merchandise is renegotiated prior to the exportation of the merchandise, and there is no change in the delivery terms, the renegotiated price becomes the price actually paid or payable for the imported merchandise. When the price is renegotiated prior to exportation of the merchandise, and the delivery terms are changed from F.O.B to C & F, and the C & F price includes freight charges, the C & F price, less the international freight charge included therein, is the price actually paid or payable for the imported merchandise.
**544911 dated Apr. 6, 1993.**

When the price of imported merchandise is renegotiated prior to the exportation of merchandise, and the delivery terms are changed from FOB to C&F, and the freight charges are included in the C&F renegotiated invoice price, the price actually paid or payable is determined by the C&F price, less the international freight charges. In this case, however, the actual transaction appears to have occurred on a FOB basis, notwithstanding the attempted change of delivery terms on the purchase orders because the buyer paid for the freight costs.
**545257 dated July 6, 1994.**

Wearing apparel is imported from various countries. When a shipment is to be sent by air rather than by sea, the importer pays the costs of air freight, and the suppliers reduce the price of the merchandise accordingly. Neither the original nor the renegotiated price includes shipping costs. A new purchase order is used, and it reflects the renegotiated price. All these acts occur prior to the exportation of the merchandise. However, it may not be possible to obtain revised visaed invoices. As long as the evidence submitted establishes that the price reductions are agreed to before the merchandise is exported to the United States, the renegotiated price constitutes the price actually paid or payable. In addition, the differences in the invoice values have been adequately explained in accordance with T.D. 86-56, and the documents need not be returned for correction.
**545628 dated July 29, 1994.**

The importer purchased caviar from a Russian seller and entered the merchandise in June 1992. In December 1992, the parties entered into a settlement agreement which provided that in consideration of the payment terms in the settlement agreement, the parties agreed to discharge each other from any and all obligations arising from the contract for the purchase of the caviar. The terms in the settlement agreement created a lower sales price than that originally stated on the invoice. The terms outlined in the settlement agreement, to the extent that they represent a decrease in price that occurred subsequent to the importation of the merchandise, may not form the basis of transaction value.
**545532 dated Sep. 14, 1994.**

The importer claims that there was a reduction in the price of the imported merchandise at issue. However, the documentation provided does not establish that there was a reduction in the selling price of the merchandise before it was imported into the United States. The “adjusted invoice,” dated after entry of the merchandise does not discredit the price shown on the invoice dated before entry of the merchandise. The alleged price reduction was properly disregarded in determining transaction value.
**546097 dated Mar. 7, 1996.**

The importer and seller renegotiated the price of imported merchandise due to a late delivery. However, the price renegotiations occurred after the merchandise was exported and after it was imported into the United States. The price renegotiations, which arose from the late delivery of the merchandise, are disregarded in determining transaction value.
**546311 dated Sep. 19, 1996.**

The renegotiated invoice price, accounting for late delivery and a faster, more costly means of transportation, appropriately represents the transaction value. The terms of sale changed from FOB Port of Origin to C&F Port of Destination, so that the invoice price took into consideration the price reductions as negotiated by the buyer and the seller prior to shipment.
**547178 dated Jan. 13, 1999.**

The retroactive price increase, agreed to between the unrelated parties after the importation of the merchandise into the United States, does not affect the transaction value. The price actually paid or payable for the imported merchandise is represented by the original invoiced amount. Those prices were the prices in effect when the merchandise was sold for exportation to the United States. Thus, the importer's retroactive price increase was not agreed to prior to exportation and the contract was not contingent upon the duty refund. The price increase is not part of the price actually paid or payable for the previously imported merchandise.
**547273 dated Apr. 22, 1999.**

There is no documentation to indicate that a price adjustment of $200,000 was agreed to prior to the sale for exportation of the merchandise. Therefore, the $200,000 paid by the importer to the seller is a retroactive price adjustment that is not part of the transaction value of the merchandise.
**547027 dated Sep. 17, 1999.**

## proceeds of a subsequent resale

See chapter on PROCEEDS OF A SUBSEQUENT RESALE, infra.

## selling commissions

See chapter on SELLING COMMISSIONS, infra.

## testing costs

At the importer's option, steel units are tested to ensure that the design is accurate and that the structure is capable of carrying specified loads. The importer pays the exporter for testing costs separately from the payments for the steel units. The testing cost payment is not an assist; however, the testing cost payments are included as part of the price actually paid or payable for the imported merchandise, regardless of the fact that the costs are invoiced separately.
**542187 dated Nov. 7, 1980 (TAA No. 11).**

Testing costs are not assists, but are dutiable as part of the price actually paid or payable when paid by the buyer to the seller of the imported merchandise.
**542187 dated Nov. 7, 1980 (TAA No. 11); 543645 dated Feb. 17, 1987.**

Testing costs paid to an agent of the buyer, unrelated to the seller, are neither assists nor part of the price actually paid or payable.
**542774 dated June 14, 1982.**

Payments made by the buyer to an independent tester of merchandise are not made to, or for benefit of, the seller. These payments are not part of the price actually paid or payable for the imported merchandise.
**542946 dated Jan. 27, 1983.**

If an amount for testing merchandise is included in the price actually paid or payable, there is no authority to deduct the cost from the transaction value of the imported product, regardless of whether the expense is invoiced separately.
**544035 dated Nov. 23, 1987.**

A U.S. company provides test equipment free of charge to foreign manufacturers to check the integrity of the finished instruments prior to shipment to the United States. The testing equipment is not used in the production of the imported merchandise. The testing equipment is not an assist within the meaning of section 402(h)(1)(A).
**544315 dated May 3, 1989.**

Testing equipment provided free of charge to the foreign manufacturer by the U.S. importer may constitute an assist within the meaning of section 402(h)(1)(A) of the TAA if it can be shown that the equipment was used for testing performed during the production process and that such testing, due to the nature of the finished product, was essential to the production of the product.
**544508 dated June 19, 1990.**

## time of payment

The fact that payment for an imported item is made by a check which is post-dated and therefore not negotiable until sometime after importation does not preclude the finding of a transaction value. There exists a price actually paid or payable for the imported merchandise.
**542622 dated Dec. 30, 1981.**

Although payment for merchandise is delayed for up to a year after importation, a price actually paid or payable exists for the merchandise and transaction value is applicable in appraising the merchandise.
**542804 dated July 12, 1982.**

The price actually paid or payable for imported merchandise consists of the sum of two payments for the imported merchandise. The first payment is paid directly to the foreign seller. The second payment is subsequently deposited into a U.S. bank in an account established by the foreign seller.
**543630 dated Oct. 8, 1985.**

Actual payment of an agreed-upon purchase price from the buyer to the seller is not a prerequisite to a finding of a bona fide sale between the parties. However, if lump sum payments made by the buyer to the seller cannot be linked to specific import transactions or invoices, there is insufficient information on which to determine the price actually paid or payable and transaction value is inapplicable.
**543446 dated Apr. 2, 1986; <u>overrules</u> 543446 dated Aug. 12, 1985 (same ruling number) and 543698 dated June 11, 1986.**

## user fee

Where the overall transaction price between the buyer and foreign seller for imported merchandise includes the user fee (ad valorem fee), the fee is not considered to be part of the price actually paid or payable. Therefore, the fee is not dutiable as part of transaction value.
**543842 dated Nov. 10, 1986; 544372 dated June 7, 1990.**

In a situation in which the overall purchase price for imported merchandise includes the $5 customs fee payable upon the arrival of a commercial truck (e.g., a CIF U.S. delivered price), the fee does not form part of the price actually paid or payable.
**544125 dated Aug. 11, 1988.**

## U.S. retail price

The importer purchases wearing apparel from a related seller. The imported merchandise bears a retail price tag specifying an amount greater than the invoice price to the importer. The U.S. retail price as shown on the price tag attached to the imported merchandise is not relevant in determining the price actually paid or payable.
**545737 dated Aug. 11, 1994.**

## U.S.-sourced merchandise

Pursuant to an agreement between a Canadian seller and U.S. buyer, the buyer agrees to pay one lump sum to cover all materials and services necessary for a project, including on-site installation services. The seller provides both Canadian and U.S. materials and provides services in Canada and the United States. As long as this "mark-up" is identified separately and is reasonably allocated, the seller's "mark- up," or essentially its profit on the U.S.-sourced goods and services, should be deducted from the price actually paid or payable by the buyer.
**545869 dated Mar. 31, 1995.**

## warehousing charges

Payments made to the seller of the imported merchandise for warehousing and storage charges are part of the price actually paid or payable.
**543501 dated May 2, 1985.**

Warehousing charges paid separately to a third party that is unrelated to the seller are not part of the price actually paid or payable.
**543569 dated July 16, 1985.**

If an amount for warehousing expenses is included in the price actually paid or payable by the buyer, there is no authority to deduct the expense from the transaction value of the imported goods.
**543622 dated June 23, 1986.**

The importer pays a fee to the seller to store merchandise in a warehouse in the country of exportation prior to importation into the United States. The importer has not met its burden under the Generra presumption that the payments by the importer to the seller for warehouse services are completely unrelated to the goods and excludable from the price actually paid or payable. Therefore, the charges are dutiable as part of the price actually paid or payable for the merchandise. In addition, the payments are not eligible for treatment as charges for services incident to international transport.
**547534 dated Jan. 19, 2001.**

# PROCEEDS OF A SUBSEQUENT RESALE

## INTRODUCTION

19 U.S.C. 1401a(b)(1) provides for the following with respect to proceeds of a subsequent resale:

The transaction value of imported merchandise is the price actually paid or payable for the imported merchandise when sold for exportation to the United States, plus amounts equal to . . . the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.
The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in paragraphs (A) through (E) [proceeds of a subsequent resale - paragraph (C)] only to the extent that each amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise shall be treated, for purposes of this section, as one that cannot be determined. (emphasis added)

In addition, the TAA states:

The transaction value of imported merchandise . . . shall be the appraised value of that merchandise for the purposes of this Act only if - . . . (iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E) . . . [referring to the above-cited provision]
19 U.S.C. 1401a(b)(2)(A)(iii)

The Customs regulations equivalent to these statutory provisions are 19 CFR 152.103 (b) and (c) and 19 CFR 152.103(j)(1)(iii), respectively.

In 19 CFR 152.103(g), the regulations further state:

Proceeds of a subsequent resale. Additions to the price actually paid or payable will be made for the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues directly or indirectly to the seller. Dividends or other payments from the buyer to the seller that do not relate directly to the imported merchandise will not be added to the price actually paid or payable. Whether any addition would be made will depend on the facts of the particular case.

An example is cited which states:

Example. A buyer contracts to import a new product. Not knowing whether the product ultimately will sell in the United States, the buyer agrees to pay the seller initially $1 per unit with an additional $1 per unit to be paid upon the sale of each unit in the United States.

Assuming the resale price in the United States can be determined in a reasonable period of time, the transaction value of each unit would be $2. Otherwise, the transaction value could not be determined for want of sufficient information.

**GATT Valuation Agreement:**

Article 1, paragraph 1(c) parallels 19 U.S.C. 1401a(b)(2)(A)(iii).

Article 8, paragraph 1(d) provides for the addition to the price actually paid or payable Athe value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller."

CCC Technical Committee Case Study 2.2 provides the following examples with respect to proceeds of a subsequent resale:

General facts of transaction
Corporation C of country X owns a number of subsidiaries in different countries, all of which operate in accordance with corporate policies established by C. Some of these subsidiaries are manufacturing enterprises, others are wholesalers and still others are service oriented enterprises.
Importer I in the country of importation Y, a subsidiary of C is a wholesaler of men's, women's, and children's garments; he buys men's garments from manufacturer M, another subsidiary of corporation C also located in country X, and women's and children's garments from unrelated manufacturers of third countries as well as from local manufacturers.

Situation 1
In accordance with C=s corporate policy concerning sales between subsidiaries, goods are sold at a price negotiated between the subsidiaries. However, at the end of the year, importer I will pay to manufacturer M 5% of the total annual resales of the men=s garments which he buys from him during that year as a further payment for the goods.

In this case, the payment in question is a proceed of a subsequent resale of the imported goods and accrues directly to the seller and the amount is to be added to the price paid or payable as an adjustment under the provisions of Article 8.1(d).

Situation 2
It has been established that importer I pays to service company A, another subsidiary of corporation C, 1% of his gross profit realized over the annual total sales of men=s,

women's and children's garments purchased from all sources. Importer I produces evidence that this payment is not related to the resale, use or disposal of the imported goods but it is a payment made in accordance with corporate policy to reimburse A for low interest loans and other financial services A provides for all the subsidiaries of corporation C.

Service company A is related to the seller of the imported goods and thus the payment could be considered as an indirect payment to the seller. It is, however, payment for a financial service which is unrelated to the imported goods. Therefore, the payment would not be considered as proceeds in the meaning of Article 8.1(d).

Situation 3
It has been established that at the end of the financial year, importer I remits to corporation C 75% of his net profit realized over that year.

In this case the remittance by I to corporation C cannot be considered as proceeds since it represents a flow of dividends or other payments from the buyer to the seller which do not relate to the imported goods. Therefore, in accordance with the Interpretative Note to Article 1, (price paid or payable) it is not a part of the Customs value.

**Headquarters Rulings:**

## addition to the price actually paid or payable

19 U.S.C. 1401a(b)(1)(E); 19 CFR 152.103(b)(1)(v); GATT Valuation Agreement, Article 8, paragraph 1(d)

The amounts required to be paid by the importer to the supplier out of the importer's net profits on the resale of vodka are proper additions to the price actually paid or payable for the imported merchandise as proceeds of a subsequent resale that accrue directly to the seller of the merchandise.
**542729 dated Mar. 29, 1982.**

Where the final price paid by a buyer to a seller is dependent on the buyer's resale price in the United States, the transaction value for the merchandise is the base price, plus any amount ultimately accruing to the seller as a result of changes in the buyer's resale price. The fact that merchandise is transformed in the United States subsequent to its importation does not affect a determination that proceeds from the resale of the imported merchandise accrue to the seller.
**542701 dated Apr. 28, 1982 (TAA No. 47).**

Proceeds received by the importer in excess of an agreed upon resale price (due to currency fluctuations) and remitted to the foreign seller are to be added to the price actually paid or payable to arrive at a transaction value.
**542879 dated Nov. 3, 1982.**

A percentage of the resale price of imported goods sold in the United States which is remitted to the seller is included in transaction value as the proceeds of a subsequent resale.
**542900 dated Dec. 9, 1982 (TAA No. 56); modified by 544436 dated Feb. 4, 1991.**

Merchandise is produced in Austria and sold to an East German company. The East German company then sells the merchandise to the U.S. importer, as well as other foreign buyers. The importer remits proceeds of a resale in the United S.tates to the Austrian manufacturer. The proceeds of this subsequent resale which accrue to the Austrian manufacturer rather than the East German seller are not added to the price actually paid or payable. In order for proceeds of a subsequent resale to be added to the price actually paid or payable, they must be paid to the actual seller referred to in section 402(b)(1)(E) of the TAA.
**543399 dated Apr. 11, 1985.**

Pursuant to a profit sharing plan between the related party buyer and seller, the parties share the profits on the resale of the imported product. These payments are dutiable as proceeds of a subsequent resale, which accrue to the seller and are included in transaction value of the imported merchandise.
**554999 dated Jan. 5, 1989.**

An addition to the price actually paid or payable for proceeds of a subsequent resale, disposal or use should be based on the imported merchandise and should not include proceeds attributable to domestic components or ingredients. In this case, the amount of the payment made by the buyer is calculated with respect to the resale of a finished product that includes U.S. components. Since the payment is based partially on the imported merchandise, and partially on other factors, i.e., mixing the imported merchandise with U.S. ingredients such that the former is no longer separately identifiable, the payment at issue does not constitute an addition to the price actually paid or payable under section 402(b)(1)(E) of the TAA.
**545307 dated Feb. 3, 1995.**

The importer is an exclusive distributor of certain products in the United States. This right is granted in an exclusive distributorship agreement between the importer and seller. The importer pays the seller a royalty computed on the basis of its sales of the merchandise at wholesale, adjusted for returns. The royalty is not dutiable pursuant to section 402(b)(1)(D) of the TAA because the royalty payment is not a condition of sale. However, the payments are dutiable as proceeds of a subsequent resale and are to be included within the transaction value of the imported merchandise.
**545504 dated May 4, 1995.**

An agreement requires that a royalty is to be paid based on a percentage of the net sales price of all products manufactured and sold by the licensee using trademarks/trade names and technical data, as well as an additional percentage based on the net sales of trademarked products sold to trademarked retailers. Where the licensor and seller are unrelated, the payment is not an addition to the price actually paid or payable as a proceed of a subsequent resale pursuant to section 402(b)(1)(E) since, under the facts presented, the payments are not made to the seller of the imported merchandise. If, however, the licensor and the seller are the same legal person, or if the seller is related to the licensor, then the payment constitutes a proceed of a subsequent resale, disposal or use within the meaning of section 402(b)(1)(E). The result is the same if the seller is related to the licensor unless the buyer/importer establishes that no portion of the proceed accrues directly or indirectly to the seller.
**545361 dated July 20, 1995.**

An importer purchases a bagged magnifying glass from the foreign seller. The magnifying glass is incorporated into a game. The only imported part for the game is the magnifying glass and all other parts of the game are U.S.-made. Royalty payments are made to the seller for the right to use a trademark on the finished game. The only imported component of the game, the magnifying glass, is combined with parts made in the U.S. to produce the complete game. The royalties are based on the sales in the U.S. of the entire finished game, not on sales of the imported magnifying glass. The licensing fees paid to the seller are not based on the resale, disposal, or use of the imported merchandise, but on sales of a different article, the complete game, which is overwhelmingly composed of domestic components. Accordingly, the royalty payments are not dutiable as proceeds of a subsequent resale pursuant to section 402(b)(1)(E).
**545824 dated Aug. 28, 1995.**

The imported merchandise is used to manufacture a finished product, i.e., photomultiplier tubes, and the royalty payments at issue are based on the net sales price of the tubes. Because the payments at issue are based partially on the imported merchandise and partially on other factors, it is inappropriate to make an addition to the price actually paid or payable under section 402(b)(1)(E) of the TAA.
**545419 dated Nov. 30, 1995.**

The importer pays a license fee to a party who is neither the seller of the imported merchandise nor related to the seller. The payments are not dutiable as royalties pursuant to section 402(b)(1)(D) of the TAA. The licensor owns and licenses the trademark used by the importer, but does not produce or sell the imported merchandise. Accordingly, the license fee payments are not dutiable as proceeds of a subsequent resale under section 402(b)(1)(E) of the TAA because they do not accrue directly or indirectly to the seller of the imported merchandise.
**546229 dated May 31, 1996.**

A royalty payment becomes due upon the resale of the imported product. The amount of the royalty payment is based on the net-sales value, which is defined as the gross sales to third parties. The proceeds of the subsequent resale apply to the imported

product, and the royalty payments directly relate to the imported product. These payments are statutory additions to the price actually paid or payable as proceeds of a subsequent resale pursuant to section 402(b)(1)(E) of the TAA.
**546034 dated May 6, 1997.**

The importer makes payments to the seller for patents used in domestically producing the active ingredient of an imported pharmaceutical product. The royalty payments that accrue to the seller are directly based on the resale of the imported merchandise in the United States. The agreement provides that the licensee shall pay a royalty equivalent to a specified percentage of all annual net sales. The royalty payments are determined solely based on sales of the imported product which is not further processed in the United States after importation. The royalty payments made by the importer to its related party seller should be added to the price actually paid or payable pursuant to section 402(b)(1)(E) of the TAA in order to properly determine the transaction value of the merchandise. (While the analysis of dutiability could be made pursuant to section 402(b)(1)(d), this ruling focused on section 402(b)(1)(e) regarding proceeds.)
**545662 dated Feb. 20, 1998.**

The royalty payments made by the buyer to the licensor/seller pursuant to a license agreement are not optional. The payments are a condition of sale for exportation to the United States and, as such, they are an addition to the price actually paid or payable. Therefore, the payments are included in the transaction value of the imported merchandise. In addition, the payments made by the buyer to the seller constitute proceeds of a subsequent resale within the meaning of section 402(b)(1)(E) of the TAA.
**546787 dated Jan. 11, 1999.**

Under a license agreement, the importer has agreed, in exchange for the right to manufacture and sell the licensed products worldwide, to pay its subsidiary certain percentages of its worldwide sales of the licensed products. Assuming transaction value is the appropriate basis of appraisement, royalties paid in respect of the licensed products for the imported raw materials purchased by the importer from its related companies are neither part of the price actually paid or payable for the imported raw materials, nor do they constitute additions thereto under section 402(b)(1)(D)-(E) of the TAA.
**547710 dated Dec. 16, 2001.**

Royalty payments may be dutiable as proceeds of any subsequent resale, disposal, or use of the subject merchandise. However, Customs has held that payments based on the resale of a finished product made in part from the imported merchandise are not dutiable as proceeds. Based on the evidence presented, Customs could not determine whether the payments at issue were based on the sale of the imported merchandise. Many of the payments appear to be based on the sale of "licensed products," i.e., finished products that may or may not contain the imported merchandise or may be the imported merchandise itself. Accordingly, unless or until the importer can explain which products are imported and whether or in what instances they are the same products

subject to the submitted agreements, Customs presumes that the payments at issue are dutiable, pursuant to section 402(e) of the TAA, proceeds of a subsequent sale.
**547662 dated Sep. 20, 2002; modified by 548305 dated Aug. 11, 2003.**

## transaction value, sufficient information

19 U.S.C. 1401a(b)(2)(A)(iii); 19 CFR 152.103(j)(1)(iii); GATT Valuation Agreement, Article 1, paragraph 1(c)

Transaction value does not exist where sufficient information is unavailable to determine within a reasonable period and with reasonable accuracy the extent of proceeds due the seller.
**542928 dated Jan. 21, 1983 (TAA No. 57).**

The amounts required to be paid by the importer to the supplier out of the importer's net profits on the resale of vodka are proper additions to the transaction value of the imported merchandise as proceeds of a subsequent resale that accrue directly to the seller.
**542729 dated Mar. 29, 1982.**

The price actually paid or payable of the merchandise is known at the time of exportation to the United States, i.e., the base price agreed upon by the parties. If the price of the product is increased subsequent to importation due to a change in the resale price in the United States, then the amount remitted becomes the proceed of a subsequent resale and the amount is added to the price actually paid or payable. Transaction value is the proper means of appraisement.
**542746 dated Mar. 30, 1982.**

Transaction value is not precluded as a basis of appraisement merely because the amount of the subsequent proceeds to be paid to the seller is not quantifiable until sometime after importation.
**542701 dated Apr. 28, 1982 (TAA No. 47).**

An addition to the price actually paid or payable for proceeds of a subsequent resale which accrue to the seller must be based upon sufficient information. If such information is unavailable, then transaction value is eliminated as a means of appraisement.
**543281 dated Aug. 9, 1984.**

# PROHIBITED APPRAISED VALUES

## INTRODUCTION

19 U.S.C. 1401a(f)(2) states:

Imported merchandise may not be appraised, for the purposes of this Act, on the basis of -
(A) the selling price in the United States of merchandise produced in the United States;
(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;
(C) the price of merchandise in the domestic market of the country of exportation;
(D) a cost of production, other than a value determined under subsection (e) for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;
(E) the price of merchandise for export to a country other than the United States;
(F) minimum values for appraisement; or
(G) arbitrary or fictitious values.
This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under title VII.

This statutory language is repeated in 19 CFR 152.108, which is entitled "Unacceptable bases of appraisement."

**GATT Valuation Agreement:**

The prohibited methods of appraisement listed in 19 U.S.C. 1401a(f)(2) quoted above, is found in Article 7, paragraph 2.

**Headquarters Rulings:**

## two or more values

If two or more transaction values for identical or similar merchandise are found, the appraisement must be based upon the lower of the two values.
**542717 dated Apr. 2, 1982.**

The merchandise imported is a complete set of gun parts absent a frame. The imported merchandise is appraised pursuant to section 402(f) of the TAA, and price information in a gun publication about a similar caliber machine gun is used. This method of appraisement does not meet the standards under section 402(f) and is inconsistent with the provision in the TAA that precludes the use of arbitrary and fictitious values.
**544746 dated Nov. 12, 1991.**

The merchandise was appraised pursuant to section 402(f) at an adjusted transaction value by using a factor of 1.20 times the entered value in order to recover the difference for undeclared fabric. However, the method in which the merchandise was appraised is precluded, as it was based upon what amounts to fictitious fabric calculations. The determination of the fabric amounts used in the production of the imported merchandise was based on nominal conversion factors, and not on the amount of fabric actually used in the production of the merchandise. Appraisement on the basis of arbitrary or fictitious values is specifically precluded under section 402(f)(2)(G).
**223727 dated Apr. 5, 1993.**

# QUOTA CHARGES

## INTRODUCTION

19 U.S.C. 1401a(b)(4)(A) defines the "price actually paid or payable" as follows:

The term "price actually paid or payable" means the total payment (whether direct or indirect,) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller. (emphasis added)

The corresponding Customs regulation is 19 CFR 152.102(f).

### GATT Valuation Agreement:

Interpretative Notes, Note to Article 1, Price actually paid or payable, is similar to 19 U.S.C. 1401a(b)(4)(A).

### Judicial Precedent:

Generra Sportswear Co. v. United States, 905 F.2d 377 (Fed. Cir. 1990),

The United States Court of Appeals for the Federal Circuit was presented with the issue of whether quota charges were properly included in the transaction value of imported merchandise.

The importer purchased cotton knit blouses from the seller in Hong Kong at a price of $6.00 each. The seller agreed to obtain type A transfer quota at $0.95 per unit. The importer paid the seller an amount for the shirts, exclusive of quota. The seller then billed the importer's buying agent for the quota charges under a separate invoice and the importer's buying agent paid for this amount. The Customs Service appraised the merchandise at $6.95 per unit by combining the amounts stated on the two invoices.

The importer filed a protest, which was subsequently denied by Customs. The importer filed suit in the Court of International Trade challenging the denial of the protest. The court held the payments to be non-dutiable and ordered the Customs Service to refund excess duties collected. The United States subsequently filed an appeal with the United States Court of Appeals for the Federal Circuit, which reversed the lower court's decision.

The Court determined that because the statutory language does not specifically address quota payments, the appraisal by the Customs Service was based upon a permissible construction of the statute. The Court stated that it is reasonable to conclude that the

quota charges are properly part of the "total payment . . . made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller." The court further stated:

As long as the quota payment was made to the seller in exchange for merchandise sold for export to the United States, the payment properly may be included in transaction value, even if the payment represents something other than the per se value of the goods. The focus of transaction value is the actual transaction between the buyer and seller; if quota payments were transferred by the buyer to the seller, they are part of transaction value.

In addition, the Court stated that it is irrelevant that the buyer did not pay for the quota charges directly to the seller; its buying agent made the payment on behalf of the buyer.

Murjani Int'l Ltd. v. United States, 17 Ct. Int'l Trade 822 (1993), amended, 17 Ct. Int'l Trade 1035 (1993).

The importer claimed that Customs improperly included quota charges in the dutiable value of imported merchandise because it never paid the seller for quota charges. The Court rejected this claim and indicated that the importer did not provide sufficient evidence to prove that the seller was not paid for quota as part of the value of the invoices. In addition, the evidence was insufficient to prove that the quota payments were paid to a party other than the seller. The quota charges were held to be part of the transaction value of the imported merchandise.

**Headquarters Rulings:**

## free-quota price manipulations; T.D. 86-56

See also, chapter on INVOICING REQUIREMENTS, supra.

In a single shipment transaction, the invoice price for the merchandise exceeds the original agreed-upon contract price. Although the higher invoice price is paid to the seller, the seller rebates the difference between the contract price and invoice price to the importer. The original agreed-upon price represents the proper transaction value. Because the parties determine the agreed-upon price prior to exportation of the merchandise, there is no rebate effected after the date of importation, within the meaning of section 402(b)(4)(B).
**543358 dated Sep. 13, 1984; overruled by 544856 dated Dec. 13, 1991.**

In a situation where an agreement between a buyer and seller to issue a rebate as part of the sale of merchandise is in existence prior to the importation of merchandise, the price actually paid or payable may differ from figures in documents accompanying a shipment. The types of evidence which are acceptable as proof of such rebate transactions are limited to *direct* payments from a seller to an importer. The price

actually paid or payable for the imported merchandise in these transactions is the sum of the funds remitted to the seller by the importer, less rebates to the buyer in the form of checks, letters of credit, etc., drawn on the seller's account or in the form of a price reduction on other merchandise previously sold to the importer by the seller.
**543611 dated Sep. 6, 1985; overruled by T.D. 86-56 dated Feb. 20, 1986.**

Where the merchandise is being shipped at a higher price than contracted for between the parties with a subsequent rebate for the difference, the lower valuation will not be accepted with respect to the appraisement of the merchandise. The acceptance of these documents by Customs is inconsistent with the requirement, under the law and regulations, that the invoice set forth the purchase price of the merchandise, and is precluded by the regulations, which call for the rejection of any documents that appear to be erroneous.
**543694 dated Mar. 20, 1986 (citing T.D. 86-56); 543659 dated Mar. 12, 1986**.

## payments for quota made directly to the seller

See 19 U.S.C. 1401a(b)(4)(A); 19 CFR 152.102(f); GATT Valuation Agreement, Interpretative Notes, Note to Article 1, Price actually paid or payable

Quota payments made by the buyer to the foreign seller are included in the price actually paid or payable for imported merchandise. Thus, even if the seller is prepaying expenses on behalf of the buyer, those expenses that are then reimbursed by the buyer to the seller will be treated as being part of the price actually paid or payable.
**542169 dated Sep. 18, 1980 (TAA No. 6); 542150 dated Jan. 6, 1981 (TAA No. 14); 542573 dated Nov. 6, 1981; 542798 dated Feb. 10, 1983; 543382 dated Nov. 14, 1984; 543715 dated June 13, 1986; 543913 dated Feb. 22, 1988; 544110 dated Apr. 26, 1990; 544472 dated July 30, 1990; 544388 dated July 13, 1990.**

Payments for quota made by the buyer, through its agent, to the seller are part of the price actually paid or payable.
**542558 dated Nov. 10, 1981**.

Payments are made for obtaining additional quota from the seller in order to comply with the correct quota category. This secondary quota payment is made after the goods are imported into the United States. In this case, the payments for the purchase of the original quota were included in the price actually paid or payable for the merchandise when sold for exportation to the United States. The payments made to obtain the correct visa category are made *subsequent* to the sale for exportation of the imported merchandise. Therefore, these payments are not part of the price actually paid or payable.
**544220 dated Jan. 22, 1990.**

Quota payments made to the agent of the seller are part of the price actually paid or payable. The fact that the payments are made to the seller's agent, rather than directly

to the seller, does not change the dutiable status of the payments. This is due to the fact that an agent, by definition, acts on behalf of the principal.
**544345 dated July 30, 1990.**

In cases where quota payments are paid to the seller or a party related to the seller, the amount of the payments is part of the total payment to the seller and is included in the transaction value of the merchandise.
**544585 dated Jan. 29, 1991; 544221 dated June 3, 1991.**

The payments for quota made by the importer to its purported agent, which on the basis of the evidence submitted is actually the seller of the merchandise, are included as part of the price actually paid or payable for the imported merchandise. These payments are therefore dutiable.
**544610 dated Dec. 23, 1991.**

The documentation submitted in this case, specifically, the visaed invoice, indicates that the cost of quota was included in the price of the imported merchandise when it was sold for exportation to the United States.
**545927 dated Jan. 30, 1996.**

The importer has not provided adequate documentation supporting its position that the quota payments are made to a third party that is unrelated to the seller. The quota charges are either paid directly to the seller of the imported merchandise, through the buying agent, or the quota charges are remitted to a party related to the seller. Either way, the quota charges are part of the price actually paid or payable for the imported sweaters.
**546343 dated May 22, 1996.**

The imported merchandise was purchased pursuant to a three-tiered sales agreement. There is sufficient evidence to establish that bona fide sales occurred between the middleman and the manufacturer. The requirements of Nissho have been met, in that the merchandise is clearly destined to the United States at the time that it is sold to the middleman and neither the importer nor the middleman is related to the manufacturer. In addition, it is presumed that the parties negotiated with each other on an arm's length basis. Therefore, the transaction value of the imported merchandise should be based upon the price actually paid or payable by the middleman to the manufacturer(s). In addition, the quota charges that are remitted, either directly or indirectly, to the seller are part of the price actually paid or payable.
**546871 dated Feb. 17, 1999.**

The imported merchandise was purchased pursuant to a three-tiered sales agreement. The transaction between the manufacturer and the middleman may *not* be used for the purpose of determining the appraised value of the imported merchandise, in that there is not sufficient evidence to support the claim that a bona fide sale occurred between the manufacturer and the middleman. Because the sale for export for purposes of determining transaction value is that between the middleman and the importer, then the quota payments that are made by the importer to the middleman, i.e., the actual seller, are part of the price actually paid or payable. In addition, an unrelated third party acts as an agent for the importer and the fees paid to the unrelated third party are bona fide buying commissions. Therefore, these fees are not included in the price actually paid or payable for the imported merchandise.
**547054 dated Aug. 6, 1999.**

There is insufficient evidence to establish that quota payments were made to an "unrelated" third party and that such payments did not "inure to the benefit of the seller." Therefore, the quota payments at issue should be included as part of the price actually paid or payable.
**548148 dated Aug. 12, 2002.**

## payments to unrelated third parties

Quota payments made by the buyer to an unrelated third party or directly to the quota holder, who is unrelated to either the buyer or the seller, are not part of the price actually paid or payable.
**542169 dated Sep. 18, 1980 (TAA No. 6); 542803 dated Dec. 30, 1982; 543382 dated Nov. 14, 1984; 543540 dated June 12, 1985; 543500 dated Apr. 9, 1985; 543616 dated Oct. 1, 1985.**

Where the buyer pays quota charges to an exporter who is unrelated to the foreign seller, and where such charges are not remitted by the exporter to the seller, in whole or in part, such charges are not part of the dutiable value of the imported merchandise.
**542442 dated June 11, 1981 (TAA No. 30).**

Quota charges paid by the importer to its buying agent are not part of the price actually paid or payable as long as these payments are not remitted in any way, directly or indirectly, by the buying agent to the seller of the goods.
**543655 dated Dec. 13, 1985.**

Sufficient evidence has been submitted to indicate that the payments for quota made by the buyer do not inure to the benefit of the seller of the imported merchandise. The payments for quota are properly excluded from the transaction value of the imported merchandise.
**544016 dated June 22, 1988; aff'd by 544245 dated Apr. 5, 1989, and July 31, 1989.**

Quota payments made by the buyer to an agent are not part of the price actually paid or payable for imported apparel provided that evidence submitted at the time of importation indicates that the payments do not inure to the benefit of the seller.
**544866 dated Sep. 29, 1993.**

The importer enters into an arrangement for the purchase of quota with an unrelated third party quota broker. The quota broker invoices the importer for the cost of the quota, and the importer remits the full payment for the quota to the broker. Payments are made directly to the quota broker via wire transfer. The importer makes no payment to the seller for the cost of the quota, and the quota broker does not remit any portion of the payments to the seller. The quota charges at issue are not included in the transaction value of the imported merchandise.
**547140 dated Sep. 21, 1998.**

Based upon the documentation submitted by the importer, it is apparent that the importer acquired quota from a third party unrelated to the seller. Therefore, the quota payment at issue should not be considered part of the price actually paid or payable.
**546461 dated Dec. 21, 1998.**

Based on the information provided, the quota payments were made by the buyer to third parties unrelated to the seller of the imported merchandise. Therefore, the quota payments are not included in the transaction value as part of the price actually paid or payable for the imported merchandise.
**546804 dated May 4, 1999.**

Based on the evidence submitted, the payment for quota was made by the buyer's agent to a third party unrelated to the seller of the imported merchandise. Accordingly, the quota payment at issue is not included in the transaction value as part of the price actually paid or payable. In this case, the transaction value of the imported merchandise is the price actually paid or payable for the merchandise as per the wire transfer, plus amounts in respect of any additions to the price actually paid or payable, including an amount for the assist.
**546701 dated Dec. 2, 1999.**

Sufficient evidence has been submitted to indicate that the payments for quota are made from the importer to a party unrelated to the seller and that each negotiates at arm's length. These quota payments do not benefit the seller of the imported merchandise. The payments for quota should not be included as part of the price actually paid or payable for the imported merchandise.
**547696 dated May 18, 2001.**

In this case, the payment for quota charges is part of the price paid by the importer to the middleman. However, the middleman does not pay quota charges to the factory. Once received from the importer, the middleman pays the quota charges to an unrelated third party quota broker. Based on the fact the importer cannot obtain the

contract between the middleman and the factory as well as the price, transaction value cannot be based on the sale between the middleman and the factory. Thus, transaction value is based on the transaction between the middleman and importer with the quota payments included in the price actually paid or payable.
**547635 dated Nov. 7, 2001.**

## quota holder acting as "straw" seller

The manufacturer of the imported merchandise is the true seller of the goods. However, to satisfy the foreign government, the documents make it appear that the quota holder buys the merchandise and resells it to the U.S. importer. The quota holder never takes title to the merchandise but, rather, the transaction merely passes through the quota holder so that it can sell the quota. In this case, the quota holder is a third party to the sales transaction and the quota charges paid are not part of the price actually paid or payable.
**543294 dated May 15, 1984; <u>overruled</u> <u>by</u> 544859 dated Dec. 13, 1991.**

Counsel argues that the documents submitted render a certain party as the seller of merchandise, in order to satisfy Hong Kong third party shipper's regulations. In appraising merchandise, Customs must rely on the accuracy of the information contained in documents, such as invoices and contracts. Customs cannot find that documentation submitted does not accurately depict the transaction. Based upon the transaction documents, the seller of the imported merchandise is also receiving the quota payments. Therefore, the payments are part of the transaction value of the imported merchandise.
**546409 dated July 9, 1997.**

The third party shipper purchased merchandise from the manufacturer and then resold the merchandise to the importer for exportation to the United States. The third party shipper was engaged in a sale for exportation of the imported merchandise and, for appraisement purposes, the third party shipper was the actual seller of the imported merchandise. Therefore, due to the fact that the third party shipper was the seller of the imported merchandise (and it received the quota payments), the payments were part of the transaction value of the imported merchandise.
**546683 dated Aug. 13, 1997.**

Based on the documentation presented, the third party quota holder/shipper in Hong Kong is considered the seller/exporter of the imported merchandise. Therefore, the quota payments remitted to the seller/quota holder are part of the price actually paid or payable for the merchandise and must be included in the transaction value of the imported merchandise.
**547055 dated June 3, 1999; <u>aff'd</u> <u>by</u> 547531 dated May 5, 2000.**

Based on the evidence submitted, the payments for quota are to be considered part of the price paid or payable for the merchandise when sold for exportation by the quota

holders. The third party quota holders in Hong Kong are the actual sellers of the merchandise for purposes of determining transaction value.
**547531 dated May 5, 2000; aff'g 547055 dated June 3, 1999.**

# REBATES SUBSEQUENT TO IMPORTATION

## INTRODUCTION

"Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1)." 19 U.S.C. 1401a(b)(4)(B).

The equivalent regulation with respect to rebates is found in 19 CFR 152.103(a)(4).

**Judicial Precedent:**

Allied Int'l v. United States, 16 Ct. Int'l Trade 545 (1992).

In determining transaction value, Customs properly disregarded the importer's purchase bonus, which was contingent on certain quantity deliveries and payment of the purchase price in a pre-importation agreement with the seller. The Court indicated that absent any proof that the contingencies had actually occurred prior to the date of the entry, the bonus should be disregarded in the determination of transaction value.

Esprit de Corp v. United States, 17 Ct. Int'l Trade 195 (1993).

The U.S. buyer contracted to purchase shoes from the seller. The sale provided for F.O.B. Hong Kong terms, and the buyer was responsible for costs of shipping and insurance. Specified dates for shipment were agreed to between the parties. Prior to the initial shipping date, the seller informed the buyer that the shipping date requirements would not be met. In order to meet delivery commitments in the United States, the parties agreed to ship the merchandise by air, rather than by sea. The seller agreed to reimburse the buyer for the cost differential between sea and air shipment. The seller reimbursed the buyer based upon the reconciliation of costs at the end of the season.

The merchandise was appraised at the invoiced unit values and no allowance was made for the freight differential reimbursement. The court agreed with Customs and indicated that the evidence does not support a finding that the shipping was a part of the price actually paid or payable or that price reductions were made. In addition, any rebate made after the date of importation must be disregarded in determining the transaction value.

Century Importers, Inc., v. United States, 22 Ct. Int'l Trade 821 (1998).

The issue before the Court of International Trade was whether the importer had established that a deduction from the invoice price should have been made for the amount of duties paid in determining the transaction value of the imported merchandise. Century Importer, a subsidiary of the buyer, Miller Brewing Company, imported beer from a related seller, Molson Brewing Company. At the time of the importations, the normal duty rates were replaced by a fifty percent rate of duty. Century paid the duties and was later reimbursed by Molson, subsequent to importation. Customs appraised the beer using transaction value based on the invoice price because there was no evidence that the invoice price included the applicable duties. The CIT held in favor of Century deciding that the claimed deduction for the applicable duties was in fact warranted. The court concluded that there was an error in the preparation of the entry papers so that the duty-paid nature of the transaction was not indicated at the time of entry. The court indicated that there is nothing in the statutes or regulations that indicates that the failure to identify the "duty paid" status of a sale at the time of entry is an error which may never be corrected. In addition, a repayment of identified duties is not a "rebate of price" within the meaning of 19 U.S.C. 1401a(b)(4) which excludes rebates or other price reductions in the determination of transaction value.

Century Importers, Inc., vs. United States, 205 F.3d 1308 (Fed. Cir. 2000), vacating and rev'g 22 Ct. Int'l Trade 821 (1998).

The Court in this case reversed the decision of the Court of International Trade in holding that Customs should have allowed a deduction for duties paid by the importer and subsequently reimbursed by the seller, after importation. Century Importer, a subsidiary of the buyer, Miller Brewing Company, imported beer from a related seller, Molson Brewing Company. At the time of importation, the normal duty rates were replaced by a 50 percent rate of duty. Century paid the duties and was later reimbursed by Molson, subsequent to importation. Century claimed that in calculating the duties on the imported beer, Customs should have deducted the reimbursed duties from the invoice price. The Court applied the relevant statutory formula, 19 USC 1401a(b)(3) that excludes customs duties from the transaction value if identified separately to Customs. The record indicates that the parties did not identify these duties separately, and therefore, Customs has no authorization to deduct these duties from the price calculation. The Court further stated that because Molson reimbursed the duties after the date of importation, that the post-importation action was in fact a rebate that, pursuant to §1401a(b)(4)(B), is disregarded in the determination of transaction value.

**Headquarters Rulings:**

## discounts

See, chapter on DISCOUNTS, supra.

Rebates or deferred quantity discounts, given by the foreign seller to the importer are not considered in determining the transaction value of imported merchandise.
**543662 dated Jan. 7, 1986.**

## formula used in determining transaction value

19 CFR 152.103(a)(1); see also, chapter on FORMULAS IN DETERMINING PRICE ACTUALLY PAID OR PAYABLE, supra.

The importer purchases generators for a C.I.F., duty-paid, installed price. The purchase price includes amounts for assembling the generators subsequent to their importation into the United States. An escalation provision contained in the sales contract sets forth a formula which allows the amount of escalation to be determined from certain indices when they are published by the Bureau of Labor Statistics. The escalation amounts are calculated monthly in proportion to the work performed and invoiced. The formula for determining the escalation amount was arrived at prior to the importation of the merchandise; therefore, the escalation payments attributable to the dutiable portions of the contract price should be taken into account in determining the price actually paid or payable for the imported merchandise.
**542671 dated Mar. 15, 1982.**

In situations in which the price actually paid or payable is determined pursuant to a formula, a firm price need not be known or ascertainable at the time of importation, although it is necessary for the formula to be fixed at that time so that a final sales price can be determined at a later time on the basis of some future even over which neither the seller nor the buyer has any control.
**542701 dated Apr. 28, 1982 (TAA No. 47).**

The price actually paid or payable has been set prior to exportation in the event that the price actually paid or payable is to be ascertained according to a formula that is in existence prior to the exportation of the goods. Even though it may not be possible at the time of exportation to ascertain an exact dollar amount owed for the goods, a price actually paid or payable has been set.
**543189 dated Oct. 19, 1983.**

A price that requires adjustment, either upward or downward, determined pursuant to a formula represents transaction value. The formula must be in existence prior to the date of exportation. Because the formula is in existence prior to the date of exportation, there is no rebate effected after the date of importation, even though the price may not be ascertainable until after the date of importation.
**543352 dated Mar. 30, 1984.**

The final sales prices between the buyer and seller are determined pursuant to a formula that is fixed at the time of exportation. Because the formula from which the prices are determined is agreed to before the dates of importation, the currency exchange payments from the seller to the buyer do not constitute rebates or other

decreases in the price actually paid or payable. Adjustments to the invoice prices resulting from currency exchange gains as well as from currency exchange losses are taken into consideration in determining transaction value.
**543089 dated June 20, 1984.**

In a contract for sale of merchandise, the parties derive the price actually paid or payable from a formula based upon the importer's industrial engineering standards and actual production rates in the United States, subject to anticipated period adjustments. At the time of entry, duties are deposited based upon standard production costs. Subsequently, it is discovered that the actual costs are lower. The price actually paid or payable is represented by the price derived from the pricing formula, i.e., that which takes into account the subsequent adjustment for actual costs. The adjustment to that price is not a rebate or other decrease in the price actually paid or payable.
**543285 dated Mar. 20, 1984.**

Although a firm price is not ascertainable at the time of importation, a fixed formula or methodology exists and is determined prior to importation so that a final sales price can be subsequently determined. The adjustments made to the provisional price indicated on the invoice at the time of entry do not constitute either rebates or decreases in the price actually paid or payable. Duties are deposited based upon the provisional invoice price with an adjustment to be reported at the end of a six-month period.
**543917 dated Aug. 27, 1987.**

The amount owed to the foreign seller for magazines is calculated pursuant to a prearranged agreement between the buyer and seller taking into account the unit price, the quantity of the shipment, as well as other factors. The buyer has a right to return any unused magazines. An invoice is not provided to the buyer until reconciliation, during which time the amount of merchandise shipped and returned is taken into account. This method of calculating the price of the imported merchandise is not a formula that determines the price actually paid or payable. The price actually paid or payable is decreased after the date of importation and the transaction value may not be reduced to take into account this reduced amount.
**543940 dated Nov. 4, 1987.**

An agreement entered into between the buyer and seller prior to exportation of the merchandise includes the purchase price of a mold, the price of the goods, and the method by which the mold is repurchased by the seller. This agreement does not constitute a formula pursuant to section 152.103(a)(1) of the Customs regulations.
**543983 dated Dec. 2, 1987.**

The importer obtains samples from a foreign manufacturer. Mutilated prototype samples are shipped to the importer for approval. Once approved, the importer instructs the manufacturer to produce additional samples in order for the importer to solicit orders. An amount paid on an annual basis which totals the value set forth on the invoices for all the individual shipments of samples during the year represents the transaction value of the imported samples.
**544317 dated Apr. 24, 1990.**

The importer receives a refund of one half of a mold purchase price if a minimum quantity of merchandise is ordered. The entire mold cost is refundable if 300,000 pieces are ordered. The arrangement contained in the mold purchase orders between the importer and manufacturer does not constitute a formula under 19 CFR 152.103(a)(1). The full amount of the mold cost, disregarding the subsequent refund, is part of the price actually paid or payable.
**544364 dated Oct. 9, 1990.**

A contract is submitted to Customs, however, the seller does not appear as a party in the document and the seller did not sign the document. Also, two preliminary invoices and two final invoices are submitted. The final invoices indicate a lower price than the preliminary invoices and allegedly represent an average price as shown in Metals Week Journal. Language on the final invoices states that these invoices cancel and replace the preliminary invoices. In this case, a base price is agreed upon and there is a subsequent credit of funds payable to the importer as determined by a formula. The payment to the importer after importation of the goods is a rebate or other decrease in the price and is disregarded in determining transaction value. The use of the average price as indicated in the Metals Week Journal is not a formula for determining the price actually paid or payable, but rather, is a formula for determining the rebate owed to the importer.
**544944 dated May 26, 1992.**

According to an agreement between the buyer and seller, the price of imported marigold meal is based upon the price per gram of xanthophyll contained in the marigold meal. The amount shown on the invoice is a base price. Upon importation, a laboratory analysis is conducted to determine the xanthophyll content of the marigold meal. Based upon this analysis, a final settlement price is determined in accordance with an established formula. The formula is in effect prior to the date the merchandise is exported to the United States. Accordingly, the post-importation adjustment does not constitute a rebate under section 402(b)(4)(B) of the TAA. The adjustment to the invoice price should be taken into account in determining transaction value.
**545289 dated Sep. 29, 1994.**

The parties' method for setting prices for the imported merchandise is based on a contract entitled the "supply agreement." The price equals the sum of certain costs incurred by the seller, plus an amount sufficient to reimburse the seller for royalties paid to the manufacturer. The seller is required to pay patent royalties to the manufacturer. The royalties are a fixed percentage of the selling price in the United States. A

supplementary agreement between the seller and the manufacturer reduces the amount of the royalty in specified circumstances. The method of payment described is not a formula upon which transaction value can be based. The amount of the royalty paid to the manufacturer is within the control of one of the parties, the seller. The decrease in price attributable to the lower royalty payment to the manufacturer is disregarded in determining transaction value.
**545388 dated Oct. 21, 1994.**

## free-quota price manipulations; T.D. 86-56

In a single shipment transaction, the invoice price for the merchandise exceeds the original, agreed-upon contract price. Although the higher invoice price is paid to the seller, the seller pays a rebate to the importer that consists of the difference between the contract price and invoice price to the importer. The original, agreed-upon price represents the proper transaction value. Because the parties determine the agreed-upon price prior to exportation of the merchandise, there is no rebate effected after the date of importation, within the meaning of section 402 (b)(4)(B).
**543358 dated Sep. 13, 1984; <u>overruled</u> <u>by</u> 544856 dated Dec. 13, 1991.**

In a situation where an agreement between a buyer and seller to issue a rebate as part of the sale of merchandise is in existence prior to importation, the price actually paid or payable may differ from figures in documents accompanying a shipment. The types of evidence which are acceptable as proof of such rebate transactions are limited to *direct* payments from a seller to an importer. The price actually paid or payable in these transactions is the sum of the funds remitted to the seller by the importer, less rebates to the buyer in the form of checks, letters of credit, etc., drawn on the seller's account, or in the form of a price reduction on other merchandise previously sold to the importer by the seller.
**543611 dated Sep. 6, 1985; <u>overruled</u> <u>by</u> T.D. 86-56 dated Feb. 20, 1986.**

Where the merchandise is being shipped at a higher price than contracted for between the parties with a subsequent rebate for the difference, the lower valuation will not be accepted with respect to the appraisement of the merchandise. The acceptance of these documents by Customs is inconsistent with the requirement, under the law and regulations, that the invoice set forth the purchase price of the merchandise, and is precluded by the regulations, which call for the rejection of any documents that appear to be erroneous.
**543694 dated Mar. 20, 1986 (<u>citing</u> T.D. 86-56 dated Feb. 20, 1986).**

## post-importation refund

19 U.S.C. 1401a(b)(4)(B); 19 CFR 152.103(a)(4)

An export deposit refunded to the buyer by the seller subsequent to exportation of the merchandise is not considered in determining the price actually paid or payable.
**542676 dated Dec. 7, 1981; 542731 dated Feb. 26, 1982; 542911 dated Sep. 16, 1982; 542917 dated Sep. 17, 1982; 542876 dated Aug. 6, 1982; 542983 dated Dec.**

**29, 1982; 543004 dated Mar. 16, 1983; 543236 dated Sep. 12, 1984; 544066 dated Dec. 15, 1987.**

The manufacturer of imported merchandise agrees to effect a refund to the buyer based upon the difference between air and sea freight. However, this refund occurs after the merchandise is imported to the United States. The refund is disregarded in determining the price actually paid or payable in that it is effected after the date of importation.
**543246 dated Jan. 9, 1984.**

With regard to merchandise for which an amount is paid, which includes a value added tax, and a refund is received subsequent to the date that the merchandise is imported, the transaction value is the price actually paid, inclusive of the value added tax.
**543435 dated Jan. 15, 1985.**

As a result of late delivery of imported merchandise, the importer receives a ten percent decrease in the purchase price. This refund is disregarded in determining transaction value because the rebate is effected after the date of importation of the merchandise.
**543537 dated Feb. 14, 1986.**

The buyer's payments to the seller for mold costs, reimbursement for unused materials and components, and cutting dies are considered to be part of the price actually paid or payable for the imported merchandise. The fact that the payments occur post-importation does not preclude their being considered part of transaction value because the parties agreed at the outset of the transaction, prior to production of the merchandise, that reimbursement would occur if the required number of goods were not ordered.
**544615 dated Sep. 11, 1991; <u>modified</u> <u>by</u> 544820 dated Oct. 18, 1991.**

The importer advances a stated amount to the seller. The amount is held by the manufacturer as security for the cost of a mold to produce imported merchandise. It is agreed between the parties that the mold charges are fully refundable if a certain number of pieces are ordered. The importer's payment, characterized as a refundable mold deposit, is part of the price actually paid or payable. The existence of an arrangement between the importer and manufacturer to refund the importer's mold deposit, upon the order and purchase of a requisite number of units, does not constitute a permissible formula under transaction value. The post-importation refund of the mold deposit from the manufacturer to the importer shall not be taken into account in determining the transaction value of the subject merchandise.
**544867 dated Dec. 15, 1993.**

The importer claims that the invoice submitted at the time of entry indicated a "provisional" price and that the price actually paid or payable was lower than that shown on the entry documentation. No documentation has been provided that supports the contention that a rebate of, or other decrease in, the price actually paid or payable was effected before the merchandise was imported into the United States. Accordingly, the

decrease in the price alleged by the importer should be disregarded in determining the transaction value.
**545510 dated Jan. 7, 1994.**

The importer purchased caviar from a Russian seller and entered the merchandise in June 1992. In December 1992, the parties entered into a settlement agreement which provides that in consideration of the payment terms in the settlement agreement, the parties agreed to discharge each other from any and all obligations arising from the contract for the purchase of the caviar. The terms in the settlement agreement created a lower sales price than that originally stated on the invoice. The terms outlined in the settlement agreement, to the extent that they represent a decrease in price that occurs subsequent to the importation of the merchandise, may not form the basis of transaction value.
**545532 dated Sep. 14, 1994.**

The retroactive price increase agreed to between the unrelated parties after the importation of the merchandise into the United States does not affect the transaction value. The price actually paid or payable for the imported merchandise is represented by the original invoiced amount. Those prices were the prices in effect when the merchandise was sold for exportation to the United States. Thus, the importer's retroactive price increase was not agreed to prior to exportation and the contract was not contingent upon the duty refund. The price increase is not part of the price actually paid or payable for the previously imported merchandise.
**547273 dated Apr. 22, 1999.**

There is no documentation to indicate that a price adjustment of $200,000 was agreed to between the parties prior to the sale for exportation of the imported merchandise. Therefore, the $200,000 that was paid by the importer to the foreign seller is a retroactive price adjustment which is not to be included in the transaction value of the imported merchandise.
**547027 dated Sep. 17, 1999.**

The defective allowances paid to the importer by the manufacturer are rebates. Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of the importation of merchandise into the United States shall be disregarded in determining the transaction value. Additionally, the port will not award a defective merchandise allowance when the allowance sought is an estimate that is not tied to specific entries, and where the importer can not demonstrate a link in diminution in value due to defects in specific merchandise to particular entries.
**548093 dated Apr. 26, 2002; aff'd by 548184 dated Nov. 5, 2002.**

## price actually paid or payable

The importer contracts with various sellers for the purchase of wearing apparel. Delivery dates are specified with a provision made for late delivery. If the seller fails to make delivery within the specified time, then the seller is obligated to ship the merchandise by air and to assume the cost of the air freight in excess of the sea freight (which the importer would have paid had the merchandise been shipped by ocean on a FOB basis). Even though the parties enter into the agreement prior to the exportation of the goods, no adjustment for freight charges can be made to transaction value because there is insufficient evidence to support a finding that the freight charges are included in the price actually paid or payable for the wearing apparel. The late delivery agreement makes no reference to a reduction in the price actually paid or payable should the goods be late. If the original purchase order contained a provision acknowledging that the price actually paid or payable is reduced in the event of a late shipment, then it is possible that the reduced amount paid would represent transaction value.
**545121 dated Jan. 31, 1994.**

## price renegotiations

To the extent that they represent price renegotiations that occur subsequent to the importation of the goods, late penalty payments are not part of transaction value of the imported merchandise.
**542275 dated June 11, 1981 (TAA No. 31).**

No documentation was submitted to substantiate the claim that any of the invoiced 6,102 packages indicated on the entry invoice were not received. The buyer claimed that only 6,100 packages were received. The post-importation price adjustment is disregarded in determining the price actually paid or payable.
**542959 dated Nov. 24, 1981.**

Retroactive price adjustments between related parties agreed to after importation of merchandise does not affect the transaction value of the goods, provided that it is determined that the parties' relationship does not influence the price charged.
**542797 dated May 19, 1982 (TAA No. 48).**

A contract for sale of seasonal goods contains a clause obligating the vendor to reduce the cost of the merchandise by an amount equal to the difference between straight ocean shipment and ocean/air shipment for failure to meet delivery schedules. This price reduction is effected prior to shipment of the goods and is invoiced as such. The price actually paid or payable is the invoiced unit price that reflects the reductions due to late delivery.
**542933 dated Oct. 13, 1982.**

Where a seller fails to deliver merchandise to a buyer on a specified delivery date, and the contract for the merchandise provides for a reduction in the invoice price of the goods *prior* to their shipment, the reduced price becomes the price actually paid or payable.
**543014 dated Feb. 15, 1983.**

The Statement of Administrative Action provides that where it is discovered subsequent to importation that the merchandise being appraised is defective, an allowance will be made. If the defect is discovered within the statutory protest period, and the protesting party submits evidence that the price was lowered due to a defect, an allowance should be taken into account.
**543061 dated May 4, 1983.**

Refunds made or effected after the date merchandise was imported may not be used to reduce the transaction value of the merchandise.
**543246 dated Jan. 9, 1984.**

An export deposit refunded to the buyer by the seller and which is received by the buyer *prior* to the date of exportation of the merchandise is not part of the price actually paid or payable.
**543277 dated Apr. 30, 1984.**

Due to a drastic change in the exchange rate between the dollar and the German mark, the seller has received windfall profits and has agreed to lower its price to the related party buyer. Assuming that the lower price that the parties have negotiated is acceptable, i.e., due to the relationship between the parties, the lower price is the transaction value. However, any rebate or decrease in the price actually paid or payable effected *after* the date of importation is disregarded in determining transaction value.
**543457 dated Apr. 9, 1985.**

Merchandise that does not meet contractual terms requiring visas for entry is not considered to be "defective goods." A post-importation price reduction is not considered in determining the price actually paid or payable.
**543609 dated Oct. 7, 1985.**

As a result of late delivery of imported merchandise, the importer receives a ten percent decrease in the purchase price. This refund is disregarded in determining transaction value because the rebate is effected after the date of importation of the merchandise.
**543537 dated Feb. 14, 1986.**

The importer ordered sweatshirts from a manufacturer in December for a spring season delivery. Due to unforeseen circumstances, the shipment was delayed. Seven months after the scheduled delivery, the goods arrived and the importer and seller arranged for the importer to receive a partial rebate of the purchase price due to the delay in shipment. This rebate in the price cannot be considered in determining the transaction value of the imported merchandise.
**544262 dated June 27, 1989.**

The importer purchases ceiling fans that are manufactured in Hong Kong. Subsequent to their importation into the United States, the seller allows the buyer to debit their account in an amount consistent with a reduced unit cost. This reduction in price is not considered in determining the transaction value of the ceiling fans.
**544453 dated Mar. 8, 1990.**

The buyer and seller tentatively agree to a price for the goods, prior to exportation of the merchandise to the United States. The parties negotiate and agree to a final price. However, the invoices are not changed until two months later. The importer has established that the negotiated lower prices had been agreed to prior to the exportation of the goods and that this price represents the price actually paid or payable for the merchandise.
**544645 dated July 16, 1991.**

The corrected invoiced amounts do not represent post-importation price adjustments or rebates within the meaning of section 402(b)(4)(B) of the TAA. The documentation reveals that the change in the invoiced values represents a clerical error that was subsequently corrected. The documentation presented includes a revised invoice, a letter from the seller explaining the nature of the error, and a credit note.
**546141 dated Apr. 16, 1996.**

The retroactive price increase agreed to between the unrelated parties after the importation of the merchandise into the United States does not affect the transaction value. The price actually paid or payable for the imported merchandise is represented by the original invoiced amount. Those prices were the prices in effect when the merchandise was sold for exportation to the United States. Thus, the importer's retroactive price increase was not agreed to prior to exportation and the contract was not contingent upon the duty refund. The price increase is not part of the price actually paid or payable for the previously imported merchandise.
**547273 dated Apr. 22, 1999.**

There is no documentation to indicate that a price adjustment of $200,000 was agreed to prior to the sale for exportation of the merchandise. Therefore, the $200,000 paid by the importer to the seller is a retroactive price adjustment that is not part of the transaction value of the merchandise.
**547027 dated Sep. 17, 1999.**

# RECONCILIATION

The importer makes remittances to its related party seller pursuant to a corporate transfer pricing policy. A portion of its remittance relates to purely domestic purchases unrelated to the imported merchandise. An additional portion relates to foreign purchases from unrelated sellers. As such, the remittances reflect income that is unrelated to the purchase of imported merchandise. Accordingly, subject to acceptable documentation prepared in accordance with generally accepted accounting principles, only the amount attributable to the purchase of imported merchandise needs to be reported for purposes of reconciliation since it is that portion that is subject to duties and fees.
**548386 dated Nov. 26, 2003.**

# RELATED PARTY TRANSACTIONS

## INTRODUCTION

19 U.S.C. 1401a(b)(2)(A) through (C) states:

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this Act only if - . . . (iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).
(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates -
(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States;
(ii) the deductive value or computed value for identical merchandise or similar merchandise; or but only if each value referred to in clause (i) or (ii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.
(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in -
(i) commercial levels;
(ii) quantity levels;
(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and
(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

In 19 U.S.C. 1401a(g)(1), related parties are defined as follows:

For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:
(A) Members of the same family, including brothers and sisters (whether by whole or half bloods), spouse, ancestors, and lineal descendants.
(B) Any officer or director of an organization and such organization.
(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.
(D) Partners.
(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

The corresponding Customs regulations regarding related parties are found in 19 CFR 152.103(j)(2) and 19 CFR 152.102(g), respectively.

In addition, 19 CFR 152.103(1) and (m), along with various interpretative notes and examples, elaborates as follows:

Related buyer and seller - (1) Validation of transaction. The district director shall not disregard a transaction value solely because the buyer and seller are related. There will be related person transactions in which validation of the transaction value, using the procedures contained in [section] 152.103(j)(2), may not be necessary.
(i) Interpretative note 1. Customs may have previously examined the relationship or may already have sufficient detailed information concerning the buyer and seller to be satisfied that the relationship did not influence the price actually paid or payable. In such case, if Customs has no doubts about the acceptability of the price, the price will be accepted without requesting further information from the importer. If Customs does have doubts about the acceptability of the price and is unable to accept the transaction value without further inquiry, the importer will be given an opportunity to supply such further detailed information as may be necessary to enable Customs to examine the circumstances of the sale. In this context, Customs will examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at in order to determine whether the relationship influenced the price.
(ii) Interpretative note 2. If it is shown that the buyer and seller, although related, buy from and sell to each other as if they were not related, this will demonstrate that the price has not been influenced by the relationship, and the transaction value will be accepted. If the price has been settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to him, this will demonstrate that the price has not been influenced by the relationship.
(iii) Interpretative note 3. If it is shown that the price is adequate to ensure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time (e.g., on an annual basis), in sales of merchandise of the same class or kind, this would demonstrate that the price has not been influenced.
Example. A foreign seller sells merchandise to a related U.S. importer. The foreign seller does not sell identical merchandise or similar merchandise to any unrelated parties. The transaction between the foreign seller and the U.S. importer is determined by Customs to be unaffected by the relationship. How should the merchandise be appraised?
Transaction value based on the price actually paid or payable. A transaction value between a related buyer and seller is acceptable if the relationship did not affect the

price actually paid or payable. This is so even if similar merchandise is being sold at a higher price, which includes a higher percentage for profit and general expenses.
(2) Test values. (i) The importer or the buyer may demonstrate that the transaction value in a related person transaction is acceptable by showing that the value "closely approximates" any one of the test values provided in [section] 152.103(j)(2)(i). The factors that will be examined to determine if the transaction value closely approximates a test value include:
(A) The nature of the imported merchandise and the industry,
(B) The season in which the merchandise is imported,
(C) Whether the difference in value is commercially significant,
(D) Whether the difference in value is attributable to internal transport costs in the country of exportation.
(ii) Because these factors may vary, Customs will not be able to apply a uniform standard, such as a fixed percentage, in each case. A small difference in value in a case involving one type of imported merchandise may be unacceptable, although a large difference in a case involving another type may be acceptable, in determining if the transaction value closely approximates any of the test values. Customs will be consistent in determining if one value "closely approximates" another value. The same approach will be taken if Customs considers a transaction value that is higher than any of the enumerated test values as will be taken if the transaction value is lower than any of the test values.
Example. In applying any of the test values, if the transaction value in the sale under consideration is rejected because 95 does not closely approximate 100, then a transaction value for the sale of the same merchandise at 105 occurring at or about the same time likewise would have to be rejected. Similarly, if 103 were considered to closely approximate 100, a transaction value of 97 likewise would closely approximate 100.
(iii) If one of the test values provided in [section] 152.103(j)(2)(i) has been found to appropriate, the district director shall not seek to determine if the relationship between the buyer and seller influenced the price. If the district director already has sufficient information to be satisfied, without further detailed inquiries, that one of the test values is appropriate, he shall not inquire the importer to demonstrate that the test value is appropriate.
(m) Rejection of transaction value. When Customs has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the district director shall inform the importer of the grounds for rejection. The importer will be afforded 20 days to respond in writing to the district director if in disagreement. This procedure will not affect or replace the administrative ruling procedures contained in Part 177 of this chapter, or any other Customs procedures.

**GATT Valuation Agreement:**

Article 1, paragraph 2(a) states:

In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and seller are related within the meaning of Article 15 shall not itself be ground for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

Article 1, Paragraph 2(b) provides for the test values corresponding to the test values provided in 19 U.S.C. 1401a(b)(2)(B). In addition, paragraph 2(c) states:

The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).
Article 15, paragraph 4, lists those deemed to be related for purposes of the Agreement (similar to those listed in 19 U.S.C. 1401a(g)(1)). Article 15, paragraph 5, states:

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4 of this Article.

Interpretative Notes, Note to Article 1, Paragraphs 2 and 2(b), correspond with the interpretative notes and examples regarding related parties in the Customs regulations. See 19 CFR 152.103(1), cited in this chapter.

CCC Technical Committee Advisory Opinion 7.1 discusses the Acceptability of Test Values under Article 1.2(b)(i) of the Agreement, and states:

1. Can a price below prevailing market prices for identical or similar goods be used as a test value for the purposes of Article 1.2(b)(i) of the Agreement [transaction value in sales to unrelated buyer of identical or similar goods for export to the same country of exportation]?
2. The Technical Committee on Customs Valuation expressed the following opinion:
When a price between unrelated parties has satisfied the conditions prescribed in Article 1 [transaction value] and, with any necessary adjustments in accordance with the provisions of Article 8 [additions to the price actually paid or payable], has been accepted by customs as a transaction value, that value can be used as a test value. That is not of course the case where a price is still subject of an enquiry or where the final determination by Customs value otherwise remains provisional (see Article 13 of the Agreement).

CCC Technical Committee Commentary 10.1 discusses and cites examples of situations involving questions of adjustments for different commercial levels and quantities with respect to test values.

**Headquarters Notices:**

Transfer Pricing; Related Party Transactions, Vol. 27, No. 4, Cust. B & Dec., January 27, 1993.

This notice informs the public of the Customs valuation laws concerning the appraisement of transactions between related parties. The notice provides for the following: the definition of related parties, tests for determining the acceptability of transaction value for related party transactions, and Customs rights to question transfer prices and importers' obligations to provide information to Customs.

**Judicial Precedent:**

La Perla Fashions, Inc., v. United States, 22 Ct. Int'l Trade 393 (1998), aff'd, 185 F.3d 885 (Fed. Cir. 1999) (decision affirmed without opinion).

In this three-tiered transaction, La Perla imported merchandise from its parent company, Gruppo La Perla (GLP), in Italy, and resold the merchandise to retailers in the United States. The merchandise was appraised by Customs based on the price paid by the U.S. customers to La Perla. The Court held that the transfer price between GLP and La Perla was affected by the relationship between the parties. The Court determined that Customs correctly appraised the merchandise based on the sales between the importer, La Perla, and its U.S. customers.

**Headquarters Rulings:**

## control

The importer has no ownership interest in the distributors. The relationship between the importer and its unrelated distributors is governed by a distributorship agreement, the provisions of which suggest a substantial degree of influence or control over the distributors. By virtue of the "control" that the importer exercises pursuant to the distributorship agreements, and by virtue of the market control the importer realizes as the exclusive importer of certain vehicles, the importer is in fact related to the distributors. Consequently, sales between the importer and the distributors cannot be used as the basis of deductive value. Instead, the deductive value of the imported vehicles must be calculated with reference to the unit price at which distributors sell them to unrelated parties.
**545481 dated Sep. 14, 1994.**

License fees paid by the buyer to the licensor for use of a trademark on the imported merchandise purchased from the seller (a party related to the licensor) are additions to the price actually paid or payable for the imported licensed product. The license fees are considered royalties under section 402(b)(1)(D) of the TAA. The seller and licensor were deemed to be related pursuant to section 402(g)(1)(G) which states that"[t]wo or more persons directly or indirectly controlling, controlled by or under common control with any person" are considered to be related parties.
**544815 dated May 8, 1997.**

## definition of related parties

19 U.S.C. 1401a(g)(1); 19 CFR 152.102(g); GATT Valuation Code, Article 15, paragraphs 4, 5

The president of an exporting company is a participant in a seven-member governing committee that controls the importer. Because each of the seven members of the governing committee has an equal vote, the president of the exporting company does not exercise the requisite degree of control required in order to determine that the parties are related within the meaning of section 402(g)(1).
**543425 dated Sep. 28, 1984.**

Section 402(g) of the TAA provides that any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization shall be considered related for purposes of appraisement. The statute does not provide that persons otherwise meeting these criteria are unrelated by virtue of the existence between the parties of an agreement whereby capital contributions are eventually repatriated. Accordingly, the manufacturer, the importer, and the reseller, are all related parties by reason of their participation in, and ownership of, a joint venture.
**545621 dated Sep. 19, 1994.**

The importer and the supplier are related due to the fact that the same person sits on the board of directors of both the supplier and importer. These parties are related pursuant to section 402(g)(1)(C) of the TAA. However, when a person is on the board of directors of the importer and is only an employee of the supplier, then the parties are not related pursuant to section 402(g)(1) of the TAA.
**546583 dated Dec. 2, 1997.**

The importer is a company under common control with a foreign corporation. The foreign corporation's parent company owns fifty-one percent of the foreign corporation. In turn, the parent company is owned by two separate companies, with one owning fifty-one percent and the other owning forty-nine percent. These two companies are each owned, approximately twenty percent and seventy percent, respectively, by the importer. As such, the foreign corporation and the importer are both indirectly controlled

by two separate companies and are related within the meaning of section 402(g) of the TAA.
**547662 dated Sep. 20, 2002; modified by 548305 dated Aug. 11, 2003.**

## examination of the circumstances of the sale

19 U.S.C. 1401a(b)(2)(B); 19 CFR 152.103(j) (2); GATT Valuation Agreement, Article 1, paragraph 2(a) and Interpretative Notes, Note to Article 1, paragraph 2

The transaction value of imported merchandise sold between related parties may be based upon "posted prices" which reflect the normal pricing practices of the industry in question.
**542261 dated Mar. 11, 1981 (TAA No. 19).**

In a related party situation, transaction value of identical or similar merchandise is acceptable if an examination of the circumstances of sale indicates that the relationship between the buyer and seller did not influence the price actually paid or payable, or if such value closely approximates one of the test values.
**542310 dated May 22, 1981.**

Retroactive price adjustments between related parties agreed to after importation of merchandise does not affect the transaction value of the goods, provided that the parties' relationship does not influence the price charged.
**542797 dated May 19, 1982 (TAA No. 48).**

Transaction value does not exist in a related party transaction where there is no basis upon which to ascertain whether the relationship influenced the price or that the price satisfies a test value. In the absence of a transaction or deductive value, computed value is to be used in appraising the merchandise.
**542792 dated Mar. 25, 1983 (TAA No. 61); aff'd by 543144 dated Nov. 17, 1983.**

In the instant case, the circumstances of the sale indicate that the relationship between the parties influences the price actually paid or payable and the price does not meet any of the statutory test values. Accordingly, the invoice price cannot represent transaction value.
**543378 dated Nov. 20, 1984.**

Information submitted regarding the manner in which the related parties conduct their transaction is conclusory in nature. No material has been submitted from which Customs will make a positive determination that the parties deal with one another as if they are unrelated. Therefore, no conclusion may be made as to the acceptability of transaction value.
**543272 dated Apr. 26, 1985.**

Documentary evidence has been submitted to establish that the parties, although related, buy and sell as if they are not related. The importer negotiates prices with the

related party seller, rejects the prices if dissatisfied, and may purchase from other suppliers. The importer's sales divisions determine their U.S. resale prices and make their own management decisions. Transaction value is applicable in appraising the merchandise.
**543519 dated Sep. 5, 1985; aff'd by 554999 dated Jan. 5, 1989.**

Customs will examine relevant aspects of the transaction between related parties. This includes the ways in which the parties organize their commercial relations and arrive at the price in question. Customs determines whether the relationship influenced the price in light of those considerations.
**543568 dated May 30, 1986.**

The determination that the price actually paid or payable is not influenced by the relationship between a related buyer and seller is made on a case-by-case basis.
**543806 dated Mar. 12, 1987.**

Evidence is available to indicate that the manufacturer/seller sells to unrelated purchasers in the United States at the same price at which the manufacturer sells to its related party buyer. It appears, from the totality of the circumstances surrounding the sale between the related parties, that the relationship does not influence the price and that transaction value is a valid means of appraisement.
**543984 dated Feb. 22, 1988.**

It appears from the facts and circumstances surrounding the sale of the imported merchandise that the relationship between the parties does not influence the price actually paid or payable. Therefore, transaction value is applicable in appraising the merchandise.
**544061 dated May 27, 1988.**

At the time of entry, the price actually paid or payable between the related parties was submitted to Customs by the importer and that price was accepted by Customs. Transaction value was accepted as a means of appraisement and, therefore, the determination that the relationship between the parties did not influence the price was made. There is no basis for rejecting transaction value and proceeding through the remaining bases of appraisement.
**544189 dated Aug. 11, 1988; 544547 dated Aug. 30, 1990.**

The importer has not submitted any documentation to establish either that the relationship between the two parties did not influence the price actually paid or payable for the imported merchandise or that certain deductions taken were not the result of such a relationship between the parties in question.
**544759 dated Dec. 13, 1991.**

The prices paid by unrelated purchasers and the importer to the foreign seller for identical merchandise appear to be the same, leading to the conclusion that the parties

buy from and sell to each other as if they are not related, thereby demonstrating that the price for the merchandise has not been influenced by the relationship.
**544809 dated June 1, 1994.**

No information has been submitted to support a finding that the transfer price between the related parties was acceptable under the circumstances of sale approach. In particular, there is neither any information concerning normal industry pricing practices, nor any detail about the way in which the seller deals with unrelated buyers. Finally, the seller has not shown that its price was adequate to ensure recovery of all costs plus a profit equal to its overall profit realized over a representative period of time in sales of parts of the same class or kind. Transaction value is inapplicable as a means of appraisement.
**545369 dated July 25, 1994.**

The importer has not submitted sufficient evidence to demonstrate that the transfer prices between the related parties were settled in a manner that is consistent either with the normal pricing practices of the construction industry or with the manner in which the seller sets prices with unrelated buyers. Accordingly, the importer has not met its burden of showing that the circumstances of the related party sale support the use of transaction value in appraising the merchandise.
**544686 dated Aug. 31, 1994; aff=d. by 545813 dated Sep. 11, 1996.**

The circumstances of sale information submitted by the importer is insufficient to establish that the relationship between the parties did not influence the price actually paid or payable of the imported merchandise. The value of the merchandise should be determined in accordance with the remaining methods of appraisement applied in sequential order.
**545669 dated Nov. 17, 1994.**

The buyer failed to prove that the price was not influenced by the relationship between the parties. Also, the price between the buyer and seller does not approximate available test values. Transaction value is eliminated as a basis of appraisement.
**545638 dated Feb. 13, 1995.**

The importer purchased carpets from its related-party parent in Belgium. The invoices between the parties indicated a sixty-day payment period. However, the importer did not pay its related seller for the merchandise for an average of 465 days after the invoice date. Interest was not charged and the importer did not incur late charges. Subsequent shipments were not delayed due to the untimely payments. The importer was timely in paying debts owed to unrelated parties. A review of the circumstances of sale indicates that the transfer price between the parties was insufficient to recover all costs plus a profit equivalent to the overall profit of the seller. The related seller's profit and general expenses, in unrelated sales of identical or similar rugs, were higher than the profit the seller claimed on sales to the importer. Transaction value was properly rejected as a means of appraisement.
**545960 dated Aug. 16, 1995.**

The buyer of the imported merchandise is a subsidiary of the foreign seller. The foreign seller is the related buyer's only foreign vendor. Using the same price list, the foreign seller sells its merchandise to the related buyer, unrelated U.S. distributors and unrelated U.S. retailers. The related buyer receives a higher trade discount than do the unrelated U.S. distributors. However, the trade discounts to both the related buyer and unrelated U.S. distributors are based on the volume of their purchases from the foreign seller. In addition, the larger trade discount given to the related buyer is due to the increased warehousing costs incurred by stocking a larger and more extensive line of the foreign seller's products than that which is maintained by the unrelated U.S. distributors. The related buyer also markets and advertises the foreign seller's merchandise in the United States. When the related buyer's purchases are adjusted for volume, the trade discounts are not significantly different from that between the related buyer and the unrelated distributors. Thus, it does not appear that the relationship affects the price of the merchandise; the parties buy and sell from each other as if they are unrelated. Therefore, the circumstances of sale indicate that transaction value is an acceptable method of appraisement.
**546285 dated June 7, 1996.**

The importer is a wholly owned subsidiary of the foreign seller. The importer has produced sufficient evidence to indicate that the seller settles prices with the importer in the same fashion that it settles prices with unrelated buyers because, to the extent reasonably allocable, the same costs are reflected in both prices and the same return is anticipated. The transfer price is sufficient to recover all costs plus a profit that exceeds the seller's overall profit based upon the company's financial statements. Transaction value is an acceptable method of appraising the imported merchandise.
**546211 dated June 10, 1996.**

The U.S. importer is related to the foreign seller in Canada. The related party seller has provided information regarding sales in its home market of Canada, including total sales in Canadian dollars, total costs incurred on a yearly basis, and "net return" on sales of like merchandise to the importer. Evidence from foreign sales does not satisfy the circumstance of sale test. In addition, the evidence submitted is inadequate to show that the price of the imported merchandise is sufficient to recover all costs plus a profit equivalent to the firm's overall profit realized over a representative period of time. It has not been demonstrated that the parties buy and sell from one another as if they are unrelated, nor has the importer proved that the transaction value closely approximates a previously accepted Customs value. Transaction value is not applicable in appraising the merchandise.
**545800 dated June 28, 1996.**

Based on the evidence submitted, the circumstances of sale between the related parties are insufficient proof that the price actually paid or payable was not influenced by the relationship between the parties. It does not appear as if the price between the parties was determined in a manner consistent with the way the price was determined between

the seller and unrelated U.S. buyers. Accordingly, transaction value is not applicable in appraising the imported merchandise.
**545878 dated July 31, 1996.**

The evidence submitted is insufficient to demonstrate that the relationship between the buyer and seller did not influence the price actually paid or payable, such that the related party transfer price constitutes an acceptable transaction value. The appropriate basis of appraisement should be determined by proceeding sequentially through the alternative methods of appraisement set forth in the TAA.
**545813 dated Sep. 11, 1996; aff'g 544686 dated Aug. 31, 1994.**

The importer has not provided any evidentiary support for the assertion that the relationship between the parties does not influence the price actually paid or payable. The information available indicates that the parties do not buy and seller from one another as if they are unrelated. In addition to making payments on the invoice value of the imported merchandise, the importers makes additional payments for advertising, promotional and design costs, accounting services, and financing services. It appears as if the price is influenced by the relationship between the parties; and, thus, transaction value is not available as a means of appraisement.
**546430 dated Jan. 6, 1997.**

An importer purchases frozen vegetables and mushrooms in jars from its wholly owned Mexican subsidiaries. The invoices submitted for appraisement purposes reflect transfer, or estimated, prices based on an "export invoice pricing policy." The importer effects payments via lump sum monthly transfers in response to the exporter's request for funds, without regard to specific entries. An aggregate average price, as opposed to an entry specific price, is derived from the prices set by the Mexican exporters, wherein the prices fluctuate based on actual costs and shipping volume. This method of pricing does not represent a formula nor does it result in a fixed price for the merchandise. In addition, evidence has not been provided concerning the circumstances of sale between the related parties that would indicate that their relationship did not influence the price actually paid or payable. Transaction value is not applicable in this case.
**546231 dated Feb. 10, 1997.**

The importer failed to establish that the price of the imported merchandise was not influenced by its relationship with its related party seller. The importer submitted inadequate evidence regarding the circumstances of sale. The financial information furnished is insufficient to establish that the price the seller charged the importer was adequate to ensure recovery of all costs plus a profit equivalent to the firm's overall profit realized over a representative period of time in sales of merchandise of the same class or kind. Transaction value based upon this related party sale is unacceptable.
**546449 dated Jan. 6, 1998.**

The importer proposes a restructuring of the importation transaction with its related supplier to create a sale of merchandise. The merchandise has previously been given to the importer, free of charge. The price for the imported merchandise is to be

negotiated based on industry norms. Assuming that a bona fide sale occurs, there is no impediment to an importer restructuring its importation transaction for the express purpose of creating a sale of merchandise that may qualify for appraisement pursuant to transaction value. However, the related party prices must be acceptable within the meaning of the valuation statute.
**546552 dated Jan. 13, 1998.**

In order to establish that the relationship between the parties did not influence the price actually paid or payable, the importer provided two sets of invoices for two different products. The invoices show that the buyer paid its related party the same price for each product before and after the parties became related. However, the mere fact that the prices remain unchanged before and after the parties became related is not prima facie evidence that the relationship between the parties did not influence the price, i.e., market conditions change over time and the prices of products must be kept current. The fact that the prices remained unchanged even though the parties became related must be examined along with other evidence regarding the circumstances of sale in order to determine whether transaction value is in fact applicable in appraising the imported merchandise.
**546561 dated Mar. 16, 1998.**

The importer indicates that the price paid by the related party buyer for the imported merchandise reflects a list price, including a discount for wholesaler expenses, which is consistent with the foreign parent's sales to other related and unrelated purchasers in third countries. The Statement of Administrative Action, Customs Regulations (19 CFR 152.103(j)(2), provides that a price will not be considered to have been influenced if it is shown that the price is profit realized over a representative period of time in sales of merchandise of the same class or kind. The importer has provided no such comparison of profit. On the contrary, the submitted evidence indicates that the subsidiary buyer did not enjoy any net profit. We cannot find that the relationship between the parties did not influence the price actually paid or payable such that transaction value is the appropriate method of appraisement.
**546072 dated May 21, 1998.**

Based on the evidence submitted, Customs concludes that an examination of the circumstances of sale indicates that the relationship of the parties did not influence the price actually paid or payable for the imported merchandise. Accordingly, the sale between the importer and its related company may be used as the basis for transaction value. The transaction value of the imported merchandise must also include the material assists, packing costs, and any other applicable additions.
**546873 dated Mar. 24, 1999.**

The buyer and seller of the imported merchandise are related. The circumstances of sale between the parties indicate that the relationship between the parties influences the price. Specifically, the evidence does not demonstrate that the price is determined in a manner consistent either with industry practice or with the way the seller deals with unrelated buyers. The Statement of Administrative Action provides that the price will not be considered to have been influenced if it is shown that the price is adequate to ensure recovery of all costs plus a profit that is equivalent to the firm's overall profit realized over a representative period of time in sales of merchandise of the same class or kind. There is insufficient information regarding the circumstances of sale, and the circumstances of sale test has not been met; therefore, it cannot be determined whether the trade discounted prices could form the basis of transaction value. Consequently, the imported merchandise should not be appraised under transaction value.
**546865 dated Aug. 6, 1999.**

In this case, the price is determined using the prices on three invoices, i.e., the cut, make, and trim (CMT), the material purchase recovery (MPR), and the appropriate costs on the warehousing and expense allocations (WEA). Also, the total price paid by the buyer to the related seller is adequate to ensure the recovery of all costs plus a profit. Thus, the evidence presented indicates that the relationship between the parties does not influence the price actually paid or payable. Therefore, based on the evidence available, the transaction value between the related parties is represented by the sum total of the three invoices as identified above.
**547108 dated Mar. 28, 2000.**

All of the importer's imported products are covered by an Advanced Pricing Agreement (APA) for its related party transactions. An APA is a prospective agreement between a taxpayer and the IRS regarding the correct transfer pricing methodologies under tax law to be applied to transactions between related parties. Based on the review of the information and the information provided to the IRS, the importer has demonstrated that the price has not been influenced by the relationship for purposes of the circumstances of sale test. Thus, transaction value is the proper basis of appraisement for the related party transactions.
**546979 dated Aug. 30, 2000.**

Under the terms of a buying agency agreement, the importer and buyer agree to form a buying agency relationship and the importer maintains control over the purchasing process. The agreement indicates that purchases shall be made only upon the explicit instructions of the importer. The buying agent has acquired a controlling interest in one of the factories that manufacturers merchandise for the importer. However, the buying agent does not share its commission with the manufacturer, nor does the agent share any expenses or profits with this manufacturer. Nothing in the agreement prevents the importer from purchasing directly from the manufacturers without the buying agent. The fact that profits realized by an agent may indirectly benefit the manufacturer does not in itself bar commissions from being non-dutiable. Therefore, the commissions paid to

buying agent constitute bona fide buying commissions that are not part of the price actually paid or payable for the imported merchandise, as long as the parties comport with the terms of the buying agency agreement.
**547806 dated Jan. 31, 2001.**

The U.S. importer purchased stainless steel bars from a related party, and under market conditions. The joint venture agreement between the two parties requires that the "related" party status not confer a benefit to either entity. The test values method and the circumstances of sale approach both indicate that the relationship between the parties did not influence the sale. The transfer price between the importer and the related party manufacturer is an acceptable basis of appraisement under transaction value.
**548024 dated Mar. 5, 2002.**

The importer and certain vendors are related parties. Whether the price between the importer and its related vendors is acceptable as a basis for transaction value depends upon the circumstances of the sale. Information submitted by the importer did not satisfy the importer's burden to demonstrate that the relationship between the parties did not affect the price between the parties. The merchandise cannot be appraised under the transaction value method of appraisement.
**548087 dated Apr. 5, 2002.**

An importer proves that sales between related parties are conducted at arm's length when the importer provides sufficient information to satisfy the circumstances of sale test. The circumstances of sale test requires the importer to demonstrate that the sale between the related parties is not influenced by their relationship. The importer may demonstrate this by establishing that the seller determines the price in a consistent manner with both related and unrelated parties. For comparison purposes, sales by the Italian seller to an unrelated UK distributor are acceptable when the seller does not sell directly to unrelated parties in the United States. The fact that absolute price levels are different does not preclude a determination that the seller's pricing methodology was consistent, provided the difference in pricing is explained by reasons other than a relationship between the parties. The discrepancy in the commercial conditions between the United States and the United Kingdom is an acceptable explanation for differences in the absolute price. Additionally, the related party price was high enough to ensure that the seller recovered all costs and the requisite amount of profit.
**548098 dated May 20, 2002.**

The circumstances of sale test requires not only that there be consistency in the importer's price levels with related and unrelated parties, but also that comparable methodologies for pricing are followed. It is inadequate to merely *allege* that related and unrelated party prices are similar because the exporter may have employed

dissimilar methodologies that resulted in similar prices. In addition, in the absence of previously accepted test values, Customs cannot evaluate whether sales between related parties were conducted at arm's length under the test values method.
**547982 dated May 20, 2002.**

The transactions between the middleman and the manufacturer constitute bona fide sales of vehicles clearly destined for exportation to the U.S. Even so, these transactions could not be used as a basis for appraisement under transaction value. The importer's evidence is insufficient to show that the sales were conducted at arm's length. Under the circumstances of sale test, the related status of the parties will not preclude appraisement under transaction value if the importer can demonstrate that the price between the middleman and the manufacturer was settled in a manner consistent with normal pricing practices of the industry. In order to establish normal pricing in the industry, objective evidence is needed regarding how prices are set in the industry in question. The company to industry comparison provided by the importer fails to clearly conform to a sufficiently objective standard. Prominent flaws in the importer's report included the following: (1) the industry in question was not clearly limited to manufacturers of vehicles comparable to the manufacturer; (2) the methodology for determining the transfer price between the middleman and the manufacturer was not included; (3) the middleman's full cost mark up was not a basis of comparison; and (4) the profit level indicator comparisons should were not based on product sold.
**547672 dated May 21, 2002.**

The transactions appear to be analogous to shelter operations, which involve a U.S. corporation that is established for the sole purpose of facilitating assembly operations for third party clients in the United States. Accordingly, the use of transaction value is appropriate so long as the relationship between the importer and the supplier did not influence the price. Absent any comment from the port, we assume that the pricing component, i.e., the amount of profit earned by the importer, is consistent with industry practices. Therefore, the price between the importer and the supplier was not influenced by the relationship between the parties. The importer acted as a buyer of the imported merchandise rather than as a selling agent for its related party assembler/manufacturer. Consequently, the transaction value for the sale between the importer and the supplier is the appropriate method of valuation.
**547729 dated Sep. 20, 2002.**

The importer has met its burden of proof in regard to the arm's length nature of its transactions with its related party suppliers. The supplier's profit figures are comparable to other companies selling like products to the importer and the sales documentation and terms used in the importer's transactions mirror those of unaffiliated transactions. It is our conclusion that the circumstances of the sales between the importer and its

related suppliers demonstrate that the prices are acceptable for use as the price actually paid or payable for appraisement purposes.
**548305 dated Aug. 11, 2003; reconsideration of 547662 dated Sep. 20, 2002, (additional information presented).**

The relationship between the related parties does not influence the price actually paid or payable based upon the circumstances of sale test. The parties have demonstrated that the circumstances of sale indicate that while related, the parties buy and sell from one another as if they were unrelated. This conclusion is based, in part, upon a review of information contained in the company's bilateral Advanced Pricing Agreement (APA). An APA constitutes a prospective agreement between a taxpayer and the IRS (and in the case of bilateral APAs, foreign tax authorities) regarding the correct transfer pricing methodologies under tax law to be applied in transactions between related parties. Although CBP's approach to related party transactions differs from the IRS approach, in some cases, especially where the APA is bilateral, some of the information in the APA may be relevant for purposes of applying the circumstances of sale test.
**548233 dated Nov. 7, 2003.**

## rejection of transaction value

In this case, the evidence indicates that the relationship between the parties influenced the price actually paid or payable for the imported merchandise, and the transaction value of the imported merchandise did not closely approximate a test value. The merchandise cannot be appraised pursuant to transaction value but must instead be appraised based upon the transaction value of identical merchandise.
**544713 dated Dec. 2, 1992; aff=d by 545274 dated Mar. 9, 1995.**

In an examination of the circumstances of the related party sale, Customs is unable to determine that the relationship did not influence the price actually paid or payable. No evidence has been submitted to indicate that the price is settled in a manner consistent either with the normal pricing practice in the industry or with how the seller sells to unrelated parties. Customs is also unable to determine if the price "closely approximates" that of certain test values. There is no transaction value of identical or similar merchandise and there has not been a previously accepted computed or deductive value of identical or similar merchandise appraised by Customs and which could be used in the instant case. Under the circumstances, transaction value is not an appropriate method of appraisement for the imported merchandise.
**544812 dated Mar. 3, 1994; revoked by 545622 dated Apr. 28, 1994 (finding transaction value inapplicable where Customs is unable to determine the price actually paid or payable).**

There is no authority for the position that in order for a transfer price between related parties to form the basis of transaction value, the transfer price must include a price element associated with the resale of the merchandise, after importation. Rejecting the use of transaction value on this basis is improper.
**545929 dated Jan. 30, 1998.**

Insufficient evidence is available to appraise the imported merchandise pursuant to transaction value of identical or similar merchandise set forth in ' 402(c) of the TAA, the deductive value set forth in ' 402(d), or the computed value set forth in ' 402(e). As such information is available, appraisement should proceed pursuant to the hierarchy established in ' 402(b). Based on the evidence presented, appraisement should be based on the related party's invoice price to the importer, as a reasonably adjusted transaction value pursuant to ' 402(f) of the TAA. To appraise the merchandise at the price list is an arbitrary value and, as such, it is precluded from serving as the basis of appraisement under '402(f) of the TAA.
**546953 dated May 5, 1999.**

The importer retains a 16.5 percent commission and remits the balance to its related company. Even if the transactions between the related parties were deemed to be bona fide sales, no evidence has been submitted to indicate that the parties dealt with one another on an arm's length basis. No evidence was submitted to show that the parties dealt with each other as though they were unrelated. Based on the information submitted, the subject merchandise may not be appraised under transaction value based on the related party price between the importer and the related party. Instead, transaction value should be based on the price actually paid or payable between the importer and its U.S. customers.
**547790 dated Sep. 10, 2001.**

The sales price between the importer and its related company is not an acceptable basis for transaction value, even though the importer has proven the existence of a bona fide sale. The importer's submission lacks the objective evidence detailing the normal pricing practice in the industry in question, assuming such a practice even exists for the designer industry. As such, the importer has not established an acceptable related party price merely by establishing that the price was settled in a manner consistent with normal pricing practices in the industry.
**548095 dated Sep. 19, 2002.**

An agreement between two related parties provides for the importation of components for sale in the United States. The price agreed to is described as "at least the normal manufacturing cost for the imported material and . . . a voluntary royalty to . . . for the use of copyrighted materials." Based upon the agreement between the parties, we cannot conclude that the relationship between the parties will not affect the price

actually paid or payable. Therefore, transaction value is not an acceptable means of appraisement.
**548291 dated May 28, 2003.**

The buyer and seller are related parties. Although the transactions are bona fide sales wherein the merchandise is clearly destined for the U.S., there is insufficient information to establish that the price between the parties is not influenced by the relationship. No information regarding the manufacturer's pricing practices in sales to unrelated parties or the normal pricing practices of the industry has been provided. There is also no information regarding the manufacturer's cost and overall profit levels. Also, no information has been submitted to demonstrate whether the related party price closely approximates previously accepted test values.
**548239 dated June 5, 2003.**

## sales to unrelated buyers

19 U.S.C. 1401a(b)(2)(B); 19 CFR 152.103(j) (2); GATT Valuation Agreement, Article 1, paragraph 2(b) and Interpretative Notes, Note to Article 1, paragraph 2(b)

If a related buyer in the United States is purchasing merchandise from a foreign seller for approximately the same price that the merchandise is sold to unrelated buyers, this requires a finding that the transaction value is acceptable.
**543257 dated Sep. 26, 1984.**

The evidence indicates that the relationship between the buyer and seller did in fact influence the price for the merchandise. The price for the merchandise sold by the parent corporation to its subsidiary is 14% lower that the price actually paid or payable by unrelated purchasers. No information regarding any test value is available.
**543615 dated Dec. 4, 1985.**

In this case, the price is not influenced by the relationship of the parties if, in fact, the price of the imported merchandise closely approximates that paid by sales to unrelated distributors in the United States.
**544049 dated Jan. 19, 1988.**

Evidence is available to indicate that the manufacturer/seller sells to unrelated purchasers in the United States at the same price at which the manufacturer sells to its related party buyer. It appears from the totality of the circumstances surrounding the sale between the related parties that the relationship does not influence the price and that transaction value is a valid means of appraisement.
**543984 dated Feb. 22, 1988.**

The related parties in this case have not met their burden of establishing that the price has not been influenced by the relationship between them. The seller admits that it incorporates a 25% profit margin into the price for sales to non-related parties, but

excludes the profit margin when it sells to the importer. The parties failed to submit any evidence to indicate that the related party price is consistent with industry practice or that the alleged transaction value closely approximates a test value.
**544239 dated Nov. 18, 1988.**

A U.S. subsidiary purchases merchandise for its own account from the related party foreign seller. In addition, the U.S. subsidiary acts as an agent in transactions between the foreign seller and unrelated U.S. customers. In comparing the prices in the related and unrelated transactions, the only difference in the price for the two types of sales is the commissions paid to the U.S. subsidiary in the sales between the foreign seller and the unrelated U.S. purchasers. This supports the contention that the relationship does not affect the price actually paid or payable, and transaction value is the appropriate basis of appraisement between the related parties.
**545087 dated Dec. 7, 1993.**

## test values

19 U.S.C. 1401a(b)(2)(B)(i) and (ii); 19 CFR 152.103(j)(2)(i) and (ii); GATT Valuation Agreement, Article 1, paragraph 2(b) and (c) and Interpretative Notes, Note to Article 1, paragraph 2

In a related party situation, transaction value of identical or similar merchandise is acceptable if an examination of the circumstances of sale indicates that the relationship between the buyer and seller did not influence the price actually paid or payable, or if such value closely approximates one of the test values.
**542310 dated May 22, 1981.**

The transfer price of merchandise purchased from a related party is acceptable as a transaction value where it closely approximates a test value, i.e., the computed value of identical or similar merchandise produced by the same manufacturer.
**542580 dated Nov. 4, 1981 (TAA No. 41).**

Once a particular importation is appraised on the basis of computed value, that value may then be used as a test value for purposes of determining whether a transaction value exists with respect to merchandise, assuming that the subsequent shipments are exported to the United States "at or about the same time" as the test value shipment.
**542580 dated Nov. 4, 1981 (TAA No. 41); 543568 dated May 30, 1986.**

Home market prices are specifically excluded as a means of comparison in determining whether the test values referred to in section 402(b)(2)(B) closely approximate the transfer price between the related parties.
**542868 dated July 29, 1982.**

Transaction value does not exist in a related party transaction where there is no basis on which to ascertain whether the relationship influenced the price, or that the price

satisfies a test value. In the absence of a transaction or deductive value, computed value is to be used in appraising the merchandise.
**542792 dated Mar. 25, 1983 (TAA No. 61); aff'd by 543144 dated Nov. 17, 1983.**

For an importer-parent that declares that it sets the prices, transaction value requires a determination that the relationship between the buyer and seller has not influenced the price or that a test value has been met.
**543144 dated Nov. 17, 1983; aff'g 542792 dated Mar. 25, 1983 (TAA No. 61).**

In considering the nature of the merchandise and industry in question, a difference of even four percent between a transfer price in a related party situation and a computed value which serves as a test value is not a close approximation and, consequently, does not meet the statutory test value. Accordingly, the transfer prices cannot represent transaction value.
**543546 dated June 7, 1985.**

Test values refer to values that are determined pursuant to actual appraisements of imported merchandise. Thus, a computed value calculation may not serve as a test value unless that calculation represents an actual appraisement of imported merchandise determined pursuant to the definition of computed value set forth in section 402(e).
**543568 dated May 30, 1986.**

For test value purposes, sales to a related party do not suffice to determine whether the transaction value of the merchandise to be imported closely approximates the value for identical or similar merchandise sold to the related party.
**543941 dated Aug. 27, 1987.**

Although a related party transaction price will be considered acceptable by a showing that those prices closely approximate certain test values, evidence of comparable sales of similar merchandise to customers outside of the U.S. does not qualify as a test value.
**543957 dated Nov. 5, 1987.**

The test value method can be used for comparison purposes only if the values relate to merchandise exported to the United States at or about the same time as the imported merchandise. In this particular case, no transaction, deductive, or computed values are available as test values.
**544409 dated Nov. 20, 1989.**

An examination of the circumstances of sale between the related parties does not validate the use of transaction value. However, in comparing transfer prices of the imported garments to previously accepted computed values, the transfer prices closely approximate the computed value of identical merchandise. Accordingly, transaction value is an acceptable basis on which to appraise the merchandise.
**544662 dated Mar. 18, 1994; modified by 545909 dated Nov. 30, 1995.**

The term "test values" refers to values determined pursuant to actual appraisements of imported merchandise. There are no previously accepted deductive or computed value appraisements of the merchandise in question. Therefore, the test value method may not be used to demonstrate the acceptability of the related party transfer price.
**545369 dated July 25, 1994; 544686 dated Aug. 31, 1994.**

Transaction value is eliminated as a method of appraisement. Based upon the evidence submitted, we cannot find either that the relationship between the parties did not influence the price actually paid or payable, or that the transaction value represented by the price paid by the related party buyer closely approximates the value of the identical merchandise sold to unrelated buyers, such that transaction value is an appropriate method of appraisement.
**545274 dated Mar. 9, 1995; aff'g 544713 dated Dec. 2, 1992.**

In determining whether a test value closely approximates the transaction value in this case, the test value must reflect a value previously accepted as a customs value. Customs has no authority to utilize values for the same entries of merchandise, based on different valuation methods, as evidence as to whether a test value closely approximates the instant transaction value.
**544455 dated Mar. 14, 1995; 545506 dated Nov. 30, 1995**.

The term "test values" refers to values previously determined pursuant to actual appraisements of imported merchandise. The evidence submitted reveals that during the same time period when the imported merchandise was being imported, the seller sold identical merchandise to an unrelated third party. The invoiced prices between the seller and the third party were used as the transaction value of the imported merchandise and appear to closely approximate the prices for identical merchandise sold from the seller to its related party buyer. Based on the information presented, Customs is satisfied that the relationship between the parties did not influence the price of the merchandise. Accordingly, the merchandise should be appraised pursuant to transaction value, based upon the price between the related parties.
**546319 dated Apr. 18, 1997; modifies 545272 dated Aug. 17, 1995 (additional evidence submitted by importer regarding test values).**

The U.S. importer purchased stainless steel bars from a related party under market conditions. The joint venture agreement between the two parties requires that the related party status not confer a benefit to either entity. The test values method and the circumstances of sale approach both indicate that the relationship between the parties did not influence the sale. The transfer price between the importer and the related party manufacturer is an acceptable basis of appraisement under transaction value.
**548024 dated Mar. 5, 2002.**

The circumstances of sale test requires not only that there be consistency in the importer's price levels with related and unrelated parties, but also that comparable methodologies for pricing are followed. It is inadequate to merely *allege* that related

and unrelated party prices are similar because the exporter may have employed dissimilar methodologies that resulted in similar prices. In addition, in the absence of previously accepted test values, Customs cannot evaluate whether sales between related parties were conducted at arm's length under the test values method.
**547982 dated May 20, 2002.**

## transfer prices

Assuming that a related party transaction may otherwise be eligible for treatment under transaction value, transfer prices based on standard costs, without subsequent adjustment, represent the transaction value of the merchandise.
**542315 dated May 13, 1981 (TAA No. 25); 542675 dated July 20, 1982; 543212 dated May 7, 1984.**

The transfer price between related parties closely approximates the computed value of the identical merchandise; therefore, a transaction value may be found for the merchandise sold at the transfer price. It is necessary to appraise an initial importation on the basis of computed value in order to establish the test value to be used to support transaction value.
**542580 dated Nov. 4, 1981 (TAA No. 41).**

Transfer prices between related parties which are based upon estimated costs, to be reconciled with actual costs on a periodic basis, are applicable and proper in appraising merchandise pursuant to transaction value. Evidence indicates that the estimated transfer prices are not influenced by the relationship between the parties.
**543079 dated Sep. 20, 1983.**

Excess costs (the difference between actual and standard costs, as established in an excess cost account, from the start of production) are amortized over current and future production and reflected in the selling price (transfer price) between the related parties in accordance with generally accepted accounting principles. The selling price is periodically adjusted, through increases or decreases. This method meets the requirements of the transaction value methodology, and accounts for start-up costs in an acceptable manner.
**543153 dated May 1, 1984.**

A determination that the related party transactions constitute bona fide sales does not mean or imply that the transaction values between the parent and subsidiary are "acceptable" within the meaning of section 402(b)(2)(B) of the TAA. This is an independent determination that must be made with respect to the importations.
**543511 dated May 29, 1986.**

The primary factory to consider in determining whether a bona fide sale exists between a foreign seller and its related U.S. importer is whether there is a transfer of ownership (i.e., title and risk of loss) from the seller to the purported buyer. Other facts include whether the amounts remitted to the seller by the buyer are equal to the related-party

transfer prices and whether these payments can be linked to specific import transactions.
**543708 dated Apr. 21, 1988.**

The transfer price is not accepted as a valid transaction value between the related parties. Because the parties refuse to supply information that would permit appraisement on other bases of valuation, resort to a section 402(f) appraisement must be made in this case.
**543850 dated June 20, 1988.**

The importer is a subsidiary of the seller and, therefore, the parties are related within the meaning of section 402(g) of the TAA. No evidence has been presented to substantiate that (1) the importer's price is settled in a manner consistent with industry pricing practices; (2) that the price is adequate to ensure recovery of all costs plus a profit equal to the firm's overall profit realized in a representative period of time in sales of merchandise of the same class or kind; or (3) that the price closely approximates a test value. Accordingly, the evidence is insufficient to support the use of transaction value.
**545753 dated Mar. 8, 1996.**

The producer and the importer are related parties. The importer's position that the transfer price ensures that the producer recovers its costs plus a reasonable profit does not satisfy the costs plus profit factor as articulated in the Statement of Administrative Action (SAA). The SAA merely provides that the price will not be considered to have been influenced if it is shown that the price is adequate to ensure recovery of all costs plus a profit that is "equivalent to the firm's overall profit realized over a representative period of time in sales of merchandise of the same class or kind." In addition, although a transfer price established in accordance with generally accepted accounting principles might provide a legitimate transaction value, it must be established that the relationship did not influence the price. Based on the evidence submitted, it has not been demonstrated that the price paid by the related party buyer is acceptable for establishing transaction value.
**546166 dated Apr. 5, 1996.**

To produce new and/or improved products the importer conducts worldwide basic research and specific development. The research and development work is undertaken overseas and in the United States by corporate technical centers established specifically for that purpose and by various corporate affiliates assigned responsibility for discrete, product-focused development. The importer is capable of segregating the research and development expenses attributed to each affiliate. Thus, the price between the parties represents an acceptable transaction value only where it includes all of the costs attributed to the selling affiliate. Where the price between related parties excludes those costs and an appropriate adjustment is not made to the declared value,

we conclude that the relationship between the parties influences the price such that the use of transaction value is unacceptable.
**546471 dated Sep. 28, 2001.**

The auditors and the port reviewed voluminous amounts of material and both agreed that the related party price was acceptable for determining the transaction value. Counsel for the importer also agreed that transaction vale was appropriate. Accordingly, Customs determined that the transaction value was acceptable for the subject entries. Counsel for the importer then claimed that the related party price was unacceptable for determining transaction value. Customs is not required to question the accountability of the related party price and there is no compelling reason to question the related party price for the purposes of determining the transaction value of the subject merchandise.
**548065 dated Sep. 6, 2002; aff'g 547108 dated Mar. 28, 2000.**

The importer makes remittances to its related party seller pursuant to a corporate transfer pricing policy. A portion of its remittance relates to purely domestic purchases unrelated to the imported merchandise. An additional portion relates to foreign purchases from unrelated sellers. As such, the remittances reflect income that is unrelated to the purchase of imported merchandise. Accordingly, subject to acceptable documentation prepared in accordance with generally accepted accounting principles, only the amount attributable to the purchase of imported merchandise needs to be reported for purposes of reconciliation since it is that portion that is subject to duties and fees.
**548386 dated Nov. 26, 2003.**

# REPAIRS

## INTRODUCTION

See chapter on DEFECTIVE GOODS, supra.

**Headquarters Rulings:**

## price renegotiations

See chapters on DEFECTIVE GOODS and REBATES SUBSEQUENT TO IMPORTATION, supra.

## repairs in the United States

Defective parts imported for repair and resale in the United States should be appraised under the superdeductive value method of appraisement, reasonably adjusted under section 402(f) of the TAA.
**543123 dated Dec. 20, 1983.**

Defective parts returned to the United States for replacement are not considered "sold" for exportation to the United States, and transaction value is eliminated as means of appraisement.
**543288 dated Nov. 26, 1984.**

The importer purchased and imported parts that were manufactured abroad. The parts were then exported out of the United States to a foreign subsidiary. Subsequently, some of the parts would break, thereby necessitating their return to the United States. When the merchandise is returned to the United States for repair, adjustments to the original purchase price in accordance with generally accepted accounting principles are made in order to properly appraise the merchandise.
**543637 dated Dec. 2, 1985.**

Defective watches are returned to the U.S. importer for repair. The defective watches are then exported from the United States to the importer's related party in the Philippines for repair and return (pursuant to a warranty provision). The watches are then repaired and sold back to the importer at prices which cover the cost of repairs plus a mark-up. Under these circumstances, the defective watches acquired by the importer and sent to the related party for repair are considered assists. The value attributed to the defective watches in this case is equal to the costs incurred in transporting the watches to the related party's plant.
**544241 dated Jan. 12, 1989.**

A related party in the United States imports merchandise from Canada to be repaired at the importer's U.S. repair facility. There is no sale between the parties nor are there any

sales of identical or similar merchandise available on which to base a transaction value. The importer does not resell the merchandise in the United States, thereby eliminating deductive value as a means of appraisement. There is insufficient information available to appraise the merchandise pursuant to computed value. The merchandise is properly appraised pursuant to section 402(f) according to seventy percent of the standard cost of new equipment. This is the inventory value of the goods in the Canadian company's accounting records.
**544377 dated Sep. 1, 1989.**

Sufficient evidence was submitted to substantiate that the merchandise was damaged at the time of importation and should be appraised in its lesser condition as imported. The actual repair costs were, in fact, a measure of the extent of the damage of the merchandise. Therefore, an allowance in appraised value of the subject merchandise may be equal to the amount of actual repair costs only. The calculation of the allowance should not include the expenses for overseeing and examining the repair work, transportation involved in the repair work, and the expense of the warehouse facility. None of these expenses are actual costs of the repair work and can not be part of the calculation of the allowance, in that these expenses do not have a direct correlation to the extent of the damage.
**547042 dated June 17, 1999.**

Components imported into the United States for repair or replacement cannot be appraised pursuant to transaction value. There is no sale for exportation to the United States upon which to base a transaction value. The importer has provided information regarding the cost for the repair parts and depreciation for replacement parts. The method employed by the importer based on cost for repair parts and depreciation for replacement parts is an acceptable method of appraisement based upon 19 USC 1401a(f), Value if Other Values Cannot be Determined.
**548211 dated July 2, 2003.**

## warranty provisions

The consideration paid for imported merchandise (the price actually paid or payable), includes all charges paid for any warranty which is a guarantee that the merchandise will be free from defects. The warranty attaches to and is an integral part of the merchandise and the payments made for this warranty are part of the consideration paid for the merchandise. The charge is properly part of the price actually paid or payable.
**542699 dated Mar. 10, 1982.**

An article imported under warranty and subsequently found to be defective by the importer is exported for repairs and later re-imported. The duty is assessed upon the value of the repairs or alterations. It is irrelevant that the article is under warranty or that the repairs have been performed at no cost to the importer.
**543142 dated May 7, 1984; 543180 dated July 17, 1984**.

Defective watches are returned to the U.S. importer for repair. The defective watches are then exported from the United States to the importer's related party in the Philippines for repair and return (pursuant to a warranty provision). The watches are then repaired and sold back to the importer at prices that cover the cost of repairs plus a mark-up. Under these circumstances, the defective watches acquired by the importer and sent to the related party for repair are considered assists. The value attributed to the defective watches in this case is equal to the costs incurred in transporting the watches to the related party's plant.
**544241 dated Jan. 12, 1989.**

The importer sells imported merchandise to U.S. consumers and guarantees the quality of the merchandise by means of a warranty. Initial returns of defective merchandise are repaired by the importer and resold as second quality merchandise. The importer also contracts with unrelated service centers to repair defective merchandise. These service centers invoice the importer for the total cost of repair. The amount for the warranty is included in the total payment transferred from the importer to the foreign seller in exchange for the imported merchandise. It is properly part of the price actually paid or payable and dutiable pursuant to transaction value.
**544394 dated Oct. 9, 1990; 544368 dated Oct. 9, 1990; 544370 dated Oct. 9, 1990; 544574 dated Nov. 14, 1990.**

## value of repairs for merchandise damaged in-transit

Merchandise dutiable under transaction value does not include the value of repairs for in-transit damage that occurred in a third country and which merely restores the merchandise to its original condition, even if replacement parts are needed. However, the addition of parts in a third country that enhances the value of the merchandise may be sufficient to make the third country the country of exportation for Customs purposes, in which case, transaction value is inapplicable.
**542516 dated Oct. 7, 1981 (TAA No. 39); <u>modified</u> <u>by</u> 543737 dated July 21, 1986.**

# RESTRICTIONS ON THE USE OF IMPORTED MERCHANDISE

## INTRODUCTION

19 U.S.C. 1401a(b)(2)(A) provides for the following:

The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this Act only if-
(i) there are no restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that- (I) are imposed or required by law, (II) limit the geographical area in which the merchandise may be resold, or (III) do not substantially affect the value of the merchandise;
(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to a condition or consideration for which a value cannot be determined with respect to the imported merchandise;
(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E) [addition to price actually paid or payable for proceeds];
(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(NOTE: With respect to 19 U.S.C. 1401a(b)(2)(A)(ii), (iii) and (iv), see chapters on CONDITIONS OR CONSIDERATION FOR WHICH A VALUE CANNOT BE DETERMINED, PROCEEDS OF A SUBSEQUENT RESALE, and RELATED PARTY TRANSACTIONS, supra.)

The corresponding Customs regulation is 19 CFR 152.103(j)(1), i.e., “Limitations on use of transaction value.”

In addition, 19 CFR 152.103(k), along with an interpretative note, states:

Restrictions and conditions on sale. (1) A restriction placed on the buyer of imported merchandise that does not affect substantially its value will not prevent transaction value from being accepted as the appraised value.
(i) Interpretative note. A seller requires a buyer of automobiles not to sell or exhibit them before a fixed date that represents the beginning of a model year.

**GATT Valuation Agreement:**

Article 1, paragraph l(a) through (d) parallels 19 U.S.C. 1401a(b)(2)(A)(i) through (iv).

The language in the Interpretative Notes, Note to Article 1, Paragraph I(a)(iii), is similar to the interpretative note cited in 19 CFR 152.103(k).

In addition, CCC Technical Committee Commentary 12.1 discusses the meaning of the term "restrictions" in Article 1 of the Agreement. In relevant part, that commentary states:

[A] number of factors may have to be taken into consideration to determine whether the restriction has substantially affected the value or not. These factors include the nature of the restriction, the nature of the imported goods, the nature of the industry and its commercial practices, and whether the effect on the value is commercially significant. Since these factors may vary from case to case, it would not be proper to apply a fixed criterion in this respect. For example, a small effect on the value of a case involving one type of goods may be treated as substantial while a much greater change in the value of goods of another type may not be treated as substantial.
An example [of] restrictions as to the disposition or use of the goods which do not substantially affect the value of the goods is mentioned in the Interpretative Notes to Article 1, i.e., where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year. Another such example would be where a manufacturing firm of cosmetics imposes through contractual provisions a requirement on all importers that its product be sold to consumers exclusively through individual sales representatives undertaking house-to-house sales since its whole distribution system and advertising approach is based on this kind of sales effort.
On the other hand, a restriction which could have a substantial effect on the value of the imported goods is one that is not usual in the trade concerned. An example of such a restriction would be the case where a machine is sold at a nominal price on condition that the buyer uses it only for charitable purposes.

CCC Technical Committee Case Study 3.1 provides several examples on the use of restrictions and conditions in Article 1.

# RIGHT OF APPEAL

## INTRODUCTION

### GATT Valuation Agreement:

Article 11 provides for the following:

1. The legislation of each Party shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. He shall also be informed of his rights of any further appeal.

The Interpretative Notes, Note to Article 11, states:

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal. Payment of normal court costs and lawyers' fees shall not be considered a fine.

3. However, nothing in Article 11 shall prevent a Party from requiring full payment of assessed customs duties prior to an appeal.

CCC Technical Committee Advisory Opinion 17.1 defines the scope and implication of Article 11 and states:

1. Does the phrase "without penalty", which is used in respect of the appeal provisions contained in Article 11, prohibit Customs from requiring the full payment, prior to the appeal, of any penalties imposed as a result of valuation fraud and other forms of contravention of valuation law?

2. The question arises because paragraph 3 of the Interpretative Note to Article 11 refers to full payment, prior to the appeal, of assessed Customs duties but does not address cases involving fines and penalties.

3. The Technical Committee on Customs Valuation concluded that paragraph 2 of the Interpretative Note to Article 11 is explicit in its definition of the words "without penalty" which "means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal".

4. Furthermore, the importer's right of appeal under this Article is in respect of decisions taken by the customs administration with regard to the determination of Customs value within the provisions of the Agreement.

5. It follows that cases of fraud fall outside the scope of this Article; in such cases, appeal procedures would be governed by national legislation which could provide for prior payment of penalties as well as of the duty.

# ROYALTY PAYMENTS AND LICENSE FEES

## INTRODUCTION

19 U.S.C. 1401a(b)(1) provides for the following:

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to - . . . Aany royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States . . . ."
The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in paragraphs (A) through (E) [royalty or license fee - paragraph (D)] only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise shall be treated, for purposes of this section, as one that cannot be determined. (emphasis added)

The corresponding Customs regulation is 19 CFR 152.103(b)(1) and (2). In addition, 19 CFR 152.103(f) states:

Royalties or license fees. Royalties or license fees for patents covering processes to manufacture the imported merchandise generally will be dutiable. Royalties or license fees paid to third parties for use, in the United States, of copyrights and trademarks related to the imported merchandise generally will be considered selling expenses of the buyer and not dutiable. The dutiable status of royalties or license fees paid by the buyer will be determined in each case and will depend on (1) whether the buyer was required to pay them as a condition of sale of the merchandise for exportation to the United States, and (2) to whom and under what circumstances they were paid. Payments made by the buyer to a third party for the right to distribute or resell the imported merchandise will not be added to the price actually paid or payable for the imported merchandise if the payments are not a condition of the sale of the merchandise for exportation to the United States.
Example. A foreign producer sold merchandise to an unrelated U.S. importer. The U.S. importer pays a royalty to an unrelated third party for the right to manufacture and sell a product made in part from the imported merchandise. The royalty is based on the selling price of the further-manufactured product in the U.S.

Is the license fee part of the appraised value? No. The license fee is not a condition of the sale of the imported merchandise for export to the U.S.

## GATT Valuation Agreement:

The equivalent provision in the Agreement regarding the addition to the price actually paid or payable for royalty and license fees is found in Article 8, paragraph l(c).

Interpretative Notes, Note to Article 8, paragraph l(c), states:

1. The royalties and license fees referred to in Article 8.1(c) may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining customs value.
2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Article 8, paragraph 3, allows for the addition to the price actually paid or payable only on the basis of objective and quantifiable data.

As an illustration, the Interpretative Notes, Note to Article 8, paragraph 3, provides:

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and seller), it would be inappropriate to attempt to made an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

CCC Technical Committee Advisory Opinions 4.1, 4.2, 4.3, 4.4, 4.5 and 4.6 are all examples of whether a royalty or license fee is to be added to the price actually paid or payable.

## Headquarters Notices:

General Notice, Dutiability of Royalty Payments, Vol. 27, No. 6, Cust. B. & Dec., February 10, 1993:

Regarding the dutiability of royalty payments, three factors are relevant in assisting in the determination of whether payments are related to the imported merchandise and are a condition of sale. These factors are: 1) whether the imported merchandise was manufactured under patent; 2) whether the royalty was involved in the production or sale of the imported merchandise and; 3) whether the importer could buy the product without paying the fee.

Negative responses to factors one and two and an affirmative response to factors three point to non-dutiability.

Notice to Require Submission of Royalty and Purchase/Supply Agreements in Ruling Requests Regarding Dutiability of Royalty or License Fees, Vol. 29, No. 36 Cust. B. & Dec., Sep. 6, 1995:

In order to obtain a ruling regarding the dutiability of royalty or license fees, any royalty agreement[s] relating to the payment of the royalty or license fees in question and any purchase/supply agreement[s] relating to the sale of the imported merchandise must be furnished. If there are no written agreements, the ruling request should so indicate.

**Headquarters Rulings:**

## direct costs of processing

A royalty fee paid in exchange for engineering and design information constitutes a cost that will be directly incurred in the production of the merchandise under consideration. Therefore, inasmuch as the price will encompass all production costs, including the royalty payment, the royalty payment is deemed to be part of the direct costs of processing operations.
**543155 dated Dec. 13, 1983.**

## price actually paid or payable

There is a rebuttable presumption that all payments made by a buyer to a seller, or a party related to a seller, are part of the price actually paid or payable. Therefore, with regard to payments made by the importer to the related party seller for merchandise purchased from the related party seller, the presumption is that the payments are part of the total payment made for the imported merchandise. The information submitted does not rebut the presumption that the royalty payments are part of the total payment made for the imported merchandise.
**545536 dated Sep. 21, 1995.**

All payments made by a buyer to a seller are presumed to be part of the price actually paid or payable unless rebutted by evidence which clearly establishes that the payments are completely unrelated to the imported merchandise. This presumption also applies to payments made to a party related to the seller. In this case, the importer pays royalties to the sub-licensor, which is related to the foreign affiliate/sellers of the

imported merchandise. The sublicensing agreement specifically addresses payment to the sub-licensor for merchandise purchased from the foreign licensed affiliate/sellers. The royalties paid represent part of the total payment made to, or for the benefit of, the foreign affiliate/sellers.
**545526 dated Nov. 30, 1995.**

There is a rebuttable presumption that royalty payments made directly to the seller are part of the price actually paid or payable for the imported merchandise. In this case, the royalty payments made for the know-how and U.S. trademark patent rights, necessary for the company to get FDA approval for the product, enable the company to import the product pursuant to the supply agreement. These payments are directly related to the imported product and are part of the total payment made, or to be made, by the buyer to the seller for the importation of the merchandise.
**546038 dated July 19, 1996.**

License fees paid by the buyer to the licensor for use of a trademark on the imported merchandise purchased from the seller (a party related to the licensor) are additions to the price actually paid or payable for the imported licensed product (as royalties under section 402(b)(1)(D) of the TAA). The seller and licensor were deemed to be related pursuant to section 402(g)(1)(G) which states that "[t]wo or more persons directly or indirectly controlling, controlled by or under common control with any person" are considered to be related parties.
**544815 dated May 8, 1997.**

Pursuant to an agreement between the importer and the unrelated seller, the importer paid the seller advance royalties and the seller agreed that the importer would purchase the necessary drug to be shipped to the seller for use in the manufacture of the time release product. The payments made to the seller constitute part of the price actually paid or payable for the imported merchandise and counsel has not demonstrated that the subject payments are unrelated to the imported merchandise. Therefore, based on the evidence and information provided, the advance payments made by the importer against future royalties, in consideration for the seller's provision of contracted plant capacity, are included within the transaction value as part of the price actually paid or payable.
**546638 dated Oct. 4, 1999.**

Pursuant to license and technical agreements, the licensee pays the licensor/seller a running royalty based on the percentage of the net selling price for each licensed product sold by the licensee. The agreements define net selling price as the price of the licensed products manufactured by the licensee and sold to it customers, excluding actual freight, transportation charges, insurance fees, agent's or distributor's commissions, and other similar charges paid by the licensee in dispatching the licensed products. Also, the payment of the royalties is not related to the sale for exportation of the imported merchandise. Accordingly, the amounts do not constitute part of the price actually paid or payable for the imported merchandise. In addition, the imported merchandise is not manufactured under patent. The royalty is not involved in the production or sale of the licensed products. Finally, the importer may purchase the imported product without paying the fee. Based on the evidence and information provided, and assuming that the price between the related parties represents an acceptable transaction value pursuant to section 402(b)(2)(B), the royalties concerning the licensed products, paid to the licensors/sellers, are not included within the transaction value as part of the price actually paid or payable, or as royalties and/or proceeds.
**546951 dated Oct. 22, 1999.**

Fees paid in accordance with the licensing agreement are part of the price actually paid or payable for the merchandise in that they are part of the total payment for the merchandise paid by the buyer to the seller. Thus, the license fees paid by licensee to licensor are included in the transaction value of the imported merchandise under section 402(b) of the TAA.
**546966 dated Nov. 5, 1999.**

The importer entered into an agreement to import partially finished haulers and wheel loaders, both of which the importer completes in the United States using U.S.-sourced material and labor. The importer makes payments directly to the seller and its related parties. A royalty is involved in the production of the merchandise occurring in the United States, and the importer cannot buy the product without paying this fee. Therefore, the importer's payment of a percentage of the value added after importation is a condition of the sale of the unfinished goods for exportation to the Unite States. Thus, the fees paid by the importer to the licensor for use of the licensor's designs, development, know-how, trade secrets, and goodwill, are included within the transaction value of the merchandise, either as part of the price actually paid or payable under '402(b)(1), or as royalties in accordance with section 402(b)(1)(D).
**546367 dated Dec. 1, 1999.**

Pursuant to a non-exclusive license agreement with its parent company, the importer has acquired rights to certain technical information or patents for use in the connection with the manufacture of certain vehicles. In exchange for these rights the importer pays its parent company a royalty of 2.5 percent of the total sales amount of licensed products manufactured and sold by the importer. These royalty payments are in fact based upon the proceeds of the sale of U.S. manufactured vehicles that may or may not

contain imported components purchased from the parent company. The amounts paid are not directly based upon the resale, disposal, or use of the imported components themselves. In addition, the payments are not involved in the production or sale of the imported components. The amounts paid by the importer to its related party parent under the non-exclusive license agreement are not included in, or additions to, the price actually paid or payable for imported components purchased from the related party company and used in the production of the vehicles.
**547532 dated Nov. 2, 2001.**

Under a license agreement, the importer has agreed to pay its subsidiary percentages of its worldwide sales of the licensed products in exchange for the right to manufacture and sell the licensed products worldwide. Assuming transaction value is the appropriate basis of appraisement, royalties paid with respect to the licensed products for the imported raw materials purchased by the importer from its related companies are neither part of the price actually paid or payable for the imported raw materials, nor do they constitute additions thereto under section 402(b)(1)(D)-(E) of the TAA.
**547710 dated Dec. 16, 2001.**

For the subject merchandise, two license fees were paid to the licensor pursuant to two separate agreements: one by the seller and a second by the importer. The seller/licensor agreement indicated that the licensor grants the seller the exclusive right to use the trademark to manufacture the subject merchandise. The importer/licensor agreement, by contrast, related to marketing the merchandise in the United States. The relationship between the license fees and the merchandise determines whether the license payments by the importer are dutiable as part of the price actually paid or payable. The importer's license fee payments were paid directly to the licensor and did not accrue to the benefit of the seller, thus the license payments are not part of the price paid or payable.
**547968 dated May 7, 2002.**

In this case, based on the evidence presented, Customs could not determine whether there was a linkage of the payment of the royalties to the purchase of the imported goods by the buyer. Unless and until the importer can indicate the goods being imported, provide a sales agreement and invoices, and furnish any other necessary evidence, Customs presumes that the payment of the royalties was a condition of sale of the imported merchandise for exportation to the United States. Thus, the royalty payments are part of the price paid or payable in determining the transaction value of the imported merchandise.
**547662 dated Sep. 20, 2002; <u>modified</u> <u>by</u> 548305 dated Aug. 11, 2003.**

Royalties paid to third parties for the right to use a trademark in the United States will generally not be added to the price paid or payable. In this case, the licensor is related

to the importer, but the licensor is not related to the manufacturer. Additionally, the licensor does not buy or sell the merchandise. Accordingly, the royalties paid by the importer to the licensor were not a condition of sale for export to the United States. The royalties paid to the licensor by the importer should not be added to the price paid or payable.
**548112 dated Sep. 23, 2002.**

## proceeds of a subsequent resale

See 19 U.S.C. 1401a(b)(1)(E); 19 CFR 152.103(b)(1)(v); GATT Valuation Agreement, Article 8, paragraph I(d)

When a royalty or license fee is found not to be a part of transaction value under section 402(b)(1)(D) of the TAA, no authority exists for including the fee in transaction value under section 402(b)(1)(E), as the proceeds of a subsequent resale.
**542900 dated Dec. 9, 1982 (TAA No. 56); 542926 dated Jan. 21, 1983; 543529 dated Oct. 7, 1985; 543773 dated Aug. 28, 1986; 544102 dated Aug. 16, 1988, aff'd by 544300 dated Feb. 17, 1989. Overruled by 544436 dated Feb. 4, 1991, C.S.D. 91-6, Cust. B. & Dec., Vol. 25, No. 18, June, 1991.**

Payments made to the seller pursuant to a royalty agreement are added to the price actually paid or payable for the imported merchandise pursuant to section 402(b)(1)(E) as proceeds of a subsequent resale. The royalty payments are due upon the importer's resale of the merchandise. These proceeds of the subsequent resale inure to the benefit of the seller.
**544436 dated Feb. 4, 1991; Cust. B. & Dec., Vol. 25, No. 18, June, 1991; modifies 542900 dated Dec. 9, 1982 (TAA No. 56), 542926 dated Jan. 21, 1983, 543529 dated Oct. 7, 1985, 543773 dated Aug. 23, 1986, 544102 dated Aug. 16, 1988.**

The payments made to the seller are not based upon the resale of the imported product. Rather, the payments are based on the resale of a finished product that includes U.S. components. Thus, a substantial portion of the payments is based on components that were not actually imported. As a result, the payments made are not dutiable as proceeds of a subsequent resale pursuant to section 402(b)(1)(E) of the TAA.
**544656 dated June 19, 1991.**

Pursuant to license and technical agreements, the licensee pays the licensor/seller a running royalty based on the percentage of the net selling price for each licensed product sold by the licensee. The agreements define net selling price as the price of the licensed products manufactured by the licensee and sold to it customers, excluding actual freight, transportation charges, insurance fees, agent's or distributor's commissions, and other similar charges paid by the licensee in dispatching the licensed products. Also, the payment of the royalties is not related to the sale for exportation of the imported merchandise. Accordingly, the amounts do not constitute part of the price actually paid or payable for the imported merchandise. In addition, the imported merchandise is not manufactured under patent. The royalty is not involved in the production or sale of the licensed products. Finally, the importer may purchase the imported product without paying the fee. Based on the evidence and information provided, and assuming that the price between the related parties represents an acceptable transaction value pursuant to section 402(b)(2)(B), the royalties concerning the licensed products, paid to the licensors/sellers, are not included within the transaction value as part of the price actually paid or payable, or as royalties and/or proceeds.
**546951 dated Oct. 22, 1999.**

## related to the imported merchandise and as a condition of the sale

19 U.S.C. 1401a(b)(1)(D); 19 CFR 152.103(b)(1)(iv); GATT Valuation Agreement, Article 8, paragraph I(c)

A distributorship or exclusivity fee paid to the seller of merchandise is not a condition of the sale of the imported merchandise. The fee may not be added to the price actually paid or payable as a royalty or license fee.
**542360 dated June 10, 1981 (TAA No. 29).**

Royalty payments made to a U.S. patent holder are not a condition of the sale of the imported merchandise and, therefore, the payments are not dutiable.
**542818 dated May 27, 1982.**

Payments made by the importer to an unrelated licensor were not a condition of the sale of the imported merchandise.
**542842 dated June 18, 1982.**

Where the value of imported components is specifically excluded from a royalty-trademark fee computation formula paid by the buyer to its related seller, the fee is not related to the imported merchandise, and is not included in transaction value.
**542900 dated Dec. 9, 1982 (TAA No. 56); <u>modified</u> <u>by</u> 544436 dated Feb. 4, 1991.**

Royalty payments made to the foreign seller and which inure to the benefit of the U.S. patent holder are not a condition of the sale and, therefore, the payments are non-dutiable.
**542926 dated Jan. 21, 1983; <u>modified</u> <u>by</u> 544436 dated Feb. 4, 1991.**

A royalty fee paid by the buyer to a third party licensor for a patent covering a process to manufacture the imported merchandise is dutiable. The fee is related to the merchandise and is a condition of the sale of the imported merchandise.
**543070 dated July 28, 1983.**

The buyer pays a royalty fee to the seller. The royalty fee is neither required as a condition of the sale of merchandise nor is it related to the imported merchandise. Accordingly, the royalty fee is not added to the price actually paid or payable for the imported merchandise.
**543192 dated Oct. 24, 1983; 543062 dated Nov. 8, 1983.**

The royalty payments in question are paid in exchange for rights that are separate and apart from the ownership of the imported merchandise. These rights are not a condition of sale of the imported products and, accordingly, the royalty payments are not dutiable under transaction value.
**543370 dated Sep. 18, 1984.**

The trademark payment is not made to the seller, but, rather, the payment is made to a third party. The payment is not a condition of the sale of the imported merchandise for exportation to the United States, as the importer is not required to use the trademark on the merchandise it imports. The payment is not dutiable under transaction value.
**543417 dated Feb. 11, 1985.**

The royalty fee in question is not included in the price actually paid or payable for the merchandise when sold for exportation to the United States, and the buyer is not required to pay the royalty as a condition of the sale. The payment is not part of transaction value.
**543421 dated Feb. 25, 1985.**

The royalties paid to the supplier of the imported merchandise are not a condition of the sale and therefore, are not dutiable under transaction value.
**543497 dated June 25, 1985.**

The royalty agreement in question specifically states that the royalty payments are not a condition of the sale of products to the licensee-importer; instead, the agreement specifies that the royalty payments are based upon subsequent sales in the United States of products bearing the licensor's trademark. Consequently, the royalty payments are not added to the price actually paid or payable.
**543577 dated Aug. 26, 1985.**

The fee in question is not related to the imported merchandise and is not paid as a condition of the sale of imported merchandise. Therefore, the royalty fee is not added to the price actually paid or payable.
**543529 dated Oct. 7, 1985; <u>modified</u> <u>by</u> 544436 dated Feb. 4, 1991.**

The royalty payment is not related to the imported merchandise and it is not paid as a condition of the sale of the imported merchandise. The payment is not connected to the ownership or importation of the merchandise but, rather, the payment is for the use of the trademarks and techniques with regard to the product. The fee is not added to the price actually paid or payable.
**543773 dated Aug. 28, 1986; modified by 544436 dated Feb. 4, 1991.**

The licensing fee in question is not related to the imported merchandise. The rights granted to the importer relate to the worldwide distribution and servicing of the affected merchandise as well as to the worldwide use of the manufacturer's technical data and trademarks. The fee is not dutiable as part of the transaction value of the imported merchandise.
**543617 dated June 8, 1987.**

A fee for the right to manufacture, process, and use the merchandise is not related to the imported merchandise and it is not paid as a condition of the sale of the imported merchandise. The fee is not added to the price actually paid or payable.
**543890 dated Aug. 18, 1987.**

Payments made to the licensor pursuant to a license agreement are not a condition of the sale of the imported merchandise. The fees remitted to the licensor by the importer are separate from the right to import the product. The fees should not be added to the price actually paid or payable to determine the transaction value of the merchandise.
**544047 dated Mar. 8, 1988.**

The importer purchases color chips used in ink formulation in the production of dry erase markers from the foreign seller. The seller also furnishes the importer with the ink formulation for processing the chips. The royalty is due to the seller even when the seller does not provide the color chips used to produce the ink, i.e., when another company supplies the color chips to the buyer. The royalty fee paid by the importer is separate and apart from the right to import the merchandise. The payment of the royalty fee is not a condition of the sale, and it is not to be added to the price actually paid or payable.
**544105 dated Mar. 25, 1988.**

The license agreement in question provides for a royalty payment by the importer to the licensor for the use, sale, and manufacture of the product in the United States. The amount used is based upon net sales subsequent to importation and, if the imported product is used for testing or research (uses which do not produce sales), no royalty is owed by the importer. In this case, the royalty fee is not to be added to the price actually paid or payable.
**544061 dated May 27, 1988**.

The license agreement between the parties grants to the importer an exclusive license in the United States under patent rights and confidential information to make, use, and sell the product. In exchange, the importer agrees to pay the manufacturer a certain

advance payment, plus royalties based upon net sales pursuant to a rising royalty schedule. The royalty payments are not linked to the purchase of the product. The payments are paid for rights that are separate and apart from the right of ownership. These payments are not added to the price actually paid or payable.
**544102 dated Aug. 16, 1988; aff'd by 544300 dated Feb. 17, 1989; modified by 544436 dated Feb. 4, 1991.**

An addition for a royalty fee paid by the buyer will be made to the price actually paid or payable unless the buyer establishes that such payment is distinct from the price for the imported merchandise, and that such payments are not a condition of the sale of the imported merchandise. In this case, the buyer has satisfied these burdens and the payments are not additions to the price actually paid or payable.
**544129 dated Aug. 31, 1988.**

In the instant case, the royalty payments are not a condition of sale of the imported merchandise for export to the United States. The royalties must be paid regardless of whether merchandise is imported into the United States. The royalty payments are not to be added to the price actually paid or payable.
**544351 dated Oct. 29, 1990.**

It does not appear from the facts presented that the licensing fees are connected to the ownership or importation of the imported merchandise. Rather, the fees are incurred in connection with the sale of the merchandise in the United States. The fees are not a condition of the sale of the imported merchandise and, therefore, the fees are not added to the price actually paid or payable.
**544575 dated Jan. 31, 1991.**

The royalty payments made by the buyer are not a condition of the sale of the imported merchandise. The payments are not dutiable royalty payments under section 402(b)(1)(D) of the TAA.
**544436 dated Feb. 4, 1991.**

The payments at issue are neither related to the imported merchandise nor are they a condition of the sale. The importer must pay the fees to the seller regardless of whether the importer purchases any parts from the seller. The fees are not added to the price actually paid or payable as a royalty under section 402(b)(1)(D) of the TAA.
**544656 dated June 19, 1991.**

The license fee in question is paid for the territorial exclusivity to manufacture, use, and sell in the licensed territory, as a condition of the ownership or importation of the merchandise. The buyer is required to pay the fee as a condition of sale of the imported merchandise and the fee is related to the imported merchandise. Therefore, these payments made from the importer to the manufacturer are part of the transaction value of the imported goods.
**544420 dated July 8, 1991.**

The royalty payment made by the importer to the seller pursuant to a patent license and technical assistance agreement is not an addition to the price actually paid or payable for the imported merchandise.
**544611 dated July 29, 1991.**

The license fees, technical aid fees, and royalties are not required to be paid as a condition of sale of the merchandise for export to the United States. The payments are not dutiable under section 402(b)(1)(D) of the TAA.
**544381 dated Nov. 25, 1991.**

The royalty fee for use of a particular name is paid to a third party, and not to the sellers of the imported apparel. Under the agreement, the royalty is not a condition of the sale of the merchandise. That is, it does not appear that the royalty is connected to the ownership or the importation of the merchandise. Therefore, the fee is not dutiable as part of the transaction value.
**544727 dated Dec. 4, 1991.**

A license fee paid to the seller is related to the imported merchandise and it is a condition of sale. As such, the payment must be included in the appraised value of the imported merchandise.
**544950 dated May 28, 1992.**

The royalty/license fee payments made by the importer for the right to use the patented process and know how necessary to produce the finished products do not qualify as statutory additions to the price actually paid or payable under either sections 402(b)(1)(D) or 402(b)(1)(E) of the TAA. As such, they are not to be included in determining the transaction value of the imported merchandise. These determinations are to be made on a case by case basis, taking all relevant circumstances into consideration.
**545114 dated Sep. 30, 1993**.

An importer purchases a variety of merchandise from the seller. When an article bears a specific trademark, the buyer is required to pay a royalty of ten percent of the ex-factory purchase price to the licensor. The seller is not related to the licensor and none of the royalty payments inure to the benefit of the seller. The imported merchandise is not manufactured under patent or trademark, and the royalty is not involved in the production and sale by the seller or the purchase of the merchandise by the buyer. The buyer can purchase the merchandise without paying the royalty to the licensor. The payment of the royalty is not a condition of sale of the merchandise from the seller. The royalty payment is not added to the price actually paid or payable pursuant to section 402(b)(1)(D) of the TAA.
**544923 dated Feb. 22, 1994.**

A “machine amortization charge” appears on invoices of imported wrapping material. The buyers of the imported wrap use it to package beverage bottles. Specialized machinery is used to combine the imported merchandise, i.e., the wrapping material

and the beverages. The equipment used in the wrapping process is manufactured in the United States and it is leased to and located on the premises of the bottlers. In this case, there is a royalty payable by the buyer due on the sale of packaging material. These payments are included in the price actually paid or payable for the imported beverage wraps. However, the "machine amortization charge" is not related to the imported merchandise and should not be added to the price actually paid or payable.
**545150 dated Feb. 24, 1994.**

The importer pays a U.S. company (unrelated to the seller) for the right to use copyrighted fabric designs. The importer pay an initial sum which is later credited towards a royalty of 2.5 percent of the importer's net revenues on its sales in the United States of apparel which incorporates the design. Although the garments are not manufactured under patent, they incorporate fabric that bears patterns identical or similar to the copyrighted patterns. However, the royalty is not involved in the production or sale of the imported garment. The royalty is paid for the exclusive right of the importer to utilize the copyrighted patterns. The right is separate from the purchase price of the garments. The merchandise may be imported without paying the royalty because the royalty becomes due only upon sale in the United States of the imported merchandise. No portion of the payment accrues, directly or indirectly, to the seller of the imported merchandise. The payments by the buyer are neither royalties under section 402(b)(1)(D) of the TAA, nor are they proceeds under section 402(b)(1)(E) of the TAA.
**545370 dated Mar. 4, 1994.**

The imported garments are not manufactured under patent, rather the agreement gives the buyer the right to use the licensed trademark in connection with the manufacture and sale of the imported garments. The royalty is not involved in the production or sale of the imported merchandise. The royalty for the right to use the trademark in the United States is paid to a third party rather than to the sellers, and is separate from the purchase price of the garments. Finally, the buyer can import the garments without paying the royalty because the royalty only becomes due upon net sales of the licensed merchandise. While the agreement provides for guaranteed minimum royalty payments, this fact does not render the royalty payment a condition of sale. Accordingly, the royalty payment by the buyer is not an addition to the price actually paid or payable.
**544781 dated Mar. 4, 1994.**

The imported merchandise is not manufactured under patent because the royalty payments to the licensors are made for the right to use copyrighted fabric design rather than for the imported garments. The royalty payment is made for the right to use the fabric design in the United States in conjunction with the imported garments, and this right is separate from the purchase price of the garments. Finally, because the royalty payments are made to a third party and are triggered by United States sales of the imported merchandise rather than by the sale of the imported merchandise for exportation to the United States, the payments by the buyer to the licensors are not a

condition of sale. Accordingly, the royalty payments made by the buyer do not constitute additions to the price actually paid or payable.
**545312 dated Mar. 18, 1994.**

The importer purchases a pharmaceutical product for which a royalty is paid to the seller. The buyer has exclusive marketing rights for the product in the United States, and the agreement specifies that the purchaser shall purchase its requirements for the product from the seller. The amount of compensation payable is fixed by the license agreement and is in the form of a royalty and may include one or more down payments. The royalty is specified at seven percent of the buyer's net sales, in addition to payment of an initial supply price. The license agreement, read in context with an option agreement between the parties, does not distinguish the royalty payments from the price actually paid or payable. Rather, the agreements expressly define compensation to include the payments. The royalty payment should be treated as part of the price actually paid or payable.
**544800 dated May 17, 1994.**

The royalty payments at issue are not a condition of sale of the imported merchandise and therefore do not constitute an addition to the price actually paid or payable under section 402(b)(1)(D) of the TAA. The imported merchandise was not manufactured under patent. The royalty was not involved in the production or sale of the imported merchandise. In addition, the buyer can purchase the merchandise without paying the royalty fee.
**545307 dated Feb. 3, 1995.**

The imported merchandise consists of components for a mainframe computer system. The importer used the components to manufacture the computer system. The importer pays royalties to the seller pursuant to a licensing agreement for the use of technical information and know-how related to the development of a computer system. Under the terms of the agreement, the importer is required to purchase the components for the computer system from the seller. Under these circumstances, the royalty is related to the production or sale of the imported merchandise. The agreement also provides that the license fee is to be paid by way of an adjustment to the importer's cost of the computer system. Therefore, the payments are dutiable either as part or the price actually paid or payable, or as an addition to the price pursuant to section 402(b)(1)(D).
**545380 dated Mar. 30, 1995.**

The continuing royalty payments made pursuant to one agreement between the parties are a condition of sale of the imported merchandise. The sales agreement between the parties pertaining to the imported merchandise is subject to the terms of the royalty agreement and conditions one upon the other. The importer cannot buy the product without paying the fee. In addition, the royalty payments from the buyer are involved in the sale of the imported merchandise. Therefore, the royalty is to be added to the price actually paid or payable for the merchandise.
**544978 dated Apr. 27, 1995.**

The merchandise at issue is not manufactured under patent or trademark. The royalty is not involved in the production or sale of the imported merchandise. The payments to the licensor, which is an unrelated third party, are separate and apart from the payments made to the foreign manufacturers. Finally, the merchandise may be purchased without paying the fee. Accordingly, the royalty payments are not a condition of sale and do not constitute an addition to the price actually paid or payable for the merchandise pursuant to section 402(b)(1)(D) of the TAA.
**545612 dated May 25, 1995.**

A manufacturer develops and owns patented proprietary technology used to produce a line of chemicals. The importer manufactures these chemicals and pays a royalty for the use, in the United States, of the manufacturer's patent processes and associated trade secrets. The manufacturer sells to the importer a product that may be used in the production of the chemicals. By the terms of the agreement, the importer may purchase the product from the manufacturer without the payment of any royalty or license fee and the importer is free to source the product from another supplier. Because the imported product is not produced by the patented processes and trade secrets, the value of the rights at issue are readily distinguishable from the value of the imported goods. The payment of the royalty is connected to the sale of the finished products incorporating the patent process and not to the importation of the product. Accordingly, the royalties are not a condition of sale of the imported merchandise and not dutiable as royalties pursuant to section 402(b)(1)(D) of the TAA.
**544742 dated June 6, 1995.**

With regard to the questions that are outlined in the "Hasbro II Ruling," the answer to the first question is yes, i.e., the machine in question was manufactured under patent. The answer to the section question is yes; the royalty was involved in the sale of the imported machine. The supply agreement specifically states that the importer shall not resell the machine because it includes the production know-how, which is owned by the seller. Thus, in order to purchase and use this patented machine, the importer must pay the seller the royalties in question. The sale of the machine to the importer is inextricably intertwined with the payment of the royalties. Finally, the answer to the third question is no, i.e., the importer could not buy the machine without paying the royalty. The importer/buyer has not established that the royalty payment is distinct from the price actually paid or payable for the imported merchandise and that it was not a condition of importation. The royalties are properly added to the price actually paid or payable for the machine pursuant to section 402(b)(1)(D) of the TAA.
**545784 dated June 6, 1995.**

The royalty payments paid by the importer to an unrelated third party do not constitute an addition to the price actually paid or payable pursuant to section 402(b)(1)(D) of the TAA. The imported merchandise is not manufactured under patent, and the royalty paid by the importer is not involved in the production or sale of the imported merchandise. In addition, the importer can purchase the merchandise from the seller (unrelated to the licensor) without paying the royalty fee. The importer has an independent relationship with the seller and the payments of the royalty are not a condition of sale. The

purchase order between the importer and seller makes no reference to the royalty payments the importer pays to the licensor.
**545895 dated June 9, 1995.**

Based upon the express language of the royalty agreement at issue, the importer has no choice but to pay the royalty amount, i.e., the importer could not buy the imported product without paying the royalty fee. The royalty payments are related to the imported merchandise and are a condition of sale of the imported merchandise. They are to be added to the price actually paid or payable and included in the transaction value of the imported merchandise as a royalty.
**545071 dated June 28, 1995; 545321 dated June 30, 1995; 545418 dated June 30, 1995.**

The licensee pays a royalty to its wholly owned subsidiary, the licensor, for the right to use the licensor's trademark in connection with the manufacture, use, and sale of imported, trademarked merchandise. The imported merchandise is not manufactured under patent. The royalty is not paid for rights associated with processes to manufacture the imported merchandise. The right to use the licensor's trademarks is not only separate from the production process of the merchandise, but also, given that the licensor and seller are unrelated, this right is separate from the sale for exportation to the United States of the imported merchandise. The royalty is not involved in the sale of the imported merchandise. It appears as if the buyer can purchase the imported merchandise from the seller without having to pay the royalty. The royalty is not a condition of sale for exportation to the United States, and consequently, the payment is not an addition to the price actually paid or payable pursuant to section 402(b)(1)(D) of the TAA.
**545930 dated June 28, 1995.**

The importer purchases ornamental hairbands from various foreign sellers and imports them into the United States. In connection with these importations, the importer pays a royalty to the licensor, the owner of a U.S. design patent related to the imported hairbands. The licensor is not related to the importer or to the foreign sellers. In the agreement, the licensor grants to the importer a non-exclusive license to sell, manufacture, or have manufactured, ornamental hairbands, in exchange for quarterly payments made by the importer to the licensor. The royalty is paid to the licensor for the non-exclusive right to use the licensor's design in connection with the manufacture and resale of the imported, licensed merchandise. The royalty is not linked to the sale of the imported merchandise. The royalty payment is not referenced in purchase contracts or other documentation between the importer and the foreign sellers. It appears that the importer may purchase the merchandise from the sellers without having to pay the royalty. Consequently, the royalty is not a condition of sale and, therefore, it is not an addition to the price actually paid or payable under section 402(b)(1)(D) of the TAA.
**545379 dated July 7, 1995.**

The importer is a manufacturer, distributor, and a retailer of wearing apparel. The importer also owns a particular trademark in the United States and in other countries. However, Company X owns the right to a similar trademark in additional countries. The manufacturers of the wearing apparel, to which the trademark may be affixed, are unrelated to either the importer or Company X. In accordance with their agreement, the importer pays Company X a royalty if, in fact, the former's trademark is affixed in a country where Company X owns the right to the similar trademark. The royalty is not involved in the production or sale of the imported merchandise, but rather, the royalty payment serves as consideration for the right to sell merchandise bearing the importer's trademark affixed in Company X=s territory. The royalty payments are not a condition of sale, and are not added to the price actually paid or payable for the imported merchandise pursuant to section 402(b)(1)(D) of the TAA.
**545486 dated July 14, 1995.**

A licensee/buyer purchases and imports trademarked merchandise manufactured and sold by a seller unrelated to either the licensor or the licensee. The licensee pays the licensor a royalty based on a percentage of the selling price of the imported merchandise. The imported merchandise is not manufactured under patent. The royalty is paid in consideration for the right to affix the licensor's trademarks and trade names to the products, to sell in the designated territory, and to use the trademarks and trade names on retail shops, rather than for the right to manufacture the imported merchandise. The royalty is not paid for rights associated with processes to manufacture the merchandise nor is there any indication that the royalty payment is subject to the terms of the sale for export. It appears as if the buyer can purchase the merchandise from the seller without paying the royalty. Therefore, the royalty is not an addition to the price actually paid or payable under section 402(b)(1)(D) of the TAA. In a second situation, the licensee purchases and imports merchandise from the licensor. Where the licensor and the seller are the same party, and the payment is made to the licensor/seller, the royalty is a condition of the sale of the merchandise for exportation to the United States. The payment is not optional, but must be made to the licensor in its capacity as seller. In this situation, an addition to the price actually paid or payable is proper. In the third situation, the licensee purchases the imported merchandise from a seller related to the licensor. The royalty is paid indirectly as a condition of the sale for exportation. The payment is not optional and must be made to the licensor. It is an addition to the price actually paid or payable pursuant to section 402(b)(1)(D) of the TAA.
**545361 dated July 20, 1995.**

Under the terms of the licensing agreement at issue, a royalty is paid in consideration for the license to use the trademarks in connection with the manufacture, sale, and distribution of licensed products in the licensed territory. The royalty payments are not subject to the sale for exportation to the United States, nor are the royalties involved in the production of the imported merchandise. The royalty payments are not made to the seller, nor has any evidence been presented which ties the royalty to a sales agreement for the imported merchandise, e.g., a requirement by the seller that the buyer pay the

royalty to the licensor. The royalty payments paid by the licensee to third party licensors pursuant to the terms of the trademark licensing agreement are not dutiable under section 402(b)(1)(D).
**545528 dated Aug. 3, 1995.**

The importer purchases alcoholic beverages from its parent company in the United Kingdom. The beverage is marketed worldwide under a well-known trademarked brand name. A Netherlands company owns the U.S. trademark rights for the product. The Netherlands company is related to both the importer and seller. The licensor and importer intend to enter into an agreement under which the licensor grants to the importer the exclusive right, limited to the United States, to use the licensed trademark solely in connection with the importation, distribution, promotion and sale of liquor products bearing and sold under the licensed mark. In exchange, the importer pays the licensor a trademark royalty. The payments are calculated on the basis of the gross margin realized by the importer on the sale in the United States of the imported liquor. The royalty is due on all licensed trademarked goods imported and sold by the importer/buyer and such royalties are paid to the licensor, a party related to the seller. To the extent that the licensed products are imported, the royalties are dutiable under section 402(b)(1)(D) as an addition to the price actually paid or payable of such imported products. If there are no importations of licensed products, the payment of minimum royalties has no duty consequences.
**545035 dated Aug. 23, 1995.**

A U.S. company imports merchandise purchased from a Japanese seller. Pursuant to an agreement with a related party licensor, the importer pays a royalty on the products purchased from the Japanese seller. The seller is not related to either the importer or the licensor. A royalty is paid for the right to use a trademark in connection with the manufacture in Japan and sales in the United States of the products manufactured by the Japanese seller. The royalty amount is based upon the FOB Japan price of the product sold to the importer. The agreement specifically identifies the seller as the party with whom the importer contracts for the manufacture of merchandise incorporating the trademark. The agreement further restricts the seller's use of the trademark to merchandise manufactured for and sold to the importer. The royalty is paid in consideration for the seller's right to manufacture and the buyer's right to purchase merchandise that bears the licensor's trademark. Under these circumstances, the payments are a condition of sale of the imported merchandise. The royalty payments pursuant to this agreement are dutiable pursuant to section 402(b)(1)(D) of the TAA. In a subsequent agreement between the importer and the licensor, there is no requirement that the royalties are to be paid in consideration for the right to "manufacture" the imported merchandise. Rather, the subsequent agreement provides that the licensor grants to the importer an exclusive, non-transferable right, license and privilege, for the use of the mark. Under this second agreement, the use of the trademark does not bear relation to the production of the imported merchandise. In addition, the royalty payments are not subject to the sale for exportation to the United States. Although the royalty payment is not optional, it is not paid to the seller, nor is the royalty tied to a

sales agreement for the imported merchandise. In the subsequent agreement, the payments are not dutiable pursuant to section 402(b)(1)(D) of the TAA.
**544982 dated Aug. 23, 1995.**

An importer purchases a bagged magnifying glass from the foreign seller. The magnifying glass is incorporated into a game. The only imported part for the game is the magnifying glass and all other parts of the game are U.S.-made. Royalty payments are made to the seller in exchange for the exclusive right and license to manufacture or have manufactured and to sell, in specific countries, the national versions of a board game for sale under the trademark. The royalties are paid on the sales of the complete games in the United Sates and not based upon sales of the individual pieces or components included in the complete packaged games. In this case, the imported merchandise, the magnifying glass, was not manufactured under patent. The royalty payment is made for the use of a trademark on the complete game and is not involved in the production or sale for exportation. In addition, the importer can buy the magnifying glass without having to pay the royalty because there is no indication that the sale of the product is subject to the terms of the license agreement. The payments are not dutiable as royalties under section 402(b)(1)(D) of the TAA.
**545824 dated Aug. 28, 1995.**

It is not in dispute that the imported merchandise is manufactured under patent. Second, the royalty at issue is involved in the production or sale of the imported merchandise. The licensing agreements provide the parent company and its subsidiaries with the right to have the patented technologies used by the manufacturer in the production of VCRs and camcorders imported by the importer. The technologies for which the royalties are paid are incorporated into the imported merchandise. The goods will only be manufactured, imported and subsequently resold based on the understanding that the royalties are paid. It is our conclusion that the importer cannot buy the imported merchandise without paying the fee, and the royalty payments are a condition of sale of the imported merchandise. The payments made to the licensor constitute royalties to be included in the transaction value of the imported merchandise.
**545777 dated Sep. 1, 1995; 545778 dated Sep. 1, 1995.**

The importer manufactures and sells certain machines using parts supplied by its parent company in Japan, as well as parts supplied by others. In this case, the party to whom the royalties are paid is both the seller and the licensor. The royalties are paid in consideration of the licensed technology and technical assistance provided by the seller in order for the importer to manufacture the machines, and for the license to use a trademark in connection with the manufacture, use, and sale of the machines. The payment of the royalties and the purchase of the imported parts at issue are closely tied together. The payments are a condition of sale and are dutiable as an addition to the price actually paid or payable.
**544991 dated Sep. 13, 1995.**

Notwithstanding the fact that the payments at issue are referred to by the parties as license fees, they are actually part of the total payment for the imported merchandise. The alleged license fees paid by the importer are not paid to the licensor. Rather, they are paid either to the buying agent or the licensees. The seller's invoices refer specifically to the fact that the fees are to be paid by the importer. The payment of the fees is related to the imported merchandise, and the fees are based on the importer's price for the imported merchandise. These fees paid to a party related to the seller constitute indirect payments to the seller.
**545194 dated Sep. 13, 1995; aff'd by 546513 dated Feb. 11, 1998; aff'd by 547134 dated July 27, 1999.**

Regarding the first factor in determining the dutiability of royalty payments, it is undisputed that much of the imported merchandise is manufactured under patent rights held by the licensor. With respect to the second factor, the royalty paid to the licensor is involved in the production of the imported merchandise. The imported merchandise is manufactured using a process referred to in the licensing agreement, for which royalties are paid. In addition, the royalty payment is in fact a condition of sale. The buyer could not purchase the imported merchandise without also paying the royalty.
**545536 dated Sep. 21, 1995.**

The licensee and licensor are, respectively, buyer and seller of the imported merchandise. In the United States, the imported parts and components are used along with domestic parts to manufacture the licensed products. In an agreement between the parties, the licensor granted the licensee the right to manufacture and sell the licensed products and agreed to provide the licensee with technical assistance and know-how in connection with their manufacture. In exchange, the licensee agreed to pay the licensor a fee in an amount equal to a percentage of the net sales price of the licensed products. With regard to the analysis regarding dutiability of the royalty payments, the imported merchandise is not manufactured under patent. The royalty payments are not made in respect of a process to manufacture. Finally, there is nothing in the license agreement to link the payment of the royalties to the purchase of the imported components. The purchase orders do not refer to, and are not linked with, the royalty payments. The payments are not a condition of sale of the imported parts and are not an addition to the price actually paid or payable.
**545419 dated Nov. 30, 1995.**

The buyer is a U.S. company that produces and sells pharmaceutical products. It imports a licensed product produced by a foreign seller. The licensor developed the licensed product, which bears a trademark owned by the licensor. The licensor is the parent company of the seller. The imported merchandise is not manufactured under patent. The royalty agreement provides that the buyer pays the royalties and license fees to the licensor, for the exclusive right and license to use and sell the imported product and to use the licensor's know-how for such purposes. The agreement further provides that the licensed product is to be sold under the licensed trademark. The royalty payment is involved in the sale of the imported merchandise. The license agreement connects the payment of the royalties with the sale of the imported product

to the buyer. In addition, in order to buy the licensed product, the buyer must agree to pay the royalty and license fee on each and every importation of the licensed product. The licensor's obligation to supply the licensed product to the buyer is undertaken by the licensor's subsidiary, the seller. The payment of the royalties is a condition of sale of the imported product. As such, the royalty payments should be added to the price actually paid or payable under section 402(b)(1)(D) of the TAA.
**545728 dated Nov. 30, 1995.**

The evidence indicates that the imported merchandise was not manufactured under patent. In addition, the payments were not made in respect of a process to manufacture. Rather, under the agreement, the buyer acquired an exclusive license to use a trademark in the territory in connection with the advertising, promotion, sale, and distribution of the trademarked products. With regard to the third question regarding dutiability of royalties, although the royalties at issue were paid for the right to use the licensor's trademark in the designated area and to sell the trademarked production, a section of the agreement unambiguously links the license payments to the imported merchandise. This demonstrates that the licensee could not have purchased the imported merchandise from the licensor without having paid the fee. Consequently, the royalty payments were a condition of sale of the imported merchandise and properly constitute an addition to the price actually paid or payable under section 402(b)(1)(D) of the TAA.
**545844 dated Dec. 22, 1995.**

Pursuant to a license agreement, the buyer of pharmaceutical products agrees to pay a specific royalty advance and a continuing royalty to the seller, based upon a percentage of all net sales of a pharmaceutical in the United States. The royalty is paid in consideration for the patent rights, trade secrets, know-how, technology, and technical assistance provided by the seller to the buyer associated with the manufacture of the pharmaceutical. According to the language of the supply agreement, the supply agreement terminates upon the termination of the license agreement. Without the license agreement, there is no sale for exportation of the product to the buyer. In addition, the supply agreement requires that the buyer purchase all of its requirements of the product from the seller. It is our conclusion that the buyer is unable to purchase the product for the manufacture of the pharmaceutical without paying the fee. The royalty payments made by the buyer to the seller are to be added to the price actually paid or payable in the determination of transaction value.
**545331 dated Jan. 19, 1996.**

The payment of the license fee at issue and the sale and importation of the imported merchandise are tied together and are not exclusive of one another. The royalty is involved with the production or sale of the imported merchandise. The license fee is a condition of sale, and the fee paid to the licensor must be added to the price actually paid or payable in determining transaction value.
**546033 dated Mar. 14, 1996; <u>aff'd</u> <u>by</u> 546433 dated Jan. 9, 1998.**

The seller is a Japanese company that designs, produces, and exports cycling apparel and accessories distributed under its own trademarks. The buyer, an unrelated U.S. company, sells cycling apparel and accessories that it imports and, at times, produces. The parties entered into various technology and trademark license agreements, as well as distribution agreements. One type of royalty grants the buyer the exclusive right and license to use the seller's technical information to produce and sell cycling products at its plant and also grants the buyer an exclusive right to use the seller's trademark. In another agreement, royalties are paid based upon quarterly sales, and the buyer is appointed the sole and exclusive distributor of the products manufactured by the seller and agrees to market, promote, and sell the products. This agreement contains provisions regarding royalties as well as the terms of sale concerning the purchase of the imported products. With regard to the first agreement, the fees are not involved in the production or sale, nor are they a condition of sale of the imported merchandise since they relate exclusively to products manufactured by the buyer. With regard to these payments, they are not to be included in the transaction value as royalties under section 402(b)(1)(D) of the TAA. However, the payments subject to the second agreement are closely tied to the purchase of the imported products insofar as the agreement includes specific provisions covering both the purchase prices of the merchandise and the license fees. In addition, the agreement provides that the seller may terminate the agreement if the buyer fails to make any such payments. These payments are an addition to the price actually paid or payable pursuant to section 402(b)(1)(D) of the TAA.
**545752 dated Apr. 1, 1996.**

The importer/distributor and licensor entered into a distribution agreement whereby, for the payment of a royalty fee, the former acquired the right to use certain names, representations, logos, artwork, and the like in connection with the distribution and sales of electronic and household products. Although under this agreement, the importer/distributor was to purchase the products from its parent corporation or authorized supplier, the products were actually manufactured by, and purchased from, independent manufacturers. In addition, the parent and licensor entered into a license agreement whereby the former acquired the right to use names and characters in connection with the manufacture, distribution and sale of the imported products incorporating the various names and characters. Under both agreements, the parent was secondarily liable to the licensor if the importer/distributor failed to make the royalty payments and was primarily liable for proper use of artwork, notice of copyrights/trademarks, and for approval of and quality control of the products. The payments were not made for rights associated with the manufacture of the imported products and were not subject to the terms of sale for exportation. Also, the importer could have purchased the merchandise without paying the fee. The supply agreement did not reference the royalty payments nor did it suggest that the purchase of the merchandise was actually conditioned upon payment of the royalties. Further, the payments were not paid to the seller and were not linked to individual sales agreements or purchase contracts for the products. Finally, the payments were triggered only when the importer/distributor decided to add a licensed image to an imported article, i.e., the

payments were for the separate right to use the licensor's trademarks and copyrights on the imported products. The payments are not added to the price actually paid or payable in the determination of transaction value.
**546146 dated May 10, 1996.**

The royalty payment is made for the right to use the licensor's trademark in connection with the manufacture, promotion, sale, distribution or any other disposition of various garments sold in the United States. The imported merchandise is not manufactured under patent. The royalty is not paid for rights associated with processes to manufacture or produce the imported merchandise, nor is the royalty involved in the sale of the imported merchandise. The royalty payment is not subject to the terms of sale for exportation to the United States, nor is it closely tied to such sale. The documents pertaining to the sale of the imported merchandise make no reference to the payment of royalties. In addition, the importer can buy the merchandise from the seller and import it without having to pay royalties to the licensor. Therefore, the royalty payment is not an addition to the price actually paid or payable pursuant to section 402(b)(1)(D) of the TAA.
**546229 dated May 31, 1996.**

The sellers of the merchandise and the licensor of the trademarks are related parties. In order to obtain the products, the importer also had to agree to pay the royalty and license fee to the related party. The fact that the licensor eventually pays some of the royalty payments to a third party is irrelevant, as long as royalties must be paid to the licensor in order to purchase the merchandise. The payments are a condition of sale for export. As such, the royalty payments are added to the price actually paid or payable pursuant to section 402(b)(1)(D).
**545841 dated June 13, 1996.**

The importer purchases a pharmaceutical active ingredient from an unrelated company located in Belgium. Upon importation, the importer combines the product with other ingredients of U.S. origin. Various agreements have been entered into between the importer and the seller and between the importer and the licensor (a party related to the seller). Based upon the facts presented, the payment of the royalty in question is a condition of sale of the imported product. Pursuant to a supply agreement entered into between the importer and seller, the importer is required to purchase all of its requirements for the imported product from the licensor's parent company, and the agreement terminates upon termination of the license agreement. The payment of the royalties is closely tied to the sale of the imported product. The royalty payments constitute additions to the price actually paid or payable for the imported product pursuant to section 402(b)(1)(D) of the TAA.
**545998 dated Nov. 13, 1996.**

The royalty payments at issue are included in the transaction value of the imported merchandise. The payments are related to the imported merchandise which the buyer is required to pay as a condition of sale. Pursuant to the license and supply agreements, as well as the informal royalty payment agreement between all three

parties, royalty payments are due on each item that is purchased, imported and sold. The merchandise could not be imported without payment of the fee. Therefore, the royalty payments are added to the price actually paid or payable pursuant to section 402(d) of the TAA.
**546034 dated May 6, 1997.**

The imported merchandise is manufactured under patent. The royalty is involved in the production or sale of the imported merchandise. The patented know-how granted to the importer relates to the manufacture of the products in their various forms, as imported. Without the licensing agreement and the royalty payments, the imported merchandise as such could not have been produced by the foreign suppliers. It is our conclusion that the importer could not have purchased the imported merchandise without paying the fee. The purchase of the merchandise and the payment of royalties are inextricably intertwined. The royalty payments are included within the transaction value of the imported merchandise as royalties in accordance with section 402(b)(1)(D) of the TAA.
**546159 dated July 18, 1997.**

The payments at issue are not optional. They must be paid in order to acquire rights to and enter the trademark label garments into the United States. Although the payments are not paid to the seller, they are linked to the purchase of the trademark label garments. The payments are a condition of sale of the imported merchandise and therefore, constitute an addition to the price actually paid or payable for the imported garments.
**546565 dated Sep. 11, 1997.**

The purchase of the merchandise and payment of the license fees at issue are inextricably intertwined and the payment of the royalties is closely tied to the purchase of the merchandise. The importer could not purchase the imported merchandise without paying the fee. The licensor appears largely in control of the amount, conditions, supply, type, and payment with regard to the sale of the imported merchandise. The license fees are a condition of sale, and are properly added to the price actually paid or payable in the determination of transaction value.
**546433 dated Jan. 9, 1998; aff'g 546033 dated Mar. 14, 1996.**

The importer pays license fees to a trust rather than to the licensee or the buying agent. The trustee for the trust in turn pays the licensors the requisite license fees. The trustee is not related to the sellers, however the licensee, the seller, and the buying agent are all related parties. The importer and the licensor are not related to any of the parties. The licensor grants to the licensee the right to use certain property in connection with the manufacture, sale, and distribution of the licensed property through a specified territory. On each sale of the imported product between the seller and the importer, the seller's related party is obligated to pay a licensee fee to the licensors, and the payment is paid by the importer to the licensor through the trust. The payment of royalties is closely tied to the production and sale for exportation to the United States of the imported products, and the payment of the license fee is a condition of sale for export. Therefore, the license fees are a proper addition to the price actually paid or payable pursuant to section 402(b)(1)(D) of the TAA.
**546513 dated Feb. 11, 1998; aff'g 545194 dated Sep. 13, 1994; aff'd by 547134 dated July 27, 1999.**

The imported merchandise is not manufactured under patent. There is no linkage between the sale for exportation of the imported merchandise and the payment of the royalties by the buyer, notwithstanding the fact that the payments are made to the licensor/seller. The royalty is paid for the right to manufacture, use, and sell the contract products in the United States. That right is separate from the purchase of the imported merchandise. The fact that the value of the imported merchandise is excluded from the royalty calculation also establishes that the royalty is not related to the sale for exportation to the United States of the imported merchandise. The royalty payments are not involved in the production or sale of the imported merchandise. In addition, the standard agreement governing transactions between the buyer and the licensor/seller does not link the payment of the royalties to the purchase of the materials, components, and assemblies imported by the buyer. Therefore, the payment of the royalties is not a condition of the sale for exportation to the United States of the imported merchandise. The royalty payments should not be added to the price actually paid or payable in the determination of transaction value.
**545951 dated Feb. 12, 1998.**

In this case, the royalties should not be added to the price actually paid or payable. The imported merchandise is not manufactured under patent. There is no linkage between the sale for exportation of the imported merchandise and the payment of the royalties by the buyer, notwithstanding the fact that the payments are made by the importer/buyer to the licensor/seller. The importer pays the royalty for the right to manufacture, use, and sell the contract products in the United States. The value of the imported merchandise is excluded from the royalty calculation. In addition, the agreement governing transactions between the buyer and licensor/seller does not link the payment of the royalties to the purchase of the materials, components, and assemblies imported by the buyer. The payment of the royalties is not a condition of the sale for exportation to the United States of the imported merchandise, and should not be added to the price actually paid or payable in the determination of transaction value.
**545903 dated Apr. 30, 1998.**

The royalty fees at issue are not closely related to the imported merchandise purchased by either the importer or a party related to the importer. The royalty fees are paid for technical information necessary to make, have made, use, and sell the merchandise in the United States. Therefore, the royalty fees do not pertain to the production or sale for exportation of the imported merchandise. In addition, the merchandise may be imported without paying the royalty fee. The importer must pay the royalty fee based on the resale price of the finished diagnostic kits regardless of where the imported component materials are sourced. There is no obligation to purchase bulk materials from the seller/licensor. Therefore, it is our conclusion that the importer could purchase the imported bulk materials without paying the fee. The royalty fees are not considered royalties pursuant to section 402(b)(1)(D) of the TAA.
**545381 dated May 4, 1998.**

The royalty payments at issue are not part of the transaction value of the imported merchandise. The imported merchandise is not manufactured under patent. Rather, the licensing agreements address the payment of royalties in connection with trademark and licensing rights. The royalty is not involved in the production or sale of the imported merchandise. An examination of the licensing agreements indicates that without the agreements and royalty payments, the imported merchandise still would be produced and sold by the foreign seller. The licensing agreements address the royalty payments separately and apart from the purchase and supply of the merchandise itself. In addition, the importer could buy the imported merchandise without having to pay the fee. The language included in the agreements does not suggest that the payment of the royalties is actually tied to the purchase of the goods. The royalty payments are not to be included in the transaction value of the imported merchandise.
**546072 dated May 21, 1998.**

The royalty at issue is related to and is a condition of sale of the imported merchandise and should be included in transaction value as an addition to the price actually paid or payable. Although the royalties are based on the product finished in the United States, and not on the value of the imported components, because the royalty is tied to the ownership of the imported merchandise, the royalty is related to, and a condition of, the sale of the imported merchandise.
**546401 dated May 21, 1998. (NOTE: Reconsideration of 544978 dated Apr. 27, 1995 with additional facts provided, but a different result was not warranted.)**

The licensed product in this case is manufactured under patent. In addition, the royalty is involved in the production and sale of the imported merchandise, and the importer may not purchase the product without the payment of the royalties. The royalties at issue are related to the imported merchandise and the importer is required to pay them as a condition of sale for exportation to the United States of the imported licensed product. The royalty payments constitute an addition to the price actually paid or payable pursuant to 19 U.S.C. 1401a(b)(1)(D).
**545710 dated Oct. 30, 1998.**

The royalty payments made by the buyer to the licensor/seller pursuant to a license agreement are not optional. The payments are a condition of sale for exportation to the United States and, as such, are an addition to the price actually paid or payable. Therefore, the payments are included in the transaction value of the imported merchandise. In addition, the payments made by the buyer to the seller constitute proceeds of a subsequent resale within the meaning of section 402(b)(1)(E) of the TAA.
**546787 dated Jan. 11, 1999.**

Pursuant to the terms of the letter agreement, the buyer agrees to pay the seller a royalty for each ton of the goods produced by the equipment *and* shipped months after successful commissioning of the equipment. The payments are not connected to the importation or ownership of the imported merchandise. Moreover, the royalties are not based on the resale of the imported merchandise but on the production of the goods produced in the United States at a factory built in part from the imported merchandise. Thus, payments are not related to, nor a condition of sale of, the imported merchandise. As a result, the royalty payments paid by the buyer to the seller should not be included in the transaction value as additions to the price actually paid or payable of the imported merchandise under sections 402(b)(1)(D)-(E) of the TAA.
**567376 dated Feb. 8, 1999.**

The buyer/licensee purchases and imports components and assemblies for use in the manufacture of certain finished products in the United States. Pursuant to Agreement No. I and the Individual Agreement III, the rights for which the royalties are paid relate solely to the manufacture and sale in the United States of finished products made in part from the imported merchandise. The value of the imported components is specifically excluded from the royalty computation. There does not appear to be a linkage of the payment of the royalties to the purchase of the components and assemblies imported by the buyer. Therefore, the royalties are not part of the price actually paid or payable for the imported merchandise, nor do they constitute additions thereto under section 402(b)(1)(D)-(E) of the TAA.
**546660 dated June 23, 1999.**

The license fees or royalties paid by the importer (licensee) to the unrelated licensor are not included in the transaction value of the imported merchandise under section 402(b)(1)(D) of the TAA. Thus the payments are not added to the price actually paid or payable pursuant to section 402(b)(1)(E) of the TAA as proceeds of subsequent resale of the imported merchandise. The merchandise is not manufactured under patent, but rather the agreement gives the importer/licensee the right to use a licensed trademark in connection with the manufacture and sale in the United States of the imported merchandise. The license fee is not involved in the sale of the imported merchandise and the buyer may purchase the imported merchandise without having to pay the fee. Thus, the payments are not a condition of sale and are not added to the price actually paid or payable in determining transaction value.
**546675 dated June 23, 1999.**

The royalty payment is made for the right to use the licensor's trademark in connection with the manufacture, promotion, sale, distribution, or any other disposition of various imported products sold in the United States. It is assumed that the imported merchandise is not manufactured under a patent. Although the payments for the use of the licensed characters are related to the imported goods and are involved in the production and sale of the goods, it is our conclusion that the buyer can buy the merchandise from the seller and import it without having to pay the fee. The license fees paid by the buyer/licensee to the licensor, an unrelated party, are not conditions of sale of the imported merchandise for exportation to the United States. Accordingly, the license fees are not additions to the price actually paid or payable for the imported merchandise as royalties under section 402(b)(1)(D) of the TAA.
**547226 dated July 27, 1999.**

Under terms of the license agreements, the fees to be paid by the importer/buyers through the trust to the licensors have the effect of settling a debt owed by the licensee, a party related to the seller. Thus, the payments to the Trust are analogous to the settlement of a debt owed by a party related to the seller and considered an indirect payment to the seller. Even though there is a change in format of settling the payment obligation (the creation of the Trust), the obligation of the parties itself does not change. The fact that a trademark license agreement contains clauses allowing the licensor to retain control over the quality of the product on which the trademark is placed does not in itself render the license fees stemming from the agreement to be dutiable. In this case, the license fees paid by the importer/buyers are included in the transaction value of the imported merchandise as part of the price actually paid or payable. The creation of the trust for this case does not change this determination pursuant to section 402(b)(1)(D) of the TAA.
**547134 dated July 27, 1999; <u>aff'g</u> 546513 dated Feb. 11, 1998, and 545194 dated Sep. 13, 1995.**

Pursuant to license and technical agreements, the licensee pays the licensor/seller a running royalty based on the percentage of the net selling price for each licensed product sold by the licensee. The agreements define net selling price as the price of the licensed products manufactured by the licensee and sold to it customers, excluding actual freight, transportation charges, insurance fees, agent's or distributor's commissions, and other similar charges paid by the licensee in dispatching the licensed products. Also, the payment of the royalties is not related to the sale for exportation of the imported merchandise. Accordingly, the amounts do not constitute part of the price actually paid or payable for the imported merchandise. In addition, the imported merchandise is not manufactured under patent. The royalty is not involved in the production or sale of the licensed products. Finally, the importer may purchase the imported product without paying the fee. Based on the evidence and information provided, and assuming that the price between the related parties represents an acceptable transaction value pursuant to section 402(b)(2)(B), the royalties concerning the licensed products, paid to the licensors/sellers, are not included within the transaction value as part of the price actually paid or payable, or as royalties and/or proceeds.
**546951 dated Oct. 22, 1999.**

The importer entered into an agreement to import partially finished haulers and wheel loaders, which the importer will complete in the United States using U.S. sourced material and labor. The importer makes payments directly to the seller and their related parties. A royalty is involved in the production of the merchandise occurring in the Untied States, and the importer cannot buy the product without paying this fee. Therefore, the importer's payment of a percentage of the value added after importation is a condition of the sale of the unfinished goods for exportation to the U.S. Thus, the fees paid by the importer to the licensor for use of the licensor's designs, development, know-how, trade secrets, and goodwill, are included within the transaction value of the imported merchandise, either as part of the price actually paid or payable under section 402(b)(1), or as royalties in accordance with section 402(b)(1)(D).
**546367 dated Dec. 1, 1999.**

Under the terms of a license agreement the importer agreed to pay the licensor a quarterly payment of the royalty equal to four percent of the net sales of the trademark products in the United States and Canada. The licensor is involved in the production of the imported merchandise to the degree that it provides general styling information and conceptual designs, in the form of sketches and paper patterns to the importer which is used by both the importer/buyer and the seller. The various inter-company design activities undertaken pursuant to the license agreement were used in designing the apparel for the ready-to-wear collection which the importer ultimately purchased from the seller. Accordingly, in the circumstances of this related party transaction, and based on the information submitted, we find that the technical information used in the production of the imported merchandise constitutes an assist under section 402(b)(1)(B) of the TAA. The royalty payments at issue are included in transaction value as either part of the price actually paid or payable, or as an addition thereto under section 402(b)(1)(D) of the TAA. In addition, the technical information supplied by the licensor to the importer constitutes an assist within the meaning of section 402(h)(1)(A)(iv) of the TAA.
**546782 dated Dec. 2, 1999.**

The importer entered into a Trademark License Agreement, in which the importer grants a non-exclusive right and license to manufacture, or have manufactured and sell Licensed Products bearing the registered trademark in the United States. In return for the license, the importer pays the trademark holder a royalty fee of ten percent of the total goods sold. In addition, the 1999 Bags Trademark License Agreement, provides the importer with the non-exclusive right and license to manufacture or have manufactured licensed products and to sell, have sold, or use those products in the United States. The royalty fees paid by the importer to the subsidiary of a trademark holder are not conditions of sale for exportation to the United States, and are therefore, not dutiable.
**547557 dated Feb. 13, 2001.**

Insufficient evidence was presented to determine whether a bona fide sale occurred between the manufacturer and the middleman or whether the merchandise was clearly destined for the United States. If the transaction value between the middleman and the importer is determined to be acceptable, the royalty fee paid is part of the transaction value. The importer/buyer is the party directly paying the royalty fees to a party related to the middleman/seller. As such, unless the payments are unrelated to the imported merchandise, they are considered payments included in the transaction value of the imported merchandise.
**547155 dated Mar. 22, 2001.**

Pursuant to a supply agreement, seller/licensor agrees to sell the merchandise exclusively to buyer/licensee. If buyer/licensee does not pay the up-front set sum royalty, it may still purchase the merchandise, but does not then have the right to exclude others from the manufacture of the merchandise. The continuing percentage-

based royalty payments are not a condition of the sale for exportation to the United States of imported products. Based on the information provided, the initial up-front sum is included in the appraised value as part of the price actually paid or payable for the imported merchandise. The ongoing percentage-based royalty payments are not additions to the price actually paid or payable pursuant to section 402(b)(1)(d) of the TAA, in the determination of transaction value, and therefore, are not included in the appraised value.
**546626 dated Nov. 9, 2001.**

The license fee at issue in this case is related to license rights, technical assistance, basic support, and product design and development of the finished product, not the imported merchandise. There is a rebuttable presumption that all payments made by a buyer to a seller, or a party related to a seller, are part of the price actually paid or payable. As in the instant case, an exception exists when the buyer demonstrates that such payments are completely unrelated to the merchandise. Therefore, the payments are not part of the price actually paid or payable. In addition, the payment of the royalty is not a condition of sale. The payment should not be added to the price actually paid or payable provided under section 402(b)(1)(d) of the TAA.
**547761 dated Mar. 14, 2002.**

Royalty payments paid for patent and trademark rights, upon importation and subsequent resale benefiting the importer, are dutiable under the TAA as part of the price actually paid or payable. Royalties are dutiable when (1) the imported merchandise was manufactured under patent; (2) the royalty was involved in the production or sale of the imported merchandise; and (3) the importer could not buy the product without paying the fee. The fact that a company pays royalties as to both domestically produced and imported patented product does not vitiate the claim that payment of royalties is closely related to the sale of the imported product. Such royalty payments are included as statutory additions to the price actually paid or payable unless the buyer establishes that no portion of the proceeds accrues directly or indirectly to the seller. Additionally, the importer failed to account for future rebates determined by the fluctuation in market prices. If the rebates are not accounted for at the time of entry, this failure precludes the use of these rebates as reimbursements that may offset the duties owed on the royalty payments in a prior disclosure.
**548055 dated Mar. 14, 2002.**

Payments made to a party related to the seller generally imply that the royalties/license fees are tied to the purchase of merchandise. In this instance, however, Customs determined that such payments are not dutiable under the transaction value method of appraisement. For the subject merchandise, two license fees were paid to the licensor pursuant to two license agreements: one with the seller and a second with the importer. The seller/licensor agreement indicated that the licensor grants the seller the exclusive right to use the trademark to manufacture the subject merchandise. The

importer/licensor agreement, by contrast, related to marketing the merchandise in the United States. Royalties and license fees are considered statutory additions to the price actually paid or payable under the transaction value. Duties apply to any royalty or license fee related to the imported merchandise that the buyer is required to pay as a condition of the sale for export to the United States and/or any subsequent resale, disposal, or use of the imported merchandise that *accrues to the seller*. In this case, the agreement between the licensor and the importer related solely to the distribution and sale of the merchandise within the United States. The agreement was not a condition of the sale for exportation by the vendor to the importer and the seller does not receive any benefit from it. Therefore the respective licensing fee should not be included in the transaction value of the subject merchandise.
**547968 dated May 7, 2002.**

The importer and the foreign manufacturer are related parties. Additionally, the party to whom the royalties are paid is both the seller and the licensor in this transaction. There is a presumption that royalties paid to the seller are included in transaction value, unless the importer can show otherwise. In this case, the license agreement is replete with requirements regarding the sale of the imported merchandise. Accordingly, the royalty payments are a condition of sale for the imported merchandise and are included in the transaction value of imported merchandise.
**547148 dated Sep. 12, 2002.**

Royalties paid to third parties for the right to use a trademark in the United States will generally not be added to the price actually paid or payable. In this case, the licensor is related to the importer, but not to the manufacturer. Additionally, the licensor does not buy or sell the merchandise. Accordingly, the royalties paid by the importer to the licensor were not a condition of sale for export to the United States. The royalties paid to the licensor by the importer should not be added to the price paid or payable.
**548112 dated Sep. 23, 2002.**

The royalty fees in question are not related to the production and sale of the imported merchandise, nor are they a condition of sale for the imported merchandise. Examination of the sales documentation, namely the purchase orders and sales invoices does not reveal any linkage between the sale for exportation to the United States and the payment of the royalty fees. The royalty payments relate to the manufacture and sale of finished licensed products in the United States. The royalty payments do not qualify as dutiable additions to the price actually paid or payable pursuant to section 402(b)(1)(D).
**548305 dated Aug. 11, 2003; <u>reconsidered</u> <u>in</u> 547662 dated Sep. 20, 2002 (additional information presented).**

The buyer pays a royalty to its related party seller for certain imported merchandise manufactured under patent. The royalty is involved in the production or sale of the imported merchandise. In addition, the importer cannot import the merchandise without paying the royalty. The payments should be included in the transaction value of the imported merchandise either as part of the price actually paid or payable, or as an addition to the price actually paid or payable.
**548373 dated Nov. 24, 2003.**

Pursuant to a trademark license agreement between the parties, the importer pays the licensor a royalty which is based upon the percentage of net retail sales for the exclusive right to product, market, distribute and sell, to boutiques and outlets products bearing a specified trademark. The royalty payments are related to the imported merchandise; however, the payments are not a condition of sale. The payments are not linked to the purchase order or invoices between the sellers and the importer, and the fees are paid on products that are manufactured in the United States. Accordingly, the royalty payments are not included in the transaction value as an addition to the price actually paid or payable.
**548368 dated Dec. 24, 2003.**

# SALE FOR EXPORTATION

## INTRODUCTION

19 U.S.C. 1401a(b)(1) states the following with respect to a sale for exportation:

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States. . . .
(emphasis added).

The corresponding Customs regulation is 19 CFR 152.103(b)(1).

**GATT Valuation Agreement:**

Article 1, paragraph 1, corresponds with 19 U.S.C. 1401a(b)(1).

CCC Technical Committee Advisory Opinion 1.1- The concept of "sale" in the Agreement. This advisory opinion lists situations in which imported goods would not be deemed to have been the subject of a sale.
I. Free consignments
II. Goods imported on consignment
III. Goods imported by intermediaries, who do not purchase the goods and who sell them after importation
IV. Goods imported by branches which are not separate legal entities
V. Goods imported under a hire or leasing contract
VI. Goods supplied on loan, which remain the property of the sender
VII. Goods (waste or scrap) imported for destruction in the country of importation with the sender paying the importer for his services

In addition, CCC Technical Committee Advisory Opinion 14.1 states the following:

What interpretation should be given to the expression "sold for export to the country of importation" in Article 1 of the Agreement?

The Technical Committee on Customs Valuation expressed the following opinion:
The Council's Glossary of International Customs Terms defines the term importation as "the act of bringing any goods into a Customs territory" and the term exportation as "the act of taking any goods out of the Customs territory". Therefore, the fact that the goods are presented for valuation of itself establishes their importation which, in turn, establishes the fact of their exportation. The only remaining requirement then, is to identify the transaction relating thereto.

In this respect, there is no need that the sale takes place in a specific country of exportation. If the importer can demonstrate that the immediate sale under

consideration took place with the view to export the goods to the country of importation, then Article 1 can apply. It follows that only transactions involving an actual international transfer of goods may be used in valuing merchandise under the transaction value method.

Examples that illustrate the above principles are are then cited in Advisory Opinion 14.1.

**Judicial Precedent:**

E.C. McAfee Co. et. al. v. United States et. al., 842 F.2d 314 (Fed. Cir. 1988).

This case is an appeal from the Court of International Trade. In the lower court, the plaintiffs challenged the decision by the Customs Service that the value of made-to-measure wearing apparel from Hong Kong when sold to U.S. customers by a Hong Kong distributor represented the transaction value of the goods. The plaintiffs claimed that the transaction value should have been based on the price paid to the distributor of fabric, tailoring, and packing.

The Court of International Trade held that Customs properly determined that the value of the merchandise when sold by the Hong Kong distributor to U.S. customers constituted the price actually paid or payable. The United States Court of Appeals for the Federal Circuit reversed the lower court's holding.

The parties stipulated to the following facts. Orders of made-to-measure wearing apparel are taken either in the United States or in Hong Kong. If the orders are taken in the United States, sales representatives of Hong Kong distributors advertise availability and set up a display of fabrics and styles in the United States, usually in a hotel. Customers make selections and measurements are taken. The order is sent to the distributor in Hong Kong. In situations where the orders are taken in Hong Kong, the transactions originate in retail shops of distributors where tourists place orders. In this instance, the clothing is subsequently sent through a freight forwarder to the United States for shipment to the U.S. customer.

Upon receipt of an order, the distributors contract with tailors in Hong Kong to produce the wearing apparel. The distributor supplies the fabric and the tailors manufacture the clothing and then return the finished apparel to the distributor. Upon receipt of the finished clothing, the distributor packs the clothing, addresses the packages to each individual customer, obtains quota and visa, and gives the package to a freight forwarder for shipment to the United States.

The court cites 19 CFR 152.103(a)(3), which states:

In some cases, the price actually paid or payable may represent an amount for assembly of merchandise in which the seller has no interest in the merchandise other than as assembler. In such cases the price actually paid or payable, adjusted by the

addition of the value of the components and required adjustments, will form the basis for transaction value.

The issue is stated as follows: Whether the custom-made clothing is assembled merchandise within the meaning of the regulation and, if so, whether the transaction value of the merchandise should be determined on that basis.

The Federal Circuit Court of Appeals, relying upon TAA No. 8, C.S.D. 81-92, 15 Cust. B. & Dec. 921 (Oct. 15, 1980), concluded that the cut, make, and trim operation by the Hong Kong tailors must be considered an "assembly" and the imported goods are to be considered "assembled merchandise" within the meaning of the regulation. The issue then becomes whether the merchandise assembled by the tailors, i.e., the transaction between the distributors and the tailors, was one "for exportation to the United States" within the meaning of 19 U.S.C. 1401a(b)(1).

In this case, the Court found that transaction value should be based upon the price the distributor paid the tailor because "the reality of the transaction between the distributors and the tailors is that the goods, at the time of the transaction between the distributors and tailors, are for exportation to the United States." McAfee, 842 F.2d at 319. The clothing is made-to-measure for individual U.S. customers and ultimately shipped to these particular customers.

However, the Court proceeded to indicate that the determination that goods are being sold or assembled for export to the United States is fact-specific and may only be made on a case-by-case basis. In this particular case, the merchandise is unique in that, from the time of the initial contact until the eventual importation, the made-to-measure clothing was being made for a specific U.S. customer and not the U.S. market in general.

Limitation of E.C. McAfee et. al. v. United States et. al, Customs B. & Dec., Vol. 22, No. 18, May 4, 1988.

The U.S. Customs Service issued a general notice indicating that the holding of the above-noted case is limited by the language of the court to the facts of that particular case. The principles set forth within the subject court case should only be applied to the importation of made-to-measure clothing when the distributor and tailor are located in the same country.

Brosterhous, Coleman & Co. A/C Lurgi Chemie Und Huttentechnik GmbH v. United States, 14 Ct. Int'l Trade 307 (1990).

In this case, Crown Zellerbach Corp., a U.S. producer of paper, contracted with the plaintiff, Lurgi, a West German corporation, to design, fabricate, and supervise the construction of a chlorine dioxide bleach plant at Crown's paper-making facility in the United States. The contract did not specify the vendors who would supply the components or the countries from which the components were to be purchased. Lurgi

then contracted with vendors in the Federal Republic of Germany for the manufacture of the components and plaintiff Brosterhous, a customs broker, imported the components for Lurgi.

The Customs Service appraised the merchandise pursuant to the transaction value derived from the sale between Lurgi and Crown. The plaintiffs contend that the sale for exportation to the United States for purposes of determining transaction value is that between Lurgi and its suppliers.

The court determined that the contract between Crown and Lurgi did not require that Lurgi purchase the components from any particular vendor or country. In fact, the contract did not preclude Lurgi from purchasing the components in the United States. A specific provision in the contract involving the payment of duties merely stipulated the responsibilities of the parties *if* the merchandise were to be imported.

Pursuant to these facts, the court held that the transactions between Lurgi and its vendors are sales for exportation to the United States for purposes of determining transaction value. The prices that Lurgi agreed to pay for the components are the prices to be used in appraising the goods.

Orbisphere Corp. v. United States, 13 Ct. Int'l Trade 866 (1989).

The plaintiff, Orbisphere Corp., sells scientific devices that are manufactured in Switzerland by Orbisphere Labs, a subsidiary of the plaintiff. At issue in this case are sales orders solicited from U.S. customers by the plaintiff's sales staff working in four U.S. sales offices. Orders are forwarded to the New Jersey office, which are then forwarded to Orbisphere Labs in Geneva for manufacture. The Geneva office determines the prices of the products and the local U.S. office has no discretion to vary these prices. The Geneva office also controls the terms and conditions of sale.

The Customs Service appraised the imported merchandise on the basis of transaction value, i.e., the sales prices between the Geneva office and the ultimate U.S. purchasers. The plaintiff contests this decision and claims the goods should be appraised pursuant to their deductive value. Plaintiff argues that the sales of the items at issue occur in the United States, and that they are not sales "for export to the United States" as is required under transaction value.

The Court agreed with the plaintiff and concluded that the proper basis for valuation of the merchandise is deductive value. Based upon the evidence submitted, the court stated that the sales at issue occurred within the United States by a United States company, to United States customers. The merchandise was not sold for exportation to the United States and therefore, transaction value is eliminated as a means of appraisement.

Nissho Iwai American Corp. v. United States, 15 Ct. Int'l Trade 644 (1991) (withdrawn), amended, 16 Ct. Int'l Trade 86, rev=d., 982 F.2d 505 (Fed. Cir. 1992).

The dispute between the parties arises over whether the valuation of imported subway cars should be based upon the contract price between the New York City Metropolitan Transportation Authority (MTA) (the U.S. purchaser) and Nissho Iwai American Corporation (Nissho American), or the price paid by Nissho American's parent company, Nissho Iwai Corporation (Nissho Japan), to the manufacturer of the cars (KHI). The lower court decided that, for purposes of determining transaction value, it was the contract between Nissho American and MTA (the U.S. purchaser) which most directly caused the merchandise to be exported to the United States. The Court rejected the argument that the sale for export was the sale between Nissho and the Japanese manufacturer.

This case was appealed to the U.S. Court of Appeals for the Federal Circuit. The Court reversed the lower court's finding and held that it is the contract between the foreign manufacturer of the subway cars (KHI), and the middleman (Nissho American), which serves as the basis for determining transaction value. Essentially, the Court stated that TAA #57 (542928, 1/21/83), which held that when there are two or more sales which could be used as a transaction value, then Customs looks to the sale which "most directly causes the merchandise to be exported to the United States," is "legally unsound." The Court overruled the requirement of "a weighing of the relative importance of two viable transactions".

Synergy Sport Int'l, Ltd. v. United States, 17 Ct. Int'l Trade 18 (1993).

This case addresses the proper dutiable value of merchandise imported pursuant to a three-tiered distribution arrangement involving a foreign manufacturer, a middleman and an ultimate U.S. purchaser. The issue is which sale, i.e., the sale between the foreign manufacturer and the middleman or the sale from the middleman to the U.S. purchaser, should form the basis of transaction value for appraisement purposes. The middleman in this case is the importer of record.

The Court determined that the price actually paid or payable by the middleman/importer to the foreign manufacturer is the proper transaction value. The Court further stated that, in order for a transaction to be viable under the valuation statute, it must be a sale negotiated at arm's length, free from any non-market influences and involving goods clearly destined for export to the United States.

United States vs. Hitachi America, Ltd and Hitachi Ltd., 21 Ct. Int'l Trade 373 (1997).

In stating that "[t]he preferred basis for arriving at the proper valuation is the >transaction value,' defined as >the price actually paid or payable' by the importer to the seller," the Court began with the price paid by the importer. The Court rejected the related party transactions between the importer and middleman and between the middleman and manufacturer on the grounds that neither was not being statutory viable because the importer failed to meet the burden of demonstrating the acceptability of the related party transaction. Neither the sale between the importer and middleman nor the

sale between the middleman and manufacturer represented a statutorily viable transaction value. Therefore, the Court determined that the loss of revenue calculation pursuant to 19 U.S.C. 1592 should be based on the sale between the importer and the ultimate purchaser in the United States under either transaction value or a modified transaction value under section 402(f) of the TAA.

In addition, the Court supported Customs= position regarding the value information an importer needs to provide to Customs. The Court concluded that the importer was required to disclose and report to Customs all information relevant to determine the value of merchandise under '402 of the TAA, including the price actually paid or payable and to notify Customs of any changes in the price paid.

United States vs. Hitachi America, Ltd,172 F.3d 1319 (Fed. Cir. 1999), aff'g in part, vacating in part, rev'g in part, 21 Ct. Int'l Trade 373 (1997).

The United States Federal Court of Appeals reversed the decision of the Court of International Trade regarding the rejection of the sales between the related parties in the determination of transaction value. The Court stated that the fact that the parties are related does not render the transaction unacceptable for valuation purposes "if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable," citing 19 U.S.C. section 1401a(b)(2)(b)(b). The Court of International Trade's decision to use the domestic transaction value rather than the import transaction value as the basis for computing the penalty in this case was reversed and remanded.

Victor Woollen Products of America, Inc., vs. United States, 21 Ct. Int'l Trade 1109 (1997).

The Court of International Trade held that Customs correctly appraised melton wool fabrics based upon the sales between Victor Woollen Products of America (VWPA) and its U.S. customers. The Court also analyzed test value comparisons to determine whether the relationship between VWPA and its parent supplier influenced the price of the imported merchandise. The Court concluded that the deductive and computed values submitted by VWPA were insufficient to form a reliable comparison.

Victor Woollen Products of America, Inc., vs. United States, 175 F.3d 1327 (Fed. Cir. 1999), vacating, 21 Ct. Int'l Trade 1109 (1997).

The Federal Circuit held that transaction value may in fact be applicable, and Customs is to look only to whether the relationship between the parties influenced the price and if the price closely approximates certain test values. If the transaction meets these tests, then it is an acceptable basis for transaction value. The Federal Circuit remanded the case to the CIT for additional fact finding.

La Perla Fashions, Inc., v. United States, 22 C.I.T. 393 (1998), aff'd by 185 F.3d 885 (Fed. Cir. 1999) (decision affirmed without opinion).

In this three-tiered transaction, La Perla imported merchandise from its parent company, Gruppo La Perla (GLP), in Italy, and resold the merchandise to retailers in the United States. Customs appraised the merchandise based on the price paid by the U.S. customers to La Perla. The Court held that the transfer price between GLP and La Perla was affected by the relationship between the parties. The Court determined that Customs correctly appraised the merchandise based on the sales between the importer, La Perla, and its U.S. customers.

Victor Woollen Products of America, Inc., vs. United States, 21 Ct. Int'l Trade 1109 (1997), vacated and remanded by 175 F.3d 1327 (Fed. Cir. 1999), remanded to U.S. Customs Service by 163 F.Supp. 2d 645 (CIT 2001), 259 F.Supp. 2d 1289 (Ct. Int' l Trade 2003).

This case involves the appraisal of wool fabric imported by Victor Woollen Products of America (VWPA) from its parent and the manufacturer, Victor Woollen Products of Canada (VWPC). Customs appraised the wool fabric under the transaction value method based on the price VWPA charged to its U.S. customers. The importer disagreed claiming the fabric should be appraised based on the related party price and filed a protest. The CIT ruled in favor of the government and the importer appealed.

On appeal, the Court of Appeals for the Federal Circuit found that the sales from VWPC to VWPA could be used to appraise the merchandise provided certain conditions were met. As noted by the court, the valuation statute allows the use of the transaction value between a related buyer and seller provided the circumstances of the sale indicate that the relationship did not influence the price actually paid or payable. Alternatively, the transaction value between a related buyer and seller may be used if the transaction value closely approximates certain test values—either the transaction value of identical or similar merchandise in sales to unrelated buyers, or the deductive value or computed value for identical or similar merchandise. The CAFC remanded the case to the CIT to determine whether either of the two conditions was satisfied, and if not, to make findings with respect to VWPA's deductive and computed value calculations.

On remand, the CIT held on August 29, 2001, that there was insufficient evidence in the record to determine whether VWPA's transaction value closely approximated a test value or to determine either the deductive or computed value. The lower court consequently remanded the case to Customs with specific instructions to make various findings with regard to the unresolved issues, the primary one being the existence of test values.

The CIT found on March 20, 2003, agreeing with Customs, that for purposes of determining the acceptability of related-party transaction value, "closely approximates" of 19 U.S.C. 1401a(b)(2)(B) contemplates a specific transaction value of specific imported merchandise based upon a specific test value. The Court rejected plaintiff's

contention that the purpose of the "closely approximates" test for the acceptability of related party prices was to ensure that related-party importers do not evade duties by declaring prices that are too low, and therefore additions to the importer's prices were unnecessary since they would only increase them. Thus, the Court agreed with Customs that transaction value based on the price paid from VWPA to its parent, VWPC, was problematic. In addition, the Court agreed with Customs that documents provided were insufficient to determine deductive value. The Court concluded, agreeing with Customs, that valuation should be on the basis of sales from the importer to U.S. customers under the fallback method.

**Headquarters Notices:**

General Notice- Determining Transaction Value in Multi-Tiered Transactions, T.D. 96-87, Vol. 30/31, No. 52/1 Cust. B. & Dec. (January 2, 1997).

Customs presumes that transaction value is based upon the price paid by the importer. In order to rebut this presumption and prove that transaction value should be based on another price, complete details of all the relevant transactions and documentation (including purchase orders, invoices, evidence of payment, contracts, and other relevant documents) must be provided. Customs rulings will be based upon the evidence submitted with the request.

**Headquarters Rulings:**

## assembly of merchandise

19 CFR 152.103(a)(3); see chapter on PRICE ACTUALLY PAID OR PAYABLE, supra.

A U.S. importer purchases oil well tubing from an unrelated manufacturer in Japan. The tubing is shipped to Canada where another unrelated party applies a plastic protective coating to the tubing. The importer makes separate payments to the Japanese manufacturer and to the Canadian company, which performs the further processing. The transaction between the importer and the Canadian processor represents a sale for export to the United States. The transaction value is represented by the price paid by the importer to the Canadian processor, plus the value, as an assist, of the tubing furnished without charge by the importer to the Canadian processor. The value of the assist equals the sum of the price paid to the Japanese manufacturer and the transportation and related costs incurred in shipping the goods from Japan to the processing site in Canada.
**543737 dated July 21, 1986; modifies 542516 dated Oct. 7, 1981 (TAA No. 39).**

The proper method of appraisement in this case is transaction value, as represented by the price paid by the importer to the foreign refinery, plus the value, as an assist, of copper concentrate furnished to the foreign refinery free of charge. The transaction

between the importer and the refinery represents a sale for exportation to the United States even though the price paid or payable to the refinery relates solely to the processing of the goods.
**543971 dated July 22, 1987.**

## bona fide sale

19 U.S.C. 1401a(b)(1); 19 CFR 152.103(b)(1); GATT Valuation Agreement, Article 1, paragraph 1

Transaction value does not exist when there is no price actually paid or payable for imported merchandise when sold for export to the United States. The absence of a transaction value leads to the use of deductive or superdeductive value.
**542476 dated June 10, 1981 (TAA No. 28); partially revoked by 542930 dated Mar. 4, 1983 (TAA No. 59).**

Transaction value may not be derived from the original contract price for imported merchandise where, subsequent to its importation, the alleged buyer refused to accept or pay for the goods. In such an instance, no sale for exportation to the United States exists, because there was no transfer of ownership to the buyer.
**542895 dated Aug. 27, 1981 (TAA No. 51); 544262 dated June 27, 1989.**

A bookkeeping debit and credit in the related party company books is insufficient to establish the passage of consideration necessary in a bona fide sale.
**542673 dated June 10, 1982; 543446 dated Aug. 12, 1985, overruled by 543446 dated Apr. 2, 1986 (same ruling number).**

The fact that title to merchandise may pass at some time subsequent to its importation into the United States does not preclude a sale for exportation to the United States which may be used to establish transaction value.
**542930 dated Mar. 4, 1983 (TAA No. 59); partially revokes 542476 dated June 10, 1981 (TAA No. 28).**

The evidence in this case is not sufficient to establish the existence of a bona fide sale between the seller and alleged buyer. On the contrary, evidence exists which indicates that the actual sale for purposes of determining transaction value occurs between the seller and the ultimate U.S. purchaser.
**543016 dated Mar. 18, 1983; 542568 dated Nov. 16, 1981 (542568 overruled on other grounds by 543641 dated Aug. 22, 1986).**

Defective parts returned to the United Sates for replacement are not considered sold for exportation to the United States, and transaction value is eliminated as a means of appraisement.
**543288 dated Nov. 26, 1984.**

Based upon the circumstances taken as a whole, the method of payment between the related parties does not establish the passage of consideration necessary in a bona fide sale. There is no reconciliation or settlement of amounts owed by the buyer for alleged purchases. There is no sale between the parties for purposes of determining transaction value.
**543492 dated Feb. 20, 1985; aff'd by 544176 dated July 27, 1988.**

Merchandise is imported and placed into a bonded warehouse. The importer refuses to pay for the goods and the seller locates a new buyer in the United States. In this case, there is no price actually paid or payable for the merchandise when sold for exportation to the United States.
**543485 dated Feb. 26, 1985.**

Transaction value is eliminated as a means of appraisement when the importer obtains the goods free of charge. There is no sale for exportation to the United States.
**543581 dated Sep. 3, 1985.**

The evidence available indicates that the transactions do not constitute bona fide sales and, therefore, transaction value between the related parties is eliminated as a means of appraisement. However, it is clear that the sale for exportation takes place between the parent corporation (seller) and the ultimate purchaser in the United States.
**543544 dated Nov. 26, 1985.**

Bona fide sales occur between the related parties. However, the evidence establishes that the price is influenced by the relationship and. therefore, transaction value is eliminated as a means of appraisement.
**543615 dated Dec. 4, 1985.**

Actual payment of an agreed-upon purchase price from the buyer to the seller is not a prerequisite to a finding of a bona fide sale between the parties. However, if lump sum payments made by the buyer to the seller cannot be linked to specific import transactions or invoices, then there is insufficient information on which to determine the price actually paid or payable for the merchandise and transaction value is inapplicable.
**543446 dated Apr. 2, 1986; overrules 543446 dated Aug. 12, 1985 (same ruling number).**

A bona fide sale may exist, and may be the basis of transaction value, even where the agreed-upon price will not be paid until sometime after the importation of the goods.
**543446 dated Apr. 2, 1986; overrules 543446 dated Aug. 12, 1985 (same ruling number); 543698 dated June 11, 1986.**

The contract between the related parties indicates an intention by the parent to sell and the subsidiary to purchase merchandise for a specific consideration. The proof of payment and the reconciliation sheet verifies the amount of the consideration. The evidence relating to the payment by the subsidiary of freight costs and the assumption

by the subsidiary of the risk of loss establishes that there is a transfer of ownership in the merchandise from the parent to the subsidiary.
**543511 dated May 29, 1986.**

Lump-sum payments from the buyer to the seller which cannot be linked to individual invoices or importations will not suffice to establish the price actually paid or payable for merchandise when sold for exportation to the United States.
**543698 dated June 11, 1986.**

Based upon all of the information available and viewed in its entirety, the transactions between the Canadian seller and the U.S. buyer constitute bona fide sales. The importer has submitted evidence substantiating that the U.S. company assumes the risk of loss and that title is passed once the goods leave the Canadian warehouse. The U.S. company pays the Canadian company in exchange for ownership of the goods. The price actually paid or payable is represented by the invoice price between the Canadian company the U.S. company.
**543633 dated July 7, 1987.**

The primary factor to consider in determining whether a bona fide sale exists between a foreign seller and its related U.S. importer is whether there is a transfer of ownership (i.e., title and risk of loss) from the seller to the purported buyer. Other facts include whether the amounts remitted to the seller by the buyer equal the related-party transfer prices and whether these payments can be linked to specific import transactions.
**543708 dated Apr. 21, 1988.**

In this case, a passage of title for a consideration has not been established. The following factors contribute to the conclusion that a bona fide sale between the parties does not occur under the circumstances in this case: the lack of regular payment with periodic reconciliation of the account; the inability to identify payments with specific importations at any point in time; the inconsistency of the treatment of currency in payment; the lack of any accounts payable ledger or similar recordkeeping; and an after-the-fact attempt to change the insurable interest in the merchandise.
**543876 dated July 22, 1988.**

A foreign distributor and a U.S. importer entered into an agreement to purchase men's wearing apparel. It is alleged that the contract was cancelled and that the importer imported the merchandise on its own behalf, thereby negating the sale. However, no documentation establishing cancellation of the contract has been submitted. Transaction value is applicable in appraising the goods.
**544352 dated July 12, 1990.**

In order for merchandise to be appraised pursuant to transaction value, there must exist a bona fide sale between the parties. In order to determine whether title and risk of loss passes between the parties in question, Customs examines whether the contract is a "shipment" or "destination" contract as provided for in the Uniform Commercial Code.
**544658 dated Mar. 26, 1991.**

In this case, the importer has submitted sufficient evidence to establish that title and risk of loss to the merchandise will pass from the seller to the buyer in order to establish a bona fide sale between the parties.
**544417 dated Apr. 10, 1991.**

The importer contracted to purchase merchandise from the foreign seller. However, the merchandise became subject to an embargo, and the importer cancelled the original sale for the merchandise. After the embargo was lifted, the importer withdrew the merchandise from bond and made entry as importer of record. In this case, due to the cancellation of the purchase order, no sale was consummated between the two parties and transaction value is not applicable as a means of appraisement.
**544661 dated June 28, 1991.**

No bona fide sale of merchandise occurred between the Canadian parent and its U.S. subsidiary. Rather, a transfer of ownership of property was made directly between the Canadian parent and the ultimate U.S. customer. The price that the U.S. customer paid is the price actually paid or payable for the merchandise under transaction value.
**544775 dated Apr. 3, 1992.**

No evidence exists to establish that a sale occurred between the foreign seller and the ultimate U.S. purchaser. Rather, a bona fide sale took place between the foreign seller and the importer. Absent any evidence regarding an alleged sale between the foreign seller and ultimate U.S. purchaser, the importer cannot be considered a selling agent for the foreign seller.
**544608 dated Sep. 21, 1992.**

A U.S. company receives orders from its U.S. customers and, in turn, submits the orders to its related company in Italy. There is no sale for export between the two related parties because the transfer does not constitute a sale. It is the sale between the Italian company and the final U.S. customer, as facilitated by the related U.S. company, that is considered to be the sale for exportation to the United States. There is a transaction value, and the U.S. company is a selling agent. The commission the U.S. customer incurs for the U.S. company's services as a selling agent should be added to the price actually paid or payable.
**544949 dated Mar. 17, 1993.**

The issue in this case is whether the transaction between the seller and the supplier, and/or that between the supplier and ultimate consignee are bona fide sales such that the price actually paid or payable constitutes a valid transaction value. The supplier took possession of the merchandise at the seller's plant for an instant, before title and risk of loss passed to the ultimate consignee. In essence, the supplier never held title nor did it bear the risk of loss. The supplier acted as a selling agent for the seller, and the merchandise should be appraised under transaction value based on the price paid by the ultimate consignee. The difference between the seller's price and that of the supplier is a selling commission.
**545105 dated Nov. 9, 1993.**

Under the facts presented, there is no bona fide sale between the related party Canadian seller and the importer. Rather, a transfer of ownership of property, including title and risk of loss, is made directly between the Canadian seller and the final U.S. purchaser. Therefore, the price actually paid or payable by the ultimate purchaser constitutes a valid transaction value for purposes of appraisement under 19 U.S.C. 1401a(b).
**544852 dated Sep. 30, 1994.**

The information submitted indicates that a bona fide sale did not exist between the Canadian supplier and its wholly owned subsidiary. The appraising officer correctly based the transaction value of the imported merchandise on the price actually paid by the final U.S. customer to the Canadian supplier.
**545542 dated Dec. 9, 1994.**

Based upon the evidence submitted, a bona fide sale exists between the related party seller and U.S. importer. Therefore, the transaction value of the imported merchandise is correctly based upon the price actually paid or payable by the importer.
**545705 dated Jan. 27, 1995.**

For purposes of determining transaction value, there exists a sale for exportation to the United States between the Japanese manufacturer/exporter and the U.S. customer. The related party importer is acting as a selling agent of the Japanese exporter, and the amounts retained by the importer are considered dutiable selling commissions.
**544793 dated Feb. 16, 1995; <u>aff'g</u> 544659 dated July 3, 1991.**

There is no bona fide sale between the related parties. Rather, the related party in the United States acts as selling agent for the seller. Transaction value is based upon the price actually paid or payable by the ultimate U.S. purchaser, and selling commissions should be added to the price actually paid or payable to the extent not included in the price.
**544957 dated Apr. 7, 1995.**

The imported merchandise should be appraised based upon the transaction value of the sale between the U.S. company and the foreign seller. In addition, unless the buyer provides evidence establishing that a five percent fee paid to a Bangladesh agent is a

non-dutiable buying agency commission, the commission paid is to be added to the price actually paid or payable for the imported merchandise.
**545522 dated Apr. 26, 1995.**

The arrangement described between the related parties cannot serve as the basis of a transaction value because it is not a genuine sale for exportation. Instead, the transaction between the related parties is conducted in the context of an agency relationship, whereby the U.S. subsidiary is performing certain functions on behalf of its related party parent.
**545136 dated Apr. 28, 1995.**

The circumstances of the transaction indicate that the related parties did not act as seller and buyer of the imported merchandise. Rather, for purposes of determining transaction value, the sale for exportation to the United States occurred between the foreign seller and the final U.S. purchasers.
**545571 dated Apr. 28, 1995.**

In order for transaction value to be applicable, there must be a sale for exportation to the United States. The merchandise in this case is not sold until after it is imported into the United States. Transaction value is inapplicable as a basis of appraisement.
**546017 dated Aug. 11, 1995.**

A bona fide sale exists between the importer and its related party seller in France. The importer obtains title and risk of loss for the merchandise based on the CIF terms of sales that it negotiates with the seller. Based upon the importer's knowledge of the seller's capability to have its factories produce the merchandise ordered, and the prices commanded for such merchandise in the market, the importer negotiates a price for the merchandise with its U.S. customers. Once a price is agreed upon between the importer and its U.S. customer, the customer generates a purchase order to the importer. When the importer receives a purchase order from a U.S. customer, it generates a separate purchase order of its own and forwards it to the seller. There are no other contracts linking the rights and obligations of the U.S. customer to the seller. The importer has no authority to contract on behalf of the seller. Invoicing and payment for the merchandise between the seller and the importer are conducted independently of the invoicing and payment between the importer and its U.S. customers. The U.S. customers remit payment for the goods directly to the importer. The importer retains its mark-up and remits to the seller only the amounts negotiated for the imported merchandise.
**545518 dated Aug. 17, 1995.**

The importer solicits orders in the United States and subsequently places these orders with the foreign manufacturer. By agreement, the manufacturer assumes the credit risk of non-payment by the ultimate U.S. customer. The manufacturer further assumes responsibility for all quality-related matters and credit risks. It is the manufacturer's responsibility to fully insure the merchandise against all risks, i.e., if any ultimate U.S. purchaser of the merchandise institutes legal action against the importer for a claim

relating to the quality of the merchandise, then the manufacturer assumes the responsibility of defending the claim and any judgment that may be entered against the importer. The evidence presented does not establish that a sale exists between the importer and the foreign manufacturer upon which to base a transaction value. The sale for exportation to the United States is that between the foreign manufacturer and the ultimate U.S. purchaser, and the price actually paid or payable is represented by the price paid by the ultimate U.S. purchaser.
**545865 dated Aug. 25, 1995.**

Insufficient evidence has been provided to indicate that a bona fide sale occurred between the manufacturer and the middleman. No commercial documents relating to the alleged sale (such as a sales contract, a commercial invoice issued by the manufacturer to the middleman, purchase orders from the middleman to the manufacturer, evidence of payment by the middleman, or correspondence between these parties) were submitted. The importer submitted a textile export license/commercial invoice and bill of lading as evidence of a sale between the manufacturer and middleman. However, the export license/commercial invoice merely list the middleman as the exporter and the importer as the consignee. This document does not prove that the middleman purchased the imported goods from the manufacturer. The submitted documents do not indicate whether there was a transfer of property or ownership from the manufacturer to the middleman, whether the middleman paid for the goods, whether the middleman assumed the risk of loss, or whether it ever acquired title to the merchandise. Therefore, the price between the middleman and the importer constitutes the price actually paid or payable for purposes of determining transaction value.
**546031 dated Oct. 12, 1995.**

Based upon the submitted facts and evidence, there is no bona fide sale between the importer and its parent corporation in Italy. The imported merchandise should be appraised based upon the price actually paid or payable by the U.S. customer. The evidence regarding the assumption of risk of loss is contradictory. Purchase orders received by the importer from the U.S. customer are addressed to the parent corporation. There is no indication that the importer is either able to set its own resale prices, or even that the importer selects, or can select, its own customers without consulting the seller. The shipping terms appearing on the invoices are inconclusive. In light of the importer's failure to adequately explain certain inconsistencies, the evidence fails to establish that the importer is acting as an independent buyer/reseller of the merchandise. Any selling commission beyond what is remitted in the price actually paid or payable constitutes part of transaction value.
**545817 dated Oct. 25, 1995.**

It appears as if the related party importer was free to sell the merchandise at any price it desired; able to select its own customers and negotiate with them without consulting the manufacturer; and able, if desired, to have the merchandise delivered for its inventory. These factors indicate that the importer was not subject to control by either the manufacturer or the ultimate U.S. purchaser, and the importer acted primarily for its own

account, as is characteristic of an independent buyer/seller rather than an agent. It appears as if bona fide sales occurred both between the related party seller and the importer and between the importer and the ultimate United States purchaser. However, it has not been demonstrated that the relationship between the related party seller and importer/buyer did not influence the price actually paid or payable such that transaction value is an appropriate basis of appraisement.
**545506 dated Nov. 30, 1995.**

The evidence presented is insufficient to support a finding that a bona fide sale existed between the manufacturer and middleman. The invoices from the manufacturer do not specify the terms of sale. It is unclear as to when or if title to the goods passed from the manufacturer to the middleman. The documents provided by the importer as to proof of payment from the middleman to the manufacturer do not indicate who is the seller of the merchandise. Because the importer has not established that a bona fide sale occurred between the manufacturer and middleman, it is not necessary to determine whether the merchandise was clearly destined for export to the United States. The merchandise was properly appraised based on the importer's price.
**545980 dated Dec. 12, 1995.**

Title and risk of loss pass from the foreign seller to the U.S. supplier and then pass immediately thereafter from the U.S. supplier to the final U.S. purchaser. The supplier holds title only momentarily, if ever. In a situation where there is a simultaneous passage of title between parties, while an intermediary might take title to the merchandise for a split second, these circumstances negate the fact that in reality a middleman is acting for the seller. As a result, the intermediary operates as a selling agent for the seller, and the amounts retained by the intermediary are selling commissions. The only sale that occurs in the case is the sale between the foreign seller and the final U.S. purchaser and the imported merchandise should be appraised pursuant to transaction value based on the price paid by the U.S. purchaser.
**546192 dated Feb. 23, 1996; <u>modified</u> <u>by</u> 546316 dated May 29, 1996 (additional documentation presented which establishes that a bona fide sale occurs between the foreign seller and the U.S. supplier and that the sale constitutes a sale for exportation upon which transaction value may be based).**

Based on the information and documentation, there exists a bona fide sale between the related parties. The terms of sale indicate that the importer possesses title and risk of loss. The shipping terms provided in the "shipment contract" (CIF U.S. port of destination) between the parties and the "destination contract" between the importer and its U.S. customers, indicate that the importer maintains title and risk of loss from the time of delivery aboard the vessel at the port of shipment until delivery to the importer's U.S. customers. The submitted purchase orders between the seller and importer, customer invoices between the importer and its U.S. customers, proof of payment, and entry documents, indicate consideration is paid for the merchandise and that the parties conduct bona fide sales.
**546067 dated Oct. 31, 1996.**

Based upon the information submitted, it appears that bona fide sales occur between the foreign manufacturers and the middleman. (The middleman then resells the imported merchandise to a related party in the United States.) Title passes to the middleman at the time of the manufacturer's sale and does not pass to the importer until the merchandise arrives in the United States. The submitted purchase orders, invoices, and bank orders indicate that the manufacturers sell the merchandise to the middleman who then resells it to the importer.
**546377 dated Nov. 12, 1996.**

The middleman issues purchase orders to the manufacturers for specific merchandise. The purchase orders show the quantity, sizes, styles, and prices of the merchandise ordered. In turn, the contract manufacturers issue invoices to the middleman for the merchandise, and which correspond with the middleman's purchase orders. These documents are consistent with a buyer-seller relationship. The middleman pays the manufacturers in exchange for the goods and the payments are linked to specific merchandise that the middleman orders and which the manufacturers produce. Based on the totality of the circumstances, the evidence establishes that bona fide sales occur between the middleman and the manufacturers.
**546233 dated Nov. 25, 1996.**

The documentation submitted indicates that the terms of the transaction between the parties are C&F San Juan. It is the buyer who bears the risk of loss or damage from the time the goods pass the ship's rail at the port of shipment. The documents submitted support the position that the parties functioned as buyer and seller. The sale between the parties is a bona fide sale. In addition, the sale is one for exportation to the United States. The parties are not related, and it has been demonstrated that the merchandise is clearly destined for export to the United States at the time of the sale.
**546142 dated Nov. 29, 1996.**

Based upon conflicting information and documentation provided, Customs cannot determine whether the middleman acted as a buyer/seller or as a selling agent for the transactions in question. The shipping terms on the submitted invoices are inconclusive as to whether property or ownership was transferred to the middleman. No invoices from the ultimate purchasers were submitted. Evidence such as proof of payment demonstrating the manner in which payment passed between the parties is lacking. Assuming that the middleman served as a selling agent, as opposed to an independent buyer/seller, transaction value would be based on the price actually paid or payable by the U.S. purchasers with additions, as appropriate, for selling commissions incurred by the U.S. purchasers pursuant to section 402(b)(1)(B) of the TAA.
**546015 dated Dec. 13, 1996.**

Based on the evidence submitted, Customs is satisfied that the transactions between the parties are bona fide sales. The parties negotiate with one another on prices and payment terms. The related party buyer is free to select its customers and set its own prices when selling merchandise to U.S. customers. The buyer is not required to purchase solely from its related seller and, in fact, the buyer purchases merchandise

from other vendors. The sales are bona fide, but no evidence regarding the acceptability of transaction value has been submitted. Therefore, Customs cannot determine whether the sales may serve as the basis of transaction value.
**546553 dated Mar. 31, 1997.**

Since the documentation presented with regard to the "sale" is inconsistent in its entirety and does not reveal the substance of the transaction, including the obligations and roles of the parties, it is insufficient to establish that a bona fide sale occurred. In addition, even if there is a valid sale for purposes of determining transaction value, without evidence regarding the substance of the transaction and the roles of the parties involved, Customs cannot determine whether the sale of, or the price actually paid or payable for, the imported merchandise is subject to any condition or consideration for which a value cannot be determined. The merchandise should not be appraised pursuant to transaction value.
**546640 dated Nov. 7, 1997.**

The importer proposes a restructuring of the importation transaction with its related supplier to create a sale of merchandise. The merchandise has previously been given to the importer, free of charge. The price for the imported merchandise is to be negotiated based on industry norms. Assuming a bona fide sale occurs, there is no impediment to an importer restructuring its importation transaction for the express purpose of creating a sale of merchandise that may qualify for appraisement pursuant to transaction value. However, the related party prices must be acceptable within the meaning of the valuation statute.
**546552 dated Jan. 13, 1998.**

The transaction documents (between the middleman and the manufacturer) are consistent with a finding of a bona fide sale. There is a contract for the purchase and sale of goods between the parties. The contract refers to the middleman as the buyer and to the manufacturer as the seller. The documents further substantiate that the merchandise was for the account and risk of the middleman.
**546429 dated Feb. 5, 1998.**

The evidence submitted indicates that the sale between the two parties constitutes a bona fide sale for export to the United States. The buyer takes title and assumes risk of loss of the imported merchandise in Panama. All of the buyer's transactions are reflected as sales in its accounting books and financial statements. The end purchasers make payment to the buyer and the end purchasers acknowledge that they are purchasing the wearing apparel from the seller. The buyer maintains an office in Puerto Rico where the majority of its customer orders are placed and the buyer employs its own independent legal and accounting staff. In addition, the buyer maintains an office in Panama to handle quality and customer problems in addition to invoicing, billing, ordering and dispatch of merchandise. The transaction constitutes the price actually paid or payable for purposes of determining transaction value of the imported wearing apparel.
**546629 dated Apr. 2, 1998.**

Based upon the evidence submitted, the importer (related to the seller) acts as an independent buyer/reseller of the merchandise. The U.S. customers purchase their merchandise from the importer, pay the importer, and they go to the importer for satisfaction if difficulties arise with their purchases. The importer negotiates prices with its related party seller, is free to buy or not buy a line of shoes, and is free to find its own customers and establish prices with them. Therefore, the transaction value should be based on the price actually paid or payable between the importer and the related party seller. Commissions paid pursuant to a design consulting agreement are paid by the importer for the benefit of the seller. These commissions constitute part of the total payment made for the imported merchandise and are part of the price actually paid or payable for the imported merchandise.
**546541 dated May 1, 1998. (NOTE: Although this ruling originated as a request for reconsideration of 545817 dated Oct. 25, 1995, it is not a reconsideration; additional information and evidence in support of the importer's claim was presented, thereby warranting a different conclusion.)**

Based upon the totality of the information presented, the transaction between the related parties constitutes a bona fide sale. The terms of the sale governing the transaction were FOB German North Sea Port. The seller completed its performance of the contract by delivering the goods to the port of shipment, at which point the buyer acquired title to the goods. The sale constitutes a sale for exportation to the United States for purposes of determining transaction value.
**546087 dated May 21, 1998.**

The evidence submitted fails to establish that a bona fide sale took place between the importer and its related party. Moreover, there is no evidence in the documents submitted that the relationship between the parties did not affect the price within the meaning of 19 U.S.C. 1401a(b)(2)(B). In addition, the evidence has failed to establish that the goods were improperly appraised under transaction value based on the price paid by the U.S. customer.
**546424 dated Feb. 2, 1999.**

Based on the evidence submitted, Customs is satisfied that there exists a bona fide sale between the related parties and that the relationship did not influence the price actually paid or payable for the imported merchandise. The invoice price between the companies is an appropriate transaction value. The buyer is not a selling agent for the seller, but, rather, the buyer is the importer of the merchandise.
**546110 dated Mar. 2, 1999.**

The invoice submitted does not establish that a sale occurs, and the remaining documents indicate that there exists only one sale, i.e., that between the middleman and the importer. Based on the evidence presented, a bona fide sale does not exist between the manufacturer and the middleman. Thus, the transaction value is based on the price the importer paid for the imported merchandise. In addition, the fees paid do not constitute bona fide buying commissions and are included in the transaction value of the imported merchandise. The evidence available indicates that the importer had no control over the alleged buying agent.
**546607 dated Aug. 17, 1999**.

Based on the documents submitted, the transaction between the unrelated seller and the buyer is a bona fide sale. The buyer and seller have negotiated a price for the lot of surplus bearings. The manner in which the parties have agreed on a “per bearing price” is acceptable for appraisement purposes. In addition, the sale is a "sale for exportation to the United States." Therefore, transaction value is the proper method of appraisement for the lots of surplus bearings imported into the United States by the buyer.
**547249 dated Sep. 7, 1999.**

The imported merchandise was purchased pursuant to a three-tiered sales agreement. There is insufficient evidence to establish that a bona fide sale occurred between the middleman and the manufacturer. The requirements of Nissho are not met. Therefore, the subject merchandise should not be appraised pursuant to transaction value based on the transactions between the middleman and the manufacturer.
**546946 dated Sep. 30, 1999.**

In this case, the related foreign supplier grants various discounts based on established criteria from a price list. A bona fide sale occurs between the importer and the foreign supplier in that the importer assumes title and risk of loss for the imported merchandise from the foreign supplier's factory and the importer is not functioning as a selling agent. The discounted price constitutes the price actually paid or payable. The importer and related foreign supplier transaction business as if they are unrelated. The same discounts are given to both related buyers and unrelated buyers. Transaction value is acceptable as a means of appraisement.
**547019 dated Mar. 31, 2000.**

Based upon the facts presented and the documentation provided, the transactions between the Canadian importer of record and its non-related Far East suppliers are bona fide sales of merchandise that are clearly destined for the United States. Therefore, transaction value is the proper method of appraisement for the merchandise imported into the United States by the Importer, provided that the transactions meet the standards established in 19 U.S.C. 1401a.
**547594 dated June 27, 2000.**

The importer orders and purchases all of its imports from its subsidiary company. The subsidiary in turn purchases the merchandise from foreign suppliers. Based on the evidence presented, the transactions between the subsidiary and the unrelated overseas supplier consist of bona fide sales conducted at arm's length, wherein the merchandise is clearly destined for the U.S. importer. Accordingly, the manufacturer's price is the appropriate basis for determining the value of the imported merchandise.
**547844 dated Feb. 15, 2001.**

Insufficient evidence was presented to determine whether a bona fide sale occurred between the manufacture and the middleman or whether the merchandise was clearly destined for the United States. If the transaction value between the middleman and the importer is determined to be acceptable, then the royalty fee paid is part of the transaction value. The importer/buyer is the party directly paying the royalty fees to a party related to the middleman/seller. As such, unless the payments are unrelated to the imported merchandise, they are considered payments included in the transaction value of the imported merchandise.
**547155 dated Mar. 22, 2001.**

Although the importer is the exclusive distributor of the exporter's merchandise, such an arrangement does not demonstrate that the importer performed as an agent of the exporter. In this particular case, a number of additional factors indicate that there is not a principal-agent relationship: (1) the importer acts independently with regard to ordering, pricing, and selling merchandise; (2) the importer purchases merchandise for its own inventory and assumes responsibility for any first quality merchandise returned by the importer's customers; and (3) the importer purchases the merchandise on an ex-works basis. Therefore, based on the information presented, such an arrangement does not demonstrate that the importer performed as an agent of the exporter.
**547982 dated May 20, 2002.**

A multinational corporation (MNC) entered into an agreement with a company that serves as the U.S. importer of record. The agreement stipulates that the latter serves as both the sales representative and the exclusive distributor of the MNC's products to U.S. purchasers. In this case, a foreign subsidiary of the MNC produced the subject merchandise. The U.S. company did not function as an independent buyer of the imported merchandise, but rather as a selling agent on behalf of MNC. Therefore, the commissions received by the U.S. company constitute dutiable selling commissions. In the absence of a bona fide sale between the foreign subsidiary of the MNC and the U.S. company, the price paid by the U.S. purchasers, which already includes the selling commission, is the appropriate transaction value to be used for customs valuation purposes.
**548173 dated Dec. 6, 2002.**

The distributor is a U.S. company that manages the engineering, marketing, and sales of automotive merchandise, including merchandise manufactured by the importer. U.S. customers enter into agreements with the distributor whereby the distributor contracts with a third party to produce the merchandise. The distributor enters into production agreements with the importer/manufacturer, and the importer/manufacturer assumes the following responsibilities: arrange and pay for freight and insurance; maintain title and risk of loss until the merchandise is ready for shipment to the customer from the U.S. warehouse; and act as importer of record for the transaction. After entry, the importer/manufacturer arranges for storage of the merchandise in warehouses in the United States. The transactions between the importer/manufacturer and the distributor are not bona fide sales. Transaction value is inapplicable as a means of appraisement. With respect to deductive value, the shipment of the merchandise and the resulting sale to the customer may occur as late as five months after the importation of the merchandise. Because the deductive value method may only be used when merchandise is sold within 90 days of importation, deductive value is not an appropriate method of appraisement. The merchandise concerned is properly appraised on the basis of computed value. Because the importer is also the manufacturer of the merchandise, information concerning material and processing costs should be readily available.
**548165 dated Mar. 21, 2003.**

There is no sale for exportation to the United States for merchandise shipped to a U.S. warehouse by a related party seller whereby the importer withdraws the merchandise from the U.S. warehouse on an as-needed basis. Neither title nor risk of loss pass to the buyer until the merchandise is withdrawn from the warehouse. In addition, the price for the merchandise is not set until the related party buyer withdraws the merchandise from the warehouse, and payment is not due until withdrawal. Transaction value is not applicable in appraising the imported merchandise.
**548273 dated Apr. 17, 2003.**

The transactions between the manufacturer and the importer are bona fide sales wherein the merchandise is clearly destined for the United States. The importer takes orders for merchandise from department store customers at the importer's showroom located in New York City. These orders are then forwarded to the manufacturer. The merchandise is shipped to the importer's U.S. warehouse. Based on the terms of sale between the manufacturer and importer, the importer acquires and retains title and assumes risk of loss for the merchandise from the time the manufacturer ships the merchandise to the importer's warehouse until the time the importer ships the goods to the U.S. customers. Once the merchandise has been received, the importer prepares an invoice and ships the merchandise to its customer. Based upon the description of the quantity, style, sizing, and color of merchandise contained in the commercial documents, it is apparent that the merchandise ordered by the U.S. customers is the

same as the merchandise produced by the manufacturer and eventually shipped to these customers.
**548239 dated June 5, 2003.**

The only "sale" upon which to base a transaction value takes place between the U.S. importer and its unrelated U.S. customers. The sales are "for exportation to the United States" for purposes of determining transaction value. The merchandise is manufactured in direct response to an order placed by the U.S. customer. The manufacturer prepares the shipping documents and invoices, on behalf of the importer, and direct ships the merchandise to the U.S. customers, and the U.S. customers pays the importer the invoice price.
**548380 dated Oct. 23, 2003.**

## irrevocably destined for exportation to the United States

Merchandise that is sold in Italy to a U.S. buyer and is then stored in France for an indefinite amount of time is not sold for exportation to the United States within the meaning of transaction value. In order for transaction value to be applicable as a means of appraisement, the merchandise must be destined for export to the United States at the time of the sale.
**542310 dated May 22, 1981.**

Sales in a foreign country are not "sales for exportation to the United States" unless the merchandise is irrevocably destined for exportation to the United States.
**542416 dated July 31, 1981 (TAA No. 38).**

A delay in the exportation of merchandise to the United States will not negate the use of transaction value where the merchandise was destined for export at the time of the sale and there was no planned or actual use overseas.
**544973 dated Jan. 11, 1993.**

The importer has submitted a 1981 invoice from a merchant overseas for eleven carpets. The carpets were exported to the United States in December 1989. Transaction value is not valid as a means of appraisement. The merchandise was not sold for exportation to the United States. When the carpets were acquired in 1981, they were not irrevocably destined for exportation to the United States.
**545137 dated May 21, 1993.**

## sale for export to the United States distinguished from domestic sale

The mere fact that merchandise is subject to a purchase order between two domestic companies prior to the importation does not result in a sale for exportation to the United States between the two domestic companies.
**543786 dated Sep. 15, 1986.**

In this case, the sale for exportation to the United States is deemed to be that which occurs between a foreign the manufacturer and the importer, rather than the subsequent domestic resale between the importer and the ultimate purchaser in the United States.
**543789 dated Feb. 17, 1987.**

The importer orders and purchases all of its imports from its subsidiary company. The subsidiary in turn purchases the merchandise from foreign suppliers. Based on the evidence presented, the transactions between the subsidiary and the unrelated overseas supplier consist of bona fide sales conducted at arm's length, wherein the merchandise is clearly destined for the U.S. importer. Accordingly, the manufacturer's price is the appropriate basis for determining the value of the imported merchandise.
**547844 dated Feb. 15, 2001.**

## sale which most directly causes merchandise to be exported to United States

(NOTE: See Nissho, supra, indicating that "[t]he transaction which most directly causes the merchandise to be exported to the United States" analysis is no longer acceptable.)

The transaction to which the phrase when sold for exportation to the United States refers, when there are two or more transactions that might give rise to a transaction value, is the transaction which most directly causes the merchandise to be exported to the United States.
**542928 dated Jan. 21, 1983 (TAA No. 57); 071374 dated Sep. 27, 1983; 543098 dated Dec. 1, 1983; 543407 dated Dec. 14, 1984, aff'd by 543831 dated Jan. 25, 1988; 543545 dated June 3, 1985; 543498 dated Apr. 15, 1985; 543673 dated Feb. 4, 1986; 543721 dated Apr. 11, 1986; 543687 dated May 6, 1986; 543746 dated May 22, 1986; 543710 dated June 3, 1986; 543726 dated Aug. 25, 1986; 543921 dated May 5, 1987; 543861 dated July 7, 1987; 543624 dated Aug. 26, 1987, aff'd by 544450 dated Nov. 5, 1990; 543776 dated Oct. 21, 1987 (overruled by court case); 543911 dated Nov. 1, 1988; 554998 dated Jan. 24, 1989; 544284 dated Jan. 26, 1989; 544280 dated Feb. 2, 1989; 544286 dated Feb. 2, 1989; 544283 dated Feb. 23, 1989; 555312 dated June 26, 1989; 544288 dated Aug. 25, 1989; 544279 dated Sep. 13, 1989; 555040 dated Oct. 24, 1989; 544289 dated Nov. 6, 1989; 544313 dated Jan. 22, 1990, aff=d. by 544595 dated Mar. 8, 1991; 544465 dated Mar. 12, 1990; 544382 dated Oct. 9, 1990. (See also Nissho, supra. The analysis regarding "sale which most directly causes the merchandise to be exported" is no longer applicable.)**

Under appropriate circumstances, a sale of merchandise from a middleman (who in turn purchases the merchandise from a manufacturer) to an importer may constitute a sale for exportation to the United States. The transaction may also be the one that most directly causes the goods to be exported to the United States.

**542992 dated May 16, 1983. (The analysis regarding "sale which most directly causes the merchandise to be exported" is no longer applicable. See Nissho, supra.)**

A U.S. importer purchases oil well tubing from an unrelated manufacturer in Japan. The tubing is shipped to Canada, where another unrelated party applies a plastic protective coating to the tubing. The importer makes separate payments to the Japanese manufacturer and to the Canadian company which performs the further processing. The transaction between the importer and the Canadian processor represents a "sale for exportation to the United States." The transaction value is represented by the price actually paid or payable by the importer to the Canadian processor, plus the value, as an assist, of the tubing furnished without charge by the importer to the Canadian processor. The value of the assist equals the sum of the price paid to the Japanese manufacturer and the transportation and related costs incurred in shipping the merchandise from Japan to the processing site in Canada.
**543737 dated July 21, 1986; modifies 542516 dated Oct. 7, 1981 (TAA No. 39).**

The facts indicate that the sale for exportation to the United States is that between the foreign seller and the alleged U.S. ultimate purchaser. The company related to the seller in the United States merely processes the entries and serves as importer of record—it is not the buyer for transaction value purposes.
**544383 dated Jan. 18, 1991.**

A U.S. purchaser placed an order for goods with a foreign distributor, who in turn purchased goods from a foreign manufacturer to fill the order. Under such circumstances it is the sale between the foreign distributor and the U.S. purchaser that most directly causes the goods to be exported to the United States.
**544595 dated Mar. 8, 1991; aff'g 544313 dated Jan. 22, 1990 and 544314 dated Apr. 15, 1991. (The analysis regarding "sale which most directly causes the merchandise to be exported" is no longer applicable. See Nissho, supra.)**

The standard that Customs has consistently applied to determine which of two or more sales should be the basis of transaction value, is which sale or transaction most directly causes the merchandise to be exported to the United States.
**544417 dated Apr. 10, 1991; 544314 dated Apr. 15, 1991. (The analysis regarding "sale which most directly causes the merchandise to be exported" is no longer applicable. See Nissho, supra.)**

The fact that title to the imported merchandise may pass at some time subsequent to the importation of the merchandise does not preclude a sale for exportation to the United States for purposes of determining transaction value.
**544417 dated Apr. 10, 1991; 544314 dated Apr. 15, 1991.**

In this case, the sale which most directly causes the merchandise to be exported to the United States is the sale between the intermediary and the vendors.
**544670 dated July 16, 1992. (The analysis regarding "sale which most directly causes the merchandise to be exported" is no longer applicable. See Nissho, supra.)**

In approaching a sale for exportation issue, Customs first determines whether a sale has actually occurred. When there is more than one sale, Customs policy is that transaction value should be based on the sale which most directly causes the merchandise to be exported to the United States.
**544772 dated Oct. 8, 1992. (The analysis regarding "sale which most directly causes the merchandise to be exported" is no longer applicable. See Nissho, supra.)**

## terms of sale

The difference between ex-factory and F.O.B. sales is that the former results in the transfer of title and risk of loss to the buyer at the factory, whereas the latter results in the transfer of title and risk of loss at the situs of the F.O.B. transaction. In this case, an ex-factory sale is claimed, although the seller arranges, as an accommodation to the buyer, for the shipment of the goods from the factory to the port of exportation. Consequently, the burden is on the importer to establish that legal responsibility for the goods passes to the importer at the factory.
**543804 dated Sep. 30, 1986.**

The buyer purchases methanol from its related party seller on an ex-factory basis. In some cases, the related party seller prepays freight on behalf of the buyer. Based upon the evidence submitted, the parties have established that the prepayment of freight represents an acceptable accommodation arrangement and that the merchandise is in fact sold on an ex-factory basis.
**544181 dated June 23, 1989.**

The importer orders and purchases all of its imports from its subsidiary company. The subsidiary in turn purchases the merchandise from foreign suppliers. Based on the evidence presented, the transactions between the subsidiary and the unrelated overseas supplier consist of bona fide sales conducted at arm's length, wherein the merchandise is clearly destined for the U.S. importer. Accordingly, the manufacturer's price is the appropriate basis for determining the value of the imported merchandise.
**547844 dated Feb. 15, 2001.**

## timing of sale

Merchandise that is sold in Italy to a U.S. buyer and is stored in France for an indefinite amount of time is not sold for exportation to the United States within the meaning of transaction value. In order for transaction value to be applicable, the merchandise must be destined for export to the United States at the time of the sale.
**542310 dated May 22, 1981.**

Jewelry purchased six years prior to export to the United States is not a sale for exportation within the meaning of section 402(b)(1) of the TAA.
**542791 dated June 10, 1982.**

For purposes of determining transaction value in appraising imported merchandise, the sale for exportation to the United States must take place at some unspecified time prior to the exportation of the goods. If the sale for exportation does not take place prior to the export of the goods, transaction value is inapplicable as a means of appraisement.
**543868 dated Mar. 5, 1987.**

Automobiles imported into the United States that are purchased pursuant to a program whereby the ultimate purchaser takes delivery abroad and uses the automobile for a specified amount of time in a foreign country prior to exportation to the United States may not be appraised pursuant to transaction value. There is no sale for exportation to the United States with respect to these automobiles. However, if there is a transaction value of identical or similar merchandise available, then it is proper to appraise the automobiles imported pursuant to the program using the transaction value of identical or similar merchandise method. However, it must be demonstrated that the transaction value of the merchandise under consideration is fully acceptable under section 402(b) in order to be applied as the transaction value of the identical or similar goods pursuant to section 402(c).
**548371 dated Nov. 19, 2003; aff'g 547197 dated Aug. 22, 2000 (regarding the issue of the acceptability of transaction value).**

## transaction value eliminated due to lack of sale

Transaction value does not exist when there is no price actually paid or payable for imported merchandise when sold for exportation to the United States. The absence of a transaction value leads to the use of deductive or superdeductive value as a means of appraising the merchandise.
**542476 dated June 10, 1981 (TAA No. 28); partially revoked by 542930 dated Mar. 4, 1983 (TAA No. 59).**

Transaction value may not be derived from the original contract price for imported merchandise where, subsequent to importation, the buyer refuses to accept or pay for the goods. There is no sale for exportation to the United States, because there was no transfer of ownership to the buyer.
**542895 dated Aug. 27, 1981 (TAA No. 51); 544262 dated June 27, 1989.**

Merchandise dutiable under transaction value does not include the value of repairs of in-transit damage made in a third country and which merely restore the merchandise to its original condition, even if replacement parts are needed. However, the addition to merchandise of parts in a third country which enhances the value may be sufficient to make the third country the country of exportation, in which transaction value is inapplicable.
**542516 dated Oct. 7, 1981 (TAA No. 39); modified by 543737 dated July 21, 1986.**

The evidence in this case indicates that title to the imported merchandise does not pass to the related party U.S. subsidiary. Rather, title passes directly to the U.S. customer. Transaction value is eliminated as a means of appraisement.
**542568 dated Nov. 16, 1981; overruled on other grounds by 543641 dated Aug. 22, 1986.**

Jewelry purchased six years prior to date of export to the United States is not "sold" for export within the meaning of section 402(b)(1) of the TAA.
**542791 dated June 10, 1982.**

A vehicle which is purchased in a foreign country and used for an extended period of time in that country prior to its exportation cannot be considered to have been sold for export to the United States. The proper dutiable value can be obtained by adjusting downward the price paid for the vehicle to reflect reasonable depreciation.
**542962 dated Dec. 29, 1982.**

In a transaction where a machine is imported by two joint-owners and only one of the importer "purchases" its portion prior to exportation, the machine is not sold for export to the United States and therefore, transaction value is inapplicable.
**543243 dated Apr. 30, 1984**.

Defective parts returned to the United States for replacement are not considered "sold" for exportation to the United States, and transaction value is eliminated as a means of appraisement.
**543288 dated Nov. 26, 1984.**

Merchandise is imported and placed into a bonded warehouse. The importer refuses to pay for the goods and the seller locates a new buyer in the United State who is willing to purchase the merchandise. In this case, there is no price actually paid or payable for the merchandise when sold for exportation to the United States.
**543485 dated Feb. 26, 1985.**

Transaction value is eliminated as a means of appraisement when the importer obtains the merchandise free of charge. In this case, there is no sale for exportation to the U.S.
**543581 dated Sep. 3, 1985.**

A foreign distributor and a U.S. importer entered into an agreement to purchase men's wearing apparel. It is alleged that the contract was ultimately cancelled and that the importer imported the merchandise on its own behalf, thereby negating the sale. However, no documentation establishing cancellation of the contract has been submitted. Transaction value is applicable in appraising the merchandise.
**544352 dated July 12, 1990.**

Merchandise is entered into the United States for the purpose of possibly selling the merchandise in trade shows. The evidence indicates that, if in fact the merchandise is not sold at the trade shows, it is returned to the foreign supplier. Transaction value is not applicable as a means of appraising the merchandise.
**546673 dated Mar. 17, 1998.**

Based on the evidence available, transaction value is not the proper basis of appraisement for the subject wearing apparel, in that no sale for exportation occurred between the exporter and the importer in the United States. Rather, the merchandise is consigned to the importer. Transactions involving goods that are shipped on a consignment basis do not constitute bona fide sales and cannot be appraised pursuant to transaction value. Appraisement of the imported wearing apparel should proceed sequentially through the subsequent provisions of section 402 of the TAA, with the first alternative basis of appraisement being the transaction value of identical or similar merchandise in section 402(c) of the TAA.
**547591 dated Apr. 21, 2000; 547573 dated Apr. 21, 2000; 547628 dated Apr. 21, 2000.**

## transaction value determination

The evidence in this case indicates that the sale for exportation to the United States for purposes of determining transaction value is that between the manufacturer and the ultimate U.S. purchaser. The importer acts as a selling agent, and the amount retained by the importer from the invoiced prices to the purchaser is considered to be a dutiable selling commission.
**544659 dated July 3, 1991; aff=d by 544793 dated Feb. 16, 1995.**

Printing presses are purchased from a foreign vendor by a U.S. buyer with instructions to ship the presses to Canada for exhibition in a trade show. The presses are subsequently stored in Toronto until they are sold to a second U.S. buyer. The sale for exportation to the United States for purposes of transaction value is the second sale. It was not until the second sale that the merchandise was in fact exported to the United States.
**544633 dated Aug. 2, 1991.**

The evidence submitted in this case does not establish that the merchandise was ever sold for exportation to the United States within the meaning of section 402(b)(1) of the

TAA. Since it cannot be established that the merchandise was ever sold for export to the U.S., transaction value is inapplicable as a means of appraisement.
**544544 dated Nov. 1, 1991.**

A U.S. company receives orders from its U.S. customers and, in turn, submits the orders to its related company in Italy. There is no sale for export between the two related parties because the transfer does not constitute a sale. It is the sale between the Italian company and the final U.S. customer, as facilitated by the related U.S. company, that causes the merchandise to be exported to the United States. There is a transaction value, and the U.S. company is a selling agent. The commission that the U.S. customer incurs for the U.S. company's services as a selling agent should be added to the price actually paid or payable.
**544949 dated Mar. 17, 1993.**

Once it is determined that both the manufacturer's price and a middleman's price are statutorily viable transaction values, then the manufacturer's price, rather than the price from the middleman to the purchaser, is used as transaction value. However, the manufacturer's price constitutes a viable transaction value when the goods are clearly destined for export to the United States and the manufacturer and middleman deal with one another at arm's length, in the absence of any non-market influences that affect the legitimacy of the sales price. Here, the manufacturer and middleman did not deal with each other at arm's length and the price was influenced by the relationship. There is only one statutorily viable transaction value that is acceptable, and tit is the sale between the middleman and U.S. purchaser.
**544579 dated Sep. 30, 1993.**

If an importer requests appraisement based upon the price paid by a middleman to the foreign manufacturer, and the importer is not the middleman, it is the importer's responsibility to show that the price is acceptable. If requested by Customs, the importer must provide sufficient evidence to indicate that the sale was an "arm's length sale", and that it was a "a sale for export to the United States," within the meaning of 19 U.S.C. 1401a(b). If the importer is unable to provide sufficient evidence from the middleman supporting the claim, then Customs has no authority to appraise under transaction value based on any price other than what the importer paid. In this case, no evidence was submitted to indicate that the goods were clearly destined for the United States or that the sale was at arm's length. The merchandise should be appraised based on the price paid by the importer to the foreign seller.
**545144 dated Jan. 19, 1994.**

The middleman and the manufacturers are not related and they deal with each other on an arm's length basis. Evidence has been submitted to indicate that the merchandise is destined for the United States. Purchase contracts between the importer and the middleman indicate that the merchandise is designed and manufactured according to the importer's specifications. The merchandise is tagged with the importer's label and sent directly from the manufacturer to the importer. The purchase orders indicate that the manufacturer has access to the quota-visa required to ensure entry of the

merchandise. The price between the manufacturers and the middleman constitutes the price actually paid or payable.
**545271 dated Mar. 4, 1994.**

The middleman sells exclusively to purchasers in the United States. Every item the middleman purchases from its suppliers, whether for inventory or in response to a specific purchase order, is destined for the United States at the time of sale. The middleman is not related to any of its suppliers and the sales between the middleman and the suppliers are at "arm's length." The transaction value may be based upon the price the middleman/distributor paid to its suppliers/manufacturers, even though the middleman is not the importer.
**545265 dated Mar. 4, 1994.**

The middleman and the manufacturer of the equipment at issue are not related and they deal with each other on an arm's length basis. The purchase orders between the middleman and the foreign manufacturer indicate that the imported merchandise is designed to meet U.S. standards, including a clause that indicates that all materials and fabrication for the equipment should be in accordance with the ASME (American Society for Mechanical Engineers) Code. The purchase order notes that all nameplates and caution signs associated with the imported equipment are to be supplied by, and bear the name of, the middleman. The manufacturer is aware not only that the middleman is a U.S. company, but that the middleman's customer is also a U.S. company. The purchase order leaves no doubt that the merchandise is clearly destined for export to the United States. Consequently, the manufacturer's price constitutes a valid transaction value.
**545262 dated Mar. 11, 1994.**

A bona fide sale for exportation occurs between the seller in Canada and the ultimate U.S. buyer in instances where the seller ships the merchandise directly to the buyer, F.O.B. Vancouver, with title and risk of loss passing to the buyer at the time the merchandise is placed on the carrier for shipment to the United States. As long as it is possible to determine the price actually paid or payable, it is proper to appraise the merchandise under transaction value. However, transaction value may not be used unless there is sufficient information available to determine the price actually paid or payable. There is no evidence that a sale for exportation existed between the Canadian seller and the ultimate U.S. buyer on those occasions where the merchandise is first shipped to an agent in the United States. As a result, merchandise imported under these conditions must be appraised using a method other than transaction value.
**545447 dated May 12, 1994.**

Sufficient evidence was submitted to demonstrate that (1) the sale was "at arm's length" and (2) at the time the middleman purchased, or contracted to purchase, the imported goods, they were "clearly destined for the United States." Therefore, the transaction value of the imported merchandise may be based upon the sale for exportation between the Hong Kong middleman and the manufacturer.
**545360 dated May 31, 1994.**

There is no dispute that the merchandise in question originated in Indonesia; however, nothing in the documentation submitted indicates that the merchandise was destined for the United States at the time it was exported from Indonesia. To the contrary, each of the documents submitted indicates Canada as the final destination of the goods. Therefore, there is insufficient evidence to indicate that the merchandise was sold for exportation to the United States at the time it was exported from Indonesia. Nor is there any evidence or claim that a bona fide sale for exportation occurred between the Canadian company and the importer in the United States. In the absence of any sale for exportation to the United States, transaction value is not an appropriate means of appraisement.
**545434 dated May 31, 1994.**

The only sale for exportation to the United States occurred between the foreign seller and the ultimate U.S. purchaser. The merchandise in question was shipped directly to the U.S. purchaser. The ultimate purchaser was the importer of record, which had title to and bore the risk of loss for the merchandise when it entered the United States. Consequently, there is only one statutorily viable transaction value.
**544835 dated June 15, 1994.**

Insufficient evidence has been presented to overcome the presumption that transaction value should be based upon the price paid by the importer to the middleman. The Korean seller's invoice and the export visa submitted are insufficient to establish that the goods were clearly destined for the United States.
**545648 dated Aug. 31, 1994.**

The documentation is insufficient to establish that the sale for exportation to the United States took place between the manufacturer and the middleman. Therefore, the importer has not overcome the presumption that the price it paid to the middleman should serve as the basis of transaction value. The transaction value of the merchandise should be based upon the price paid by the importer.
**545499 dated Oct. 13, 1994.**

The appraising officer correctly based the transaction value of the imported merchandise on the price actually paid or payable by the importer to the middleman. The documentation submitted is insufficient to support the importer's claim that the transaction value should be based upon the price paid by the middleman to the manufacturer.
**545560 dated Oct. 14, 1994.**

With regard to whether the transaction value may be based on the sale between the middleman and the manufacturer, the appropriate evidence needs to be tendered to the appraising officer. Such evidence includes invoices, purchase orders, letters of credit, bills of lading, agreements between the parties, proof of payment. The evidence must establish that the transaction was "a sale for export to the United States," that is, that at the time the middleman purchased, or contracted to purchase, the imported goods were

clearly destined for the United States and that the transaction was an "arm's length sale." At that point, a determination may be made as to whether the transaction value should be based on the sale between the middleman and the foreign manufacturer.
**545714 dated Nov. 9, 1994.**

Because the manufacturer and the middleman are related parties and insufficient evidence was submitted to demonstrate that they dealt with each other at arm's length, the transaction value was properly based upon the price actually paid or payable for the imported merchandise by the importer.
**545377 dated Nov. 10, 1994.**

The importer has established that the sale from the foreign manufacturer to the middleman is conducted at "arm's length." In addition, the importer has provided sufficient evidence that the duffle bags were clearly destined for the United States, even though they were shipped through Canada. The duffle bags were special ordered by a specific U.S. purchaser, bore its logo, and were ultimately sent to that purchaser. Even though the bags were initially shipped to Canada, the evidence indicates that they were shipped in-bond and there is no indication that there was any planned or actual use of the bags in Canada. The sale for exportation to the United States occurred between the middleman and the foreign seller.
**545254 dated Nov. 22, 1994; <u>modifies</u> 544714 dated Mar. 3, 1992 (additional clarifying evidence presented).**

The manufacturer and middleman are related parties and insufficient evidence has been submitted to demonstrate that they dealt with each other at arm's length. The price paid by the middleman to the manufacturer can not serve as the basis of transaction value.
**544711 dated Dec. 23, 1994.**

Sufficient evidence was submitted to demonstrate that (1) the sales were at “arm’s length” and (2) at the time the middleman purchased, or contracted to purchase, the imported goods, they were “clearly destined for the United States.” Therefore, the transaction value of the imported merchandise may be based upon the sale for exportation between the middleman and the manufacturer.
**545508 dated Jan. 20, 1995.**

Transaction value is based upon the price paid by the importer, which is the invoiced amount paid by the importer including the amount remitted to the manufacturers and the markup retained by the middleman.
**545129 dated Mar. 6, 1995.**

Transaction value of the imported merchandise should be determined with respect to the price actually paid or payable by the importer to the middleman. There is no basis for determining that the manufacturer’s price constitutes a viable transaction value. Accordingly, the presumption that the importer’s price is the appropriate basis of appraisement has not been overcome. In addition, this price paid by the importer

includes the cost of quota. Consequently, these amounts are properly part of the price actually paid or payable.
**545603 dated Mar. 10, 1995; 545604 dated Mar. 10, 1995.**

There is a presumption that transaction value is based upon the price that the importer pays. Absent sufficient information to determine that another transaction is a bona fide sale, the merchandise is to be appraised based upon the price paid by the importer. When the importer presents an invoice from a sale between the middleman and the foreign seller, it is the importer's burden to show that such a sale was at "arm's length" and that the goods sold were "clearly destined for the United States." The importer has not met this burden, and transaction value should be based upon the price paid by the importer.
**545645 dated Apr. 11, 1995.**

The appraising officer correctly based the transaction value of the imported merchandise on the price that the importer paid to the middleman. It is not clear from the evidence presented whether there exists a sale between the manufacturer and the middleman.
**545595 dated Apr. 26, 1995.**

The presumption that transaction value should be based upon the price paid by the importer to the middleman has not been overcome. No evidence has been provided that indicates that the merchandise is "clearly destined" for the United States at the time it is sold from the manufacturer to the middleman. Also, the middleman resells merchandise to countries other than the United States and the purchase orders do not designate which of the items in the order are destined for the United States. The transaction value should be based upon the price paid by the importer to the middleman.
**545815 dated Apr. 28, 1995.**

The appraising officer correctly based the transaction value of the imported merchandise on the price that the importer paid to the middleman. With regard to whether transaction value may be based on the transaction between the middleman and the manufacturer, it is unclear whether there was a sale between the manufacturer and the middleman. No documentation has been provided to establish a sale between the manufacturer and middleman.
**545657 dated May 5, 1995.**

The middleman and the foreign manufacturer are not related and the sales from the foreign manufacturer to the middleman constitute independent, arm's length transactions. Evidence has been submitted to establish that the merchandise is clearly destined for the United States. The invoices and purchase orders indicate that the merchandise is to be shipped to the importer. When the middleman contracts with the manufacturer and before the merchandise for export to the United States is produced, the parties are aware that the product is being produced for export to the United States. A sale for exportation occurred between the middleman and the foreign manufacturer.

Consequently, the transaction value of the merchandise is correctly based on the price actually paid or payable by the middleman to the foreign manufacturer.
**545709 dated May 12, 1995.**

The middleman and the foreign manufacturers are not related and the sales are at arm's length. In addition, the merchandise is clearly destined for the United States at the time it is sold from the manufacturer to the middleman. The merchandise is designed and manufactured according to the importer's specifications and is shipped directly to the importer. Based upon the evidence presented, the transaction value of the imported merchandise is appropriately based on the price paid by the middleman to the manufacturers.
**545612 dated May 25, 1995.**

The submitted documents relating to the transaction between the middleman and foreign seller, such as order confirmations and invoices, indicate that the merchandise was to be shipped to New York or to another location in the United States. In addition, the evidence indicates that the imported goods were manufactured specifically for the middleman's customer. At the time that the middleman purchased the merchandise from the foreign seller, it was clearly destined for the United States. In addition, the sale between the middleman and the foreign seller was at arm's length. The transaction value of the imported merchandise should be based upon the sale from the foreign seller to the middleman.
**545898 dated June 12, 1995.**

The importer has presented a number of factors that indicate that the imported hair dryers are clearly destined for the United States. First, there is the exclusive use of the English language on the packaging and use care manual. Second, the electrical products bear the Underwriters Laboratory Trademark, indicating that the products meet safety standards of an organization that tests products for the U.S. market. Third, the electrical products are made to operate on 110-volt electrical current, which is not used outside of North America. Fourth, the products bear a U.S. trademark which is licensed to the importer. Finally, the shipping documents indicate that the merchandise is to be delivered to the importer in the United States. In addition, the importer has established that the manufacturer and the middleman are unrelated and it is presumed that they negotiated with each other at arm's length. Therefore, the transaction value of the imported merchandise should be based upon the price actually paid or payable by the middleman to the manufacturer.
**545368 dated July 6, 1995.**

In order to appraise the imported merchandise on the lower price that the middleman pays to the manufacturer, the importer must present sufficient evidence that the sale was an arm's length sale and that it was a sale for exportation to the United States. The foreign manufacturers in this case are not related to the middleman, and the sales from the foreign manufacturers to the middleman constitute independent, arm's length transactions. In addition, evidence demonstrating that the merchandise is clearly destined for the United States has been presented. The imported merchandise is the

result of an order from the importer to the middleman who in turn places an order with the manufacturer. The merchandise is manufactured specifically for the importer for the U.S. market. Transaction value may be based on the price that the middleman pays the manufacturer.
**545967 dated July 7, 1995.**

The importer has established that there was a bona fide sale between the foreign manufacturer and the middleman and that the imported merchandise was clearly destined for exportation to the United States when sold by the manufacturer to the middleman. However, the importer has not established that the transactions were at arm's length and that the relationship between the middleman and the manufacturer did not influence the price. Consequently, the transaction value of the merchandise should be based on the price actually paid or payable by the importer.
**545272 dated Aug. 17, 1995.**

The importer purchases cameras, lenses, and other merchandise from its Japanese parent company. The parent company acts as middleman in the transaction. The middleman and the foreign manufacturer are unrelated, that is, they deal with one another at "arm's length." The importer has also established that the merchandise is clearly destined for the United States at the time it is sold to the middleman. A copy of warranty information that accompanies all merchandise purchased for the U.S. market has been submitted. The warranty applies only to merchandise sold in the United States. In addition, the manner in which the merchandise is purchased further supports a finding that the merchandise is clearly destined for export to the United States. Based on the information presented, the manufacturer's price to the middleman constitutes a viable transaction value under section 402(b)(1) of the TAA.
**545979 dated Aug. 24, 1995.**

A bona fide sale exists between the middleman and the unrelated foreign manufacturers. The sales between the manufacturers and the middleman are independent, arm's length transactions. The evidence presented demonstrates that at the time the purchase orders for the footwear are placed with the manufacturers, the goods are clearly destined for the United States. Purchase orders include instructions to ship the merchandise directly from the factory to the United States. The manufacturers are instructed to mark the merchandise in English with the country of origin, and labels relating to constituent materials must comply with particular labeling guidelines of the Federal Trade Commission. Further, the manufacturers are required to mark the cartons in which the merchandise is packed for international shipment with the name and address of the U.S. importer. In addition, the manufacturers are required to complete a special invoice that is intended to satisfy U.S. Customs' invoicing requirements for certain classes of footwear. A sale for exportation to the United States takes place between the middleman and the foreign manufacturers. The transaction value is based on the price actually paid or payable by the middleman to the manufacturers.
**545474 dated Aug. 25, 1995.**

Without information indicating whether the middleman and the foreign manufacturers are related, it cannot be concluded that the transactions are conducted at arm's length. Furthermore, evidence indicating that the merchandise is clearly destined for the United States is insufficient, by itself, to rebut the presumption that the importer's price is the basis of transaction value. Regarding the evidence submitted concerning whether the goods are clearly destined for the United States, the manufacturer's invoice does not specify the name of the importer, nor does it indicate that the goods are destined for delivery in the United States. To the contrary, the invoice specifies that delivery of the merchandise is local. Additionally, no purchase orders were submitted from the importer that could link the imported merchandise to the merchandise referenced on the manufacturer's invoice. The transaction value should be based upon the price actually paid or payable by the importer.
**545627 dated Sep. 13, 1995.**

There is no evidence to establish that the imported merchandise was clearly destined for the United States at the time of the alleged sale between the toy manufacturer and middleman. The middleman sells its products to many countries. The middleman is under no contractual obligation to deliver specific merchandise to the importer at a certain time. In addition, the evidence fails to establish that the transactions between the manufacturer and the middleman were at arm's length. The imported merchandise should not be appraised based on the transaction between the middleman and the toy manufacturer.
**546091 dated Jan. 3, 1996.**

The suppliers of the imported merchandise and the middleman are not related, and the sales occur at arm's length. The commercial invoices indicate that the merchandise is to be shipped by the suppliers directly to the importer in the United States. The importer orders the goods from the middleman who, in turn, orders them from the suppliers, and all parties are aware that the goods are produced for export to the United States. The merchandise purchased by the middleman from the suppliers is clearly destined for export to the importer in the United States. Therefore, the sale between the suppliers and the middleman constitutes a sale for exportation to the United States for purposes of determining transaction value.
**546143 dated Feb. 23, 1996.**

Based upon the documentation, Customs cannot determine whether the middleman was acting as an independent buyer/reseller of imported goods, or whether instead, the middleman was acting as a selling agent for its parent company, the manufacturer of the merchandise. The importer has failed to persuade Customs that the claimed transaction is a valid sale for exportation. Therefore, the presumption that transaction value is based on the price actually paid or payable by the importer controls in this case.
**545804 dated Feb. 27, 1996.**

The imported merchandise is designed, ordered, produced, and labeled explicitly for the U.S. market. The wearing apparel is labeled in accordance with relevant Federal Trade Commission requirements pertaining to content and care instructions, as well as with

both U.S. designations and the private labels of the U.S. retailers. In addition, the apparel is accompanied by properly visaed export licenses issued by the appropriate authorities in the People's Republic of China. The evidence available indicates that the sale between the middleman and manufacturer is a bona fide, arm's length sale for export to the United States. Therefore, the price between the middleman and manufacturer constitutes the price actually paid or payable for purposes of determining transaction value.
**546206 dated Apr. 11, 1996.**

The imported garments are made pursuant to the U.S. customer's specifications. These specifications are set forth on purchase orders that the importer receives from its customers. The importer then provides the specifications to the middleman. The middleman then provides the manufacturers with the specifications. The purchase orders between the middleman and the manufacturers state that the finished goods are for export to the United States and must comport with the specifications. The export packing identifies the goods as destined for the United States. In addition, the manufacturer and the middleman are not related. The sale is an arm's length sale and is free from any non-market influences that affect the legitimacy of the sales price. Accordingly, the sale between the manufacturers and the middleman constitutes a sale for exportation to the United States for purposes of determining transaction value.
**546288 dated July 11, 1996.**

The importer has not overcome the presumption that the imported merchandise should be appraised on the basis of the price that the importer paid the middleman. The documentation submitted contains certain discrepancies. There are discrepancies between the manufacturer's price as reflected on the commercial invoice and the manufacturer's price as stated on the visaed invoice. The discrepancies between the commercial and visaed invoices raise the presumption that the documents contain false or erroneous information in regard to appraisement. The imported merchandise should be based upon the price actually paid or payable by the importer to the middleman.
**545920 dated July 25, 1996.**

The importer has failed to rebut the presumption that the price the importer paid, as shown on the invoices presented to Customs at the time of entry of the merchandise, should serve as the basis of transaction value. The evidence presented does not establish that there were sales for exportation to the United States between the supplier and the alleged middleman. The transaction value should be based on the price actually paid or payable by the importer.
**546128 dated July 26, 1996.**

The evidence submitted fails to show that the manufactured goods were clearly destined for the United States at the time of the sale between the manufacturers and the middleman. The majority of the invoices do not designate any shipping terms. No other evidence (such as purchase orders, bills of lading, or other shipping documents) showing that the products were clearly destined for the United States was provided.

Therefore, the transactions between the manufacturers and the middleman do not determine the price actually paid or payable for the merchandise.
**545878 dated July 31, 1996.**

Although the evidence submitted establishes that a bona fide sale occurs between the manufacturer and the middleman, the evidence does not support the position that the sale is a sale for export clearly destined for the United States. The merchandise is not shipped to the U.S. customer from the factory; instead, it is first shipped to the middleman for quality testing. The invoices to the middleman make no reference to the United States or otherwise indicate that the merchandise is destined for the United States. In addition, the freight documents do not indicate that the merchandise is clearly destined for the United States, nor do the invoices indicate the terms of sale. Insufficient evidence has been submitted to overcome the presumption that the transaction value is based upon the price actually paid or payable by the importer to the middleman.
**546069 dated Aug. 1, 1996.**

In order for the sale between the manufacturer and the middleman to be a sale for exportation to the United States for purposes of determining transaction value, the imported merchandise must have been clearly destined for export to the United States, and the manufacturer and the middleman must have dealt with each other at arm=s length. None of the parties are related in this case. With respect to the clearly destined standard, copies of purchase orders, commercial invoices, correspondence, and other related documents have been provided. The documentation indicates that the manufacturer shipped the merchandise directly to the importer in the United States. The export certificate prepared by the manufacturer indicates that the goods were at all times destined for the importer. The sale between the manufacturer and the middleman constituted a bona fide sale and a sale for exportation to the United States for purposes of determining transaction value.
**546098 dated Sep. 18, 1996.**

The middleman and the foreign manufacturers are not related, and the sales between the middleman and foreign manufacturers are freely negotiated, arm's length transactions. In addition, the merchandise is clearly destined for the U.S. when it is sold to the middleman. The submitted invoices, purchase orders and packing lists indicate that the merchandise is produced and sold for export to the United States, and specifically to the U.S. customer in Los Angeles. The marks and numbers on the shipping cartons as well as trademarks (registered in the United States) placed on the merchandise are consistent with such a finding. Accordingly, the sales between the middleman the foreign manufacturers are "arm's length" sales and the merchandise is sold for exportation to the United States within the meaning of section 402(b)(1).
**546377 dated Nov. 12, 1996.**

The documentation indicates that there exists a bona fide sale between the middleman and the manufacturers. The ordering of the imported merchandise is initiated when the importer receives an order from a U.S. customer. Once it receives an order, the

importer places the order with the middleman. Pursuant to the instructions received from the importer, the middleman arranges to have the merchandise produced by one of the contract manufacturers. Consequently, the imported merchandise is produced in accordance with an order made by the importer's U.S. customer, who chooses the fabrics, style, and design of the merchandise. To comply with the order from the importer's U.S. customer, the merchandise must be sized and labeled to meet U.S. standards. The transaction documents indicate that the merchandise is made for a specific U.S. retailer. During the production of the merchandise, the articles are marked with tracking codes to ensure that the products arrive at the intended destination and are not diverted to alternative purchasers and locations. The use of this tracking system and inventory control, which the manufacturers must abide by, demonstrates that the parties understand that the merchandise is intended for the United States when sold to the middleman. The merchandise is clearly destined for the United States when it is sold to the middleman. The contract manufacturers are not related to the middleman, therefore it is presumed that they negotiate with each other at arm's length. The transaction value of the imported merchandise should be based upon the sale between the manufacturers and the middleman.
**546233 dated Nov. 25, 1996.**

The middleman and the manufacturer are related parties. No information regarding the influence that the relationship may have had on negotiations or dealings between the parties has been submitted. It has not been demonstrated that the transaction value between the parties is acceptable. Therefore, Customs cannot conclude that the transactions were conducted at arm's length. Although the evidence may establish that the merchandise was clearly destined for the United States, this is insufficient, by itself, to overcome the presumption that the price paid by the importer is the price actually paid or payable in the determination of transaction value.
**546015 dated Dec. 13, 1996.**

Women's wearing apparel is exported from Germany to both the United States and Canada. All of the merchandise that is intended for the U.S. market, as well as the merchandise intended for the Canadian market, is shipped to Canada. In Canada, the merchandise is placed in a bonded warehouse, and a quality control inspection is performed. Any merchandise that is intended for the U.S. market and which is of inferior quality is either entered into the commerce of Canada, where an attempt is made to sell it, or it is returned to Germany, and the account of the U.S. importer is credited. The fact that some or all of the merchandise could be sold in Canada creates a contingency of diversion. Accordingly, the merchandise is not sold for exportation to the United States and transaction value is not applicable.
**546427 dated Dec. 19, 1996.**

There are bona fide sales of imported appliances from unrelated Asian manufacturers to the middleman, and the parties deal with one another at arm's length. However, the evidence does not establish that the merchandise is clearly destined for the United States. Prior to when the boxes are addressed and delivered to a carrier, there is no indication that the appliances are specifically ordered and made only for the United

States. The contracts between the parties indicate that the merchandise could be going to countries other than the United States. The transaction value of the imported appliances cannot be based upon the price that the middleman pays the manufacturers.
**545985 dated Dec. 19, 1996.**

The importer is a wholly-owned subsidiary of the middleman and it is also the exclusive U.S. distributor of the imported equipment. The middleman and the foreign manufacturer are related parties. The information submitted concerning the circumstances of the manufacturer-middleman sale supports a finding that, despite the relationship, the manufacturer and middleman deal with one another at arm's length. In addition, the importer has proven that the merchandise is clearly destined for export to the importer in the United States. The presumption that the importer's price is the appropriate basis of appraisement has been overcome. Transaction value is based on the price paid by the middleman to the manufacturer.
**546089 dated Jan. 17, 1997.**

The middleman is not related to the seller. Therefore, it is assumed that the sales between the middleman and seller are at arm's length. The merchandise is "cut to order" for a U.S. company and the shipping documents clearly state that the goods are destined for sale in the United States. Based upon the description of the transactions, and provided that, upon request, the importer is able to present to Customs the kind of supporting documentation described in T.D. 96-87, it appears that a sale for exportation to the United States occurs between the middleman and seller, with the middleman fulfilling a role characteristic of a buyer/reseller. Transaction value may be based upon the sale between the middleman and seller.
**546464 dated Apr. 3, 1997.**

Based upon the submitted documents, such as purchase orders, the manufacturers' invoices, and the airway bills, the importer has established that the merchandise was clearly destined to the United States at the time that the middleman purchased it from the manufacturers. In addition, the middleman and the manufacturers are not related; therefore, it is presumed that they negotiate with each other at arm's length. The evidence establishes that the sales between the middleman and the manufacturers are sales for exportation to the United States for purposes of determining transaction value.
**546225 dated Apr. 14, 1997.**

A bona fide sale for exportation occurs between a related importer and seller. However, the information and documents submitted do not support the acceptability of the transfer price pursuant to section 402(b)(2(B) of the TAA. Therefore, the sale between the related importer and seller does not represent a viable transaction value. The merchandise should be appraised based on the transaction between the importer and the unrelated U.S. customer. The transaction value is determined to be the price actually paid or payable by the U.S. customers plus an addition for selling commissions paid to the importer's selling agent.
**546260 dated June 6, 1997.**

Based on the information submitted, there exists a sale between the middleman and the manufacturer of the merchandise. The middleman and the manufacturer are not related parties, and the sale is considered to be at arm's length. However, considering the totality of the evidence, the burden of establishing that the merchandise is clearly destined for the United States at the time it is purchased by the middleman from the manufacturer has not been met. Therefore, the transaction value cannot be based on the price the middleman pays the manufacturer, but rather, should be based on the importer's price.
**545902 dated June 18, 1997.**

The middleman and the manufacturer are not related parties; therefore, it is presumed that they deal with one another on an arm's length basis. The merchandise is made to order for the importer pursuant to the retailer's specifications, and the merchandise is shipped directly to the importer's premises. A review of the submitted documents indicates that the merchandise is made to order as per the requirements of the importer for retail sale in the United States. The transaction value may be based on the sale between the middleman and the manufacturer.
**546450 dated July 3, 1997.**

Invoices are submitted which indicate that the manufacture sold liquor to a U.S. distributor, and that the U.S. distributor in turn resold the liquor to a U.S. retailer. Assuming the manufacturer and the U.S. distributor are not related parties, then the sales are presumed to be arm's length transactions. With regard to whether the goods are clearly destined for the United States, freight bills have been submitted from the carrier who shipped the merchandise, and the bills indicate that the merchandise was shipped from the manufacturer to the United States. At the time the orders were placed with the foreign seller, the goods were clearly destined for the United States. Therefore, the transaction value may be based upon the sales between the manufacturer and middleman.
**546253 dated July 9, 1997.**

In determining whether the merchandise is clearly destined for the United States at the time it is sold for exportation, Customs notes that the merchandise in question could not be legally exported from Hong Kong without using a quota allocation from the Hong Kong government. In this instance, in the transaction between the middleman and manufacturer, the manufacturer did not use a quota allocation from the Hong Kong government. Accordingly, the manufacturer could not legally export the merchandise to the United States. Instead, when the merchandise was exported from Hong Kong to the United States, the middleman supplied the quota. Consequently, the sale between the manufacturer and the middleman was not a sale for exportation to the United States that could serve as the basis of transaction value. The sale between the middleman and the importer, which used quota from Hong Kong government, was the only available sale for exportation to the United States upon which to appraise the merchandise. Therefore, the Nissho decision is not applicable to this case, and transaction value was properly based on the price actually paid or payable by the importer.
**546409 dated July 9, 1997.**

The importer issues a purchase order for specific merchandise to the middleman. In turn, the middleman issues a purchase order to factories of its choice in Asia for the same merchandise. The factories are not related to either the middleman or the importer. In this case, the merchandise is shipped directly from the factories in Hong Kong to the importer in the United States. The factories know that the goods, although purchased by the middleman, are destined for export to the United States. In all cases, the importer decides when to order what goods, and in what quantities, but the middleman chooses the supplier with whom it places the order. The documentation submitted supports the conclusion that the merchandise is destined for export to the United States at the time of purchase. In addition, the documents indicate that there is a sale between the middleman and the Asian factories. Finally, the importer and the middleman deal with each other at arm's length. The manufacturer's price actually paid or payable to the middleman constitutes a viable transaction value for appraisement purposes.
**546750 dated Aug. 6, 1997.**

Commercial invoices and shipping documents indicate that the imported merchandise is to be shipped by the suppliers directly to the importer in the United States. The invoices submitted indicate that the importer orders the goods from the middleman who, in turn, orders them from the suppliers. The invoices also indicate that all parties are aware that the goods are being produced for export to the United States. The merchandise is clearly destined for export to the United States. However, the importer, middleman, and manufacturer are all related parties. The information submitted concerning the circumstances of the sale at issue supports a finding that, despite the relationship, the manufacturer and middleman deal with each other at arm's length. The manufacturer's price is adequate to ensure recovery of all costs plus a profit equivalent to the manufacturer's overall profit for the relevant period. Accordingly, transaction value may be based on the manufacturer-middleman sale.
**546357 dated Aug. 26, 1997.**

The importer has not presented Customs with copies of invoices from factories, purchase orders, or other correspondence between the middleman and the factories that might indicate that the transaction is a sale. Customs has not been furnished with any proof of payment or anything resembling a complete set of transaction documents. Under these circumstances, the importer has not overcome the presumption that transaction value is based on the price actually paid or payable by the importer.
**546691 dated Sep. 8, 1997.**

The transaction value of the imported merchandise should be based upon the price paid by the importer. The submitted evidence does not enable Customs to find that the sales between the manufacturer and middleman were clearly destined for the United States. The supply agreements provide that the exclusive products not only will be purchased for distribution and sale in the United States, but also for distribution in other such countries and territories as the parties mutually may agree in their dealings.
**545948 dated Dec. 5, 1997.**

For purposes of determining transaction value based on the sale between the middleman and the manufacturer, the evidence submitted does not establish that the merchandise was clearly destined for export to the United States under the Nissho standard. Consequently, the importer has not met its burden to establish that the merchandise should be appraised on a transaction other than that between the importer and the middleman.
**546535 dated Dec. 19, 1997.**

The importer issues a blanket purchase order to the middleman for goods it desires to purchase for export to the United States. The importer only purchases goods made to U.S. specification and which it intends to sell in the United States. This information is then sent to the manufacturer, which produces the goods to U.S. specification, labels the merchandise for shipment to the United States, and then places the goods with the carrier under cover of a through bill of lading for shipment. Customs is satisfied that throughout the entire transaction, the goods are clearly destined to the United States based submitted documents and the importer's representations concerning the following: that the goods are manufactured to conform to U.S. electrical requirements; that the model numbers differ depending on the ultimate destination of the product (U.S. goods versus other countries); that the middleman does not purchase goods for inventory; and that the goods are sent directly from the manufacturer to the United States. The middleman purchases the products from unrelated manufacturers; therefore, these sales are conducted at "arm's length." The sale between the middleman and the manufacturer is a sale for exportation to the United States upon which transaction value may be based.
**546658 dated Jan. 30, 1998. (NOTE: Although this ruling originated as a request for reconsideration of 545985 dated Dec. 19, 1996, it is not a reconsideration; additional information and evidence in support of the importer's claim was presented, thereby warranting a different conclusion.)**

The evidence submitted establishes that the merchandise, when sold to the middleman by the manufacturer, was clearly destined for export to the United States. The contract indicates the port of destination for the merchandise as Jacksonville. It further references the contract between the middleman and the importer, indicating that the middleman entered into the contract with the manufacturer to satisfy its contractual obligations with the importer. The middleman and the manufacturer are related parties. Therefore, the importer must establish that the transaction between these related parties was at arm's length. If Customs determines that the "circumstances of sale" test is satisfied (as alleged by the importer), then the price paid by the middleman to the manufacturer should serve as the basis of transaction value.
**546429 dated Feb. 5, 1998.**

Based upon the information presented, all parties to the transactions are aware that the goods are being produced for export to the United States, and the merchandise is clearly destined for export to the United States. The commercial invoices indicate that the merchandise is to be shipped directly by the manufacturer to the importer in the United States. Also, the labels sewn into the imported garments by the factory conform to U.S. textile labeling requirements and reflect the identity of the U.S. distributor. The middleman and the manufacturer are not related parties; therefore, they deal with one another at "arm's length." The sales between the middleman and the unrelated manufacturer constitute sales for exportation to the United States for the purposes of determining transaction value.
**546518 dated Feb. 9, 1998.**

The importer is claiming that the transaction value for the imported merchandise should be based on the transaction between the middleman and the unrelated suppliers. Because the suppliers are unrelated to the middleman, it is assumed that the parties deal with one another on an arm's length basis. The importer has submitted purchase order reports, purchase orders and invoices between the parties, certificates of origin, bills of lading, and packing lists. The documents all support the claim that, at the time the merchandise is purchased by the middleman from the manufacturers, the merchandise is clearly destined for the United States. Based upon the submitted evidence, the merchandise at issue is imported pursuant to a sale for exportation to the United States between the middleman and the unrelated suppliers.
**546825 dated Feb. 20, 1998.**

The merchandise at issue is sold for exportation and destined for the United States at the time the buyer purchased it from the Asian sellers. The importer has submitted purchase orders, invoices, packing lists, Customs forms, and bills of lading as evidence that the products are sold for exportation and destined for the United States at the time it purchased the products from the sellers. Both the purchase orders and invoices indicate that the terms of sale or shipping terms are F.O.B. Asian shipping port through Los Angeles to McAllen, Texas. The bills of lading show shipment from Asia to the United States, and designate the importer as the consignee who is responsible for paying the shipping costs. The imported merchandise (and its packaging) comply with

U.S. Customs Service country of origin marking requirements in that it carries the statement, in English, that the product is "Made in China."
**546561 dated Mar. 16, 1998.**

Insufficient evidence has been submitted to rebut the presumption that the price actually paid or payable by the U.S. customer (as the importer) is presumed to be the basis of transaction value of the imported merchandise. It is up to the importer to rebut this presumption. Relevant documents including purchase orders, invoices, proof of payment, contracts, and any additional documents must be submitted to support a claim that the merchandise is clearly destined for the United States. No such documents were submitted in this case. Therefore, the price actually paid or payable by the importer is presumed to be the basis of the transaction value of the imported merchandise.
**546821 dated July 15, 1998.**

The submitted documentation establishes a complete paper trail of the imported merchandise, showing the structure of the transaction and demonstrating that, throughout the entire transaction, the merchandise is clearly destined for exportation to the United States. The evidence establishes that there is a sale of the merchandise between the foreign producers and the middleman. In addition, the middleman and foreign producers deal with one another at arm's length. The merchandise may be appraised based upon the price actually paid or payable for the merchandise by the middleman.
**546813 dated July 23, 1998.**

The imported merchandise was purchased pursuant to a four-tiered sales arrangement. The importer allegedly purchased the goods from a middleman in Taiwan, who, in turn, purchased the goods from a middleman in Hong Kong, who bought the goods from various factories in Hong Kong. The importer has not overcome the presumption that the importer's price is the basis of transaction value; the transaction value is based upon the price actually paid or payable by the importer.
**546681 dated July 31, 1998.**

Although the importer has submitted documentation that supports a finding that the imported merchandise was clearly destined for the United States, the evidence does not establish that a bona fide, arm's length sale occurred between the foreign manufacturer and the middleman, who are related parties. The imported merchandise should be appraised based on the price actually paid or payable between the middleman and the importer.
**546267 dated Dec. 4, 1998.**

The importer has not provided sufficient evidence to demonstrate that the imported merchandise was clearly destined for the United States and that, where related, the manufacturers and the middleman dealt with one another on an arm's length basis. The imported merchandise was correctly appraised under the transaction value method on the basis of the price actually paid or payable by the importer to the middleman.
**546353 dated Dec. 15, 1998.**

The evidence submitted fails to establish that a bona fide sale took place between the importer and its related party. Moreover, there is no evidence in the documents submitted that the relationship between the parties did not affect the price within the meaning of 19 U.S.C. 1401a(b)(2)(B). In addition, the evidence has failed to establish that the goods were improperly appraised under transaction value based on the price paid by the U.S. customer.
**546424 dated Feb. 2, 1999.**

The imported merchandise was purchased pursuant to a three-tiered sales agreement. There is sufficient evidence to establish that bona fide sales occurred between the middleman and manufacturer. The requirements of Nissho are met, in that the merchandise is clearly destined for export to the United States at the time it is sold to the middleman, and neither the importer nor the middleman is related to the manufacturer. In addition, it is presumed that they negotiated with each other at arm's length. Therefore, the transaction value of the imported merchandise should be based upon the price actually paid or payable by the middleman to the manufacturer(s). In addition, the quota charges that are remitted, directly or indirectly, to the seller are part of the price actually paid or payable.
**546871 dated Feb. 17, 1999.**

The importer has provided sufficient evidence to demonstrate that the imported merchandise was clearly destined for export to the United States at the time of sale. The manufacturer and the middleman are not related parties, and the business transactions were conducted at "arms length." Additionally, no discrepancies were found in the entry documents filed with Customs. Therefore, the evidence submitted establishes that the transaction between the unrelated trading company and the middleman determines the price actually paid or payable for the imported merchandise pursuant to transaction value.
**546760 dated Mar. 2, 1999.**

Based on the evidence submitted, Customs concludes that an examination of the circumstances of sale indicates that the relationship of the parties did not influence the price actually paid or payable of the imported merchandise. Accordingly, the sale between the importer and its related company may be used as the basis for transaction value. The transaction value of the imported merchandise must also include the material assists, packing costs, and any other applicable additions.
**546873 dated Mar. 24, 1999.**

The imported merchandise was purchased pursuant to a multi-tiered sales agreement. There is sufficient evidence to establish that bona fide sales occurred between the unrelated vendor and the middleman. The destination of the merchandise is evidenced by the vendor's commercial invoice, which indicates a U.S. destination at the time of sale. In addition, it is presumed that the parties negotiated with each other at arm's length. Therefore, the transaction value of the imported merchandise should be based upon the price actually paid or payable by the unrelated vendor to the middleman.
**546875 dated Apr. 2, 1999.**

Based on the evidence presented regarding the three scenarios of a multi-tiered sales transaction, we find that there are bona fide sales between the vendor and the middleman. In this case, the requirements of Nissho are satisfied, in that the merchandise was clearly destined for export to the United States at the time it was sold to the middleman. In addition, the middleman and vendor are unrelated and they negotiated with each other at arm's length. Where the middleman and vendor are related, there must be sufficient evidence to demonstrate that transaction value is acceptable. In such case, transaction value of the imported merchandise should be based upon the price actually paid or payable between the middleman and the vendors. The charges paid to the third parties unrelated to the seller are not included in the transaction value of the imported merchandise, provided there is evidence that they do not accrue directly or indirectly to the seller of the merchandise.
**546586 dated June 23, 1999.**

Based on the evidence presented, the importer has not established that the manufacturer's price to the middleman (importer's parent company) may be used as the basis of appraisement consistent with the requirements of Nissho. Accordingly, the price between the middleman and the unrelated manufacturer may not constitute the price actually paid or payable for purposes of determining the transaction value of the imported merchandise. Instead, the price actually paid or payable by the importer to the middleman will be the proper basis of appraisement.
**546887 dated June 23, 1999.**

The imported merchandise was purchased pursuant to a three-tiered sales agreement. There is sufficient evidence to establish that a bona fide sale occurred between the middleman and its foreign supplier. The requirements of Nissho have been met, in that the imported merchandise is clearly destined for exportation to the United States at the time of the sale and the middleman and its manufacturer negotiated with each other on an arm's length basis. Therefore, the transaction value of the imported merchandise should be based upon the price actually paid or payable by the middleman to the manufacturer.
**546810 dated July 16, 1999.**

The imported merchandise was purchased pursuant to a three-tiered sales agreement. The transaction between the manufacturer and the middleman may *not* be used for the purpose of determining the appraised value of the imported merchandise, in that there is in sufficient evidence to support the claim that a bona fide sale occurred between the manufacturer and the middleman. The sale for exportation for purposes of determining transaction value is that between the middleman and the importer. Accordingly, the quota payments made by the importer to the middleman (the actual seller) are part of the price actually paid or payable for the imported merchandise. In addition, an unrelated third party acts as the buying agent for the importer and the fee paid to the unrelated third party is a bona fide buying commission; therefore, it is not included in the price actually paid or payable for the merchandise.
**547054 dated Aug. 6, 1999.**

The invoice submitted does not establish that a sale occurs, and the remaining documents indicate that there exists only one sale, that is, the sale between the middleman and the importer. Based on the evidence presented, a bona fide sale does not exist between the manufacturer and the middleman. Thus, the transaction value is based on the price the importer paid for the imported merchandise. In addition, the fees paid do not constitute bona fide buying commissions and are thus included in the transaction value of the imported merchandise. The evidence available indicates that the importer had no control over the alleged buying agent.
**546607 dated Aug. 17, 1999**.

The imported merchandise was purchased pursuant to a multi-tiered sales agreement. Although the evidence submitted establishes that a bona fide sale occurs between the two middlemen, the evidence does not support the position that the sale is a sale for export clearly destined for the United States. None of the purchase orders, invoices, shipping documents, etc. pertaining to this transaction make any mention that the goods were for a specified U.S. purchaser or reference any of the documents pertaining to the sale to the U.S. purchaser. In addition, there is no indication that the goods were packaged for the United States or met any special U.S. labeling requirements. Therefore, insufficient evidence has been submitted to overcome the presumption that the transaction value is based upon the price actually paid or payable by the importer to the middleman.
**547035 dated Aug. 18, 1999.**

The imported merchandise was purchased pursuant to a multi-tiered sales agreement. The documentation submitted is insufficient to establish that a bona fide sale occurred between the manufacturer and the middleman. Based on the evidence presented, the transactions are not sales for exportation clearly destined to the United States. Consequently, these transactions cannot be used as a basis for transaction value, in that insufficient evidence has been submitted to overcome the presumption that the transaction value should be based upon the price actually paid or payable by the importer to the middleman.
**547046 dated Aug. 18, 1999.**

The imported merchandise was purchased pursuant to a three-tiered sales agreement. There is insufficient evidence to establish that a bona fide sale occurred between the middleman and the manufacturer. The requirements of Nissho are not met in this case. Accordingly, the subject merchandise should not be appraised pursuant to transaction value and based on the transactions between the middleman and the manufacturer.
**546946 dated Sep. 30, 1999.**

Based on the facts presented, it appears that transactions between the factories and the importer are bona fide sales and it appears that the sales between the importer and the unrelated factories are at "arm's length." However, there are factors indicating that the merchandise is not clearly destined for export to the United States at the time the importer purchases the garments from the factories. Therefore, transaction value cannot be based on the sale between the importer and the factories. Rather, it should be appraised pursuant to the price actually paid or payable between the importer and its U.S. customers.
**547349 dated May 5, 2000.**

Based on the evidence available, the sale for exportation occurred between the U.S. customer and the foreign supplier. The importer is the selling agent for the foreign supplier and the commissions paid are included in the price actually paid or payable. Transaction value is the appropriate method of appraisement. The price actually paid or payable does not include the costs associated with post-importation services, international freight, duties and taxes, and any domestic sourced goods.
**546858 dated June 2, 2000.**

The documentation presented demonstrates that the circumstances of sale of the imported merchandise between the related buyer and seller indicate that the relationship between the buyer and seller did not influence the price actually paid or payable. Therefore, we find that transaction value has been supported as an appropriate valuation method for the transaction between the related companies from January 1, 1995 and onward.
**546898 dated July 27, 2000; reconsideration of 546260 dated June 6, 1997 (additional evidence presented).**

The evidence available indicates that the sale between the foreign supplier and middleman is a bona fide, arm's length sale for export to the United States. Therefore, the price between the foreign supplier and the middleman constitutes the price actually paid or payable for purposes of determining transaction value of the imported merchandise.
**547436 dated Aug. 10, 2000.**

A vehicle is purchased from a foreign manufacturer for export to the United States. The vehicle is not exported immediately to the United States; rather, it is used overseas. The buyer and seller developed a program to provide bona fide retail customers an opportunity to drive their vehicles in Europe before shipment to the United States and to tour the vehicle production facilities. The only time limit in the program requires the U.S. customer to return the vehicle to the factory within twelve months of delivery to receive free shipment. Also, the only penalty for non-compliance with the program is the possible removal of buyer from the program, and no penalty is imposed on the U.S. customer if the vehicle is not exported to the United States. Thus, based on the evidence submitted, the transactions between the buyer and foreign do not involve goods which are destined for the United States. Accordingly, a sale for exportation exists does not exist and the price between buyer and the foreign seller is not an acceptable transaction value.
**547197 dated Aug. 22, 2000; aff'd by 548371 dated Nov. 19, 2003.**

The merchandise is exported to the United States according to the contract of sale between the importer and the foreign supplier. However, the importer does not take title and possession of the merchandise or make final payment until it is removed from the premises of a warehouse supplier. The price therefore, is payable to the seller at the time of export, but not paid. Payment and transfer of title are conditioned on the removal of the merchandise from the warehouse. Thus, although the importer does not take title to the merchandise or make payment at the time of import, the sales between the importer and its foreign suppliers are sales for exportation to the United States within the meaning of section 1401a(b)(1) permitting the use of transaction value. The retroactive price reductions between unrelated parties, after importation, are not taken into account in determining transaction value.
**547798 dated Aug. 23, 2000.**

There was insufficient evidence provided to prove that the imported merchandise should have been appraised based on transaction value between the middleman and the foreign manufacture in a multi-tiered sales transaction. As such, it is impossible to determine which parties are functioning as buyers and sellers and whether a transfer of property or ownership occurred or who may or may not have assumed risk of loss or acquired title to the merchandise. The merchandise was properly appraised based upon the sale between the middleman and the importer.
**547116 dated Mar. 22, 2001.**

Insufficient evidence was presented to determine whether a bona fide sale occurred between the manufacturer and the middleman or whether the merchandise was clearly destined for the United States. If the transaction value between the middleman and the importer is determined to be acceptable, the royalty fee paid is part of the transaction value. The importer/buyer is the party directly paying the royalty fees to a party related to the middleman/seller. As such, unless the payments are unrelated to the imported

merchandise, they are considered payments included in the transaction value of the imported merchandise.
**547155 dated Mar. 22, 2001.**

The importer purchases the subject merchandise pursuant to a multi-tiered sales transaction whereby the middleman contracts with another company for the production of merchandise to fill a purchase order from the importer. The parent company of the importer forwards the importer's orders to the middleman. The middleman then chooses several independent and unrelated manufacturers and/or vendors and the parent company provides the manufacturers/vendors with the appropriate garment designs and with materials and accessories to be used in actual production. The parent company makes its choice with input from the middleman and importer. Price negotiations originate between the importer and the vendor/manufacturer, although subsequent negotiations may occur after discussions with the parent company. The parent company then determines the final prices the middleman will charge the importer. The middleman sells the merchandise to the importer at a predetermined price. Sufficient evidence was not submitted to verify that the sale between the manufacturer and the middleman constitutes the sale for exportation to the United States in a multi-tiered sales transaction. Therefore, the transactions between the middleman and the vendors/manufacturers can not serve as the basis for transaction value.
**546957 dated Mar. 26, 2001.**

The transaction between the related parties cannot be treated as a sale for exportation subject to transaction value. The evidence indicates that it is a consignment delivery. However, there exists a sale between unrelated parties that supports the use of transaction value. Notwithstanding the fact that the two parties are U.S. entities, the sale between these parties is a sale for export to the United States upon which to appraise the merchandise under transaction value
**547480 dated Oct. 31, 2001.**

The subject merchandise was purchased and imported by the importer from the middleman. The middleman in turn purchased the merchandise from the supplier, a vendor in Hong Kong. The supplier subsequently contracted with its related factory in China, for the manufacture of the goods on a cut, make, and trim (CMT) basis. The supplier also contracted with five suppliers for fabric, which was provided to the manufacturer, and with an export quota holder for the cost of securing quotas. Based on the evidence submitted, the sale between the supplier and the middleman represents a bona fide sale conducted at arm's length in which the exported merchandise was clearly destined for export to the United States. Therefore, the sale from the supplier to the middleman is an appropriate basis for determining the transaction value.
**547071 dated Nov. 1, 2001.**

In this case, counsel contends that the transaction involves a three-tiered transaction involving an importer, a middleman, and a factory. However, there is insufficient evidence to conclude that a sale for export occurred between the factory and middleman. As such, for the entry in question, this transaction between the factory and middleman may not be used as the basis for transaction value. The transaction value should be based on the price paid by the importer.
**547625 dated Nov. 2, 2001.**

In this case, the payment for quota charges is part of the price paid by the importer to the middleman. However, the middleman does not pay quota charges to the factory. Once received from the importer, the middleman pays the quota charges to an unrelated third party quota broker. Based on the fact the importer cannot obtain the contract between the middleman and the factory as well as the price, transaction value cannot be based on the sale between the middleman and the factory. Thus, transaction value is based on the transaction between the middleman and importer, with the quota payments included in the price actually paid or payable.
**547635 dated Nov. 7, 2001.**

According to the importer's submission, the manufacturer sold titanium sponge to the middleman, which resold the material to the importer, which resold it to the customer. Although the importer was designated as the consignee on the importer's purchase order, the manufacturer's sales contract and invoice make no reference to the importer or to the United States as the ultimate destination of the merchandise. Based on the evidence submitted, there exists a possibility of diversion in that the merchandise from the manufacturer was not clearly destined for the United States at the time of sale. Consequently, transaction value cannot be based on the sale between the manufacturer and the middleman. Therefore, the transaction value should be based on the sales between the middleman and the importer.
**547859 dated Nov. 26, 2001.**

There is insufficient evidence to prove the existence of bona fide sales between the manufacturers and the middleman. Therefore, because the Nissho standard has not been met, the manufacturers' prices cannot be used to determine transaction value. Thus, the imported merchandise was appraised properly pursuant to the transaction value method, on the basis of the price paid by the importer to the middleman.
**547697 dated Dec. 27, 2001.**

The sale from the manufacturer to the middleman may be used as the basis of appraisement where there is a legitimate choice between two statutorily viable transaction values in a multi-tiered transaction. The importer must demonstrate that the sale from the manufacturer to the middleman is a bona fide, arm's length sale of goods

clearly destined for export to the United States. However, in this case, the U.S. importer failed to provide sufficient proof of the price for the assists provided to the foreign manufacturers by the Danish middleman. Therefore, transaction value is inapplicable as a means of appraisement for the sale between the manufacturer and the middleman. The basis of appraisement for this transaction must be based on the sale between the middleman and the importer.
**547588 dated Jan. 18, 2002.**

Failure to demonstrate that the manufacturer and the middleman bought and sold from each other as if they were unrelated parties precludes the use of transaction value as a method of appraisement. In this case, the importer did not establish that the prices paid by the middleman in the related party transactions with the manufacturer were at arm's length. The sale between the middleman and the U.S. importer should be used as the basis for determining the transaction value of the imported merchandise.
**547332 dated Jan. 22, 2002.**

The price paid for merchandise by the middleman to the manufacturer(s) may be used to determine the transaction value in a multi-tiered transaction. It is incumbent upon the importer to provide a complete paper trail for the imported merchandise. The paper trail should include the structure and documentation for the entire transaction. If an insufficient amount of documents is identified, then the paper trail will be deemed insufficient evidence to conclude that a bona fide sale for export occurred between the manufacturers and the middleman.
**547607 dated Feb. 14, 2002.**

The transaction between the UK middleman and the UK manufacturer is a bona fide sale for export to the United States conducted at arm's length. As such, it is an acceptable basis for appraisement using transaction value. The presumption is that merchandise shipped to a foreign party and location is not sold for export to the United States. The importer must present sufficient evidence to show that the merchandise is clearly destined for the United States at the time of the sale to the middleman. Two factors generally indicate that the subject merchandise is for export to the United States: (1) intended direct shipment to the United States; and (2) a unique quality in the merchandise itself that limits its destination to the United States. In this case, the merchandise is sold ex-works from the manufacturer to the middleman and then ex-works warehouse to the United States. The stamping of a shoe with a U.S. customer identification number is insufficient evidence that a shoe is destined only for the United States market. Several additional factors, when considered with the stamping, indicate that the shoes were sold for export to the United States: These factors include: the document trail, the carton labeling, an exclusive distributorship, a tracking system, etc. The sale between the middleman and the manufacturer may be used for purposes of determining transaction value.
**547382 dated Feb. 14, 2002.**

The sales between the importer and the manufacturer are conducted pursuant to an agreement that is lengthy and comprehensive. It is presumed that the agreement reflects entirely the intentions of its drafters. The delivery arrangements of the agreement clearly indicate that a sale took place between the manufacturer and its subsidiary, the importer. The importer is not a principal in these arrangements; it is an agent facilitating the delivery of payment for the subject merchandise via the trading companies. Under the manufacturer's orders, foreign trading companies delivered subject merchandise to the importer. Even if property rights were exchanged, the transactions between the trading companies and the importer are not actual sales for exportation. Thus the importer and the trading companies are agents of the manufacturer. For the purposes of determining the transaction value, the only bona fide sale is between the importer and the manufacturer. The selling commissions are already included in the price actually paid or payable, so there should not be an addition made for these amounts.
**547158 dated Mar. 1, 2002.**

The manufacturer is related to the middleman and to the importer. The sale between the manufacturer and the middleman is a bona fide sale for export to the United States. Whether that sale may be used to appraise the merchandise under transaction value is contingent upon the acceptability of the price between the related parties. If the parties buy and sell from one another as if they were unrelated, then the price paid or payable for the sale between the manufacturer and the middleman will be considered an acceptable basis for appraisement. In this case, there is an insufficient evidentiary basis to overcome the presumption that transaction value should be based on the price paid by the importer. Multi-tiered transactions should be documented in accordance with the guidelines set forth in T.D. 96-87. The requestor must describe in detail the roles of all of the various parties and furnish relevant documents pertaining to each transaction that is involved in the exportation of the merchandise to the United States.
**547421 dated May 8, 2002.**

The importer did not provide to Customs sufficient evidence to determine the nature of the relationship between the parties involved in this multi-tiered transaction. Given the evidence presented, it is unclear whether the transactions between the related parties qualify as bona fide sales for export to the United States. In addition, the parties have failed to demonstrate that they conduct their transactions at arm's length. Customs cannot conclude that the proper method of appraisement would be transaction value.
**548057 dated May 20, 2002.**

The importer purchased apparel from its overseas parent corporation, the exporter, for resale to the United States. Neither party is related to the manufacturer. The transaction between the manufacturer and the middleman is a bona fide sale that is

clearly destined for export to the United States. As such, the sale between the manufacturer and the exporter is a valid basis for transaction value.
**548079 dated June 25, 2002.**

In situations involving multi-tiered transactions, Customs presumes that the price paid by the importer is the basis of the transaction value. In order to rebut this presumption, the importer must provide evidence that establishes that the manufacturer's transaction was conducted at arm's length and that the merchandise was clearly destined for export to the United States. The documentary evidence suggests an agency relationship between the middleman and the importer. The importer has not overcome the presumption that transaction value should be based on the price paid by the importer. Additionally, the importer failed to provide sufficient evidence to substantiate a bona fide buying agency. The fees do not constitute bona fide buying commissions and are, therefore, included in the transaction value of the imported merchandise.
**547668 dated July 31, 2002.**

The substance of the import transaction reveals a multi-tiered transaction involving two foreign intermediaries located in the same country. It also reveals that neither of these intermediaries has title to or risk of loss for the goods for more than an instant. Neither of the intermediaries obtained physical possession of the goods. Under these circumstances, the transaction documents by themselves are insufficient to establish the roles of the intermediaries as buyer and seller for the purposes of appraisement under transaction value. Therefore, the transaction value is properly based on the price paid by the importer.
**547712 dated Aug. 1, 2002.**

The merchandise is shipped directly from the manufacturer to the importer's warehouse, both of which are located in Italy. The purpose of the warehousing is for the importer to coordinate the shipment of merchandise from various manufacturers prior to export to the United States. The fact that merchandise is shipped to the importer's warehouse does not preclude a determination that the merchandise is destined for export to the United States. In this case, counsel provided a comprehensive paper trail demonstrating that the garments ordered by the distributor from the importer were of the same quantity, style, and fabric as the merchandise ordered by the importer from the manufacturer. Additionally, the manufacturer's invoice and hang tags include the comment "USA," indicating that the merchandise was intended for export to the United States. The likelihood of diversion is further reduced by the fact that there is no transshipment of the merchandise into a third country for storage purposes. Thus, the merchandise is destined for export to the United States even if it is stored in an Italian warehouse. The sale between the importer and the manufacturer is an acceptable basis for determining transaction value.
**548112 dated Sep. 23, 2002.**

The merchandise was appraised under transaction value, using the price between the importer of record and the related U.S. purchasers. The importer filed a protest, seeking to appraise the merchandise using the price between the importer of record and the related factories. The evidence submitted by counsel in support of the protest is insufficient. Not only does the evidence submitted fail to clarify how the price was arrived at, but it also fails to establish what the actual final price is between the importer and the factories. Ambiguities remain concerning the of the roles played by multiple parties in the transactions, how the price was arrived at between the factories and the importer, and who bears the risk of loss for the merchandise compel. Accordingly, the protestant has not overcome the presumption of correctness attached to the import specialist's appraisement.
**546820 dated Sep. 28, 2002.**

In this multi-tiered transaction, Customs will not appraise the imported merchandise on the basis of the "first sale" between the foreign middleman and the manufacturer because it is unclear as to whether a bona fide sale occurred between the two parties. Instead, Customs will determine the transaction value of the imported merchandise based upon the price paid by the importer to the middleman.
**548198 dated Dec. 26, 2002.**

Generally speaking, if merchandise is not directly shipped to the United States, then it is not considered to have been destined for export to the United States. In this multi-tiered transaction, the documentation supports the importer's claim that the goods were, at all times, clearly destined for export to the United States. However, two of the sub-assemblies were shipped to Canada before their eventual importation to the United States. In Canada, the merchandise undergoes further manufacturing, under the middleman. The manufacturing adds value to the merchandise and the process significantly alters its physical nature. Thus the product that enters the United States is not the same product that was the subject of the first sale between the middleman and the manufacturer. Accordingly, customs cannot conclude that the two sub-assemblies were clearly destined for export to the United States.
**548198 dated Dec. 26, 2002.**

The importer, through its supplier and independent warehouse contracts, operates a just-in-time inventory management program whereby inventory management warehouses are located near the importer's various manufacturing facilities. The program is designed to assure adequate supplies of product that are readily available to the importer. The importer does not take title, nor does it become obligated to pay for the product until it is withdrawn from the warehouse. The commercial invoice price is not the agreed upon price, and the price is not known until the merchandise is withdrawn from the warehouse. There is no sale for exportation to the United States upon which to base a transaction value. With respect to the use of deductive value, merchandise is appraised on the basis of the price at which it is sold in the United

States in its condition as imported and in the greatest aggregate quantity either at or about the time of importation, or before the close of the 90th day after the date of importation. This price is subject to certain enumerated deductions. For any specific entry, the importer is not able to provide the price for merchandise when it is withdrawn and the price for the sales that take place in the greatest aggregate quantity. The merchandise cannot be appraised under the deductive value method. The imported merchandise should be appraised pursuant to section 402(f), value if other values cannot be determined. In this case, the commercial invoice price is acceptable under a section 402(f) appraisement.
**548236 dated Mar. 27, 2003.**

The only "sale" upon which to base a transaction value takes place between the U.S. importer and its unrelated U.S. customers. The sales are "for exportation to the United States" for purposes of determining transaction value. The merchandise is manufactured in direct response to an order placed by the U.S. customer. The manufacturer prepares the shipping documents and invoices, on behalf of the importer, and direct ships the merchandise to the U.S. customers, and the U.S. customers pays the importer the invoice price.
**548380 dated Oct. 23, 2003.**

# SELLING COMMISSIONS

## INTRODUCTION

19 U.S.C. 1401a(b)(1) provides for the following:

TRANSACTION VALUE OF IMPORTED MERCHANDISE.-(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to- . . . (B) any selling commission incurred by the buyer with respect to the imported merchandise.

**GATT Valuation Agreement:**

With respect to selling commissions which are added to the price actually paid or payable for imported merchandise, CCC Technical Committee Explanatory Note 2.1 paragraphs 7 and 8, state the following:

7. A selling agent is a person who acts for the account of a seller; he seeks customers and collects orders, and in some cases he may arrange for storage and delivery of the goods. The remuneration he receives for services rendered in the conclusion of a contract is usually termed "selling commission". Goods sold through the seller's agent cannot usually be purchased without payment of the selling agent's commission. These payments can be made in the ways set out below.
8. Foreign suppliers who deliver their goods in pursuance of orders placed through a selling agent usually pay for the latter's services themselves, and quote inclusive prices to their customers. In such cases, there is no need for the invoice price to be adjusted to take account of these services. If the terms of the sale require the buyer to pay, usually direct to the intermediary, a commission that is additional to the price invoiced for the goods, this commission must be added to the price when determining transaction value under Article 1 of the Agreement.

**Headquarters Rulings:**

### addition to price actually paid or payable

A five percent commission paid to an agent who is under the control and direction of the seller is a selling commission and is to be added to the price actually paid or payable.
**542493 dated Aug. 12, 1981.**

The fact that a bona fide buying agent of a particular importer acts as a selling agent for the seller in a separate transaction does not necessarily negate the existence of the established buying agent relationship.
**543053 dated July 11, 1983.**

A U.S. party that is related to the foreign seller is acting as its selling agent and enters into sales agreements for the purchase of merchandise with U.S. buyers. The merchandise is appraised pursuant to transaction value, with the selling commission added to the price actually paid or payable.
**543774 dated June 4, 1987; aff'd by 544116 dated Apr. 19, 1988.**

Selling commissions may be added to the price actually paid or payable by the buyer to the seller only if they are "incurred by the buyer" in the sale for exportation. The statute neither contemplates nor authorizes the addition of selling commissions incurred by a subsequent purchaser in a domestic sale made after the sale for exportation.
**543708 dated Apr. 21, 1988.**

Transaction value is defined as the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to any selling commission incurred by the buyer with respect to the merchandise. The addition to the price for the selling commission must be based upon sufficient information. If sufficient information is not available, then the transaction value of the imported merchandise cannot be determined.
**544177 dated Sep. 19, 1988.**

The actions of the alleged buying agent are those performed by a seller of merchandise and not by a buying agent. Invoices have been submitted which indicate that the alleged agent is actually the manufacturer. The commissions paid are dutiable selling commissions.
**544110 dated Apr. 26, 1990**.

The documents submitted establish the existence of a selling agency relationship between the parties. The documents include purchase orders detailing the contract terms, copies of checks, and work orders and invoices specifying the details of additional processing.
**544382 dated Oct. 9, 1990.**

The evidence available supports the conclusion that the amount listed on the invoice as a commission is a dutiable selling commission and not a trade discount as alleged by the importer.
**544907 dated Apr. 13, 1992.**

No evidence exists to establish that a sale occurred between the foreign seller and the ultimate U.S. purchaser of imported merchandise. Rather, a bona fide sale took place between the foreign seller and the importer. Absent any evidence regarding an alleged sale between the foreign seller and the ultimate U.S. purchaser, the importer cannot be considered a selling agent for the foreign seller.
**544608 dated Sep. 21, 1992.**

A U.S. company receives orders from its U.S. customers and, in turn, submits the orders to its related company in Italy. There is no sale for export between the two related parties because the transfer does not constitute a sale. It is the sale between the Italian company and the final U.S. customer, as facilitated by the related U.S. company, that causes the merchandise to be exported to the United States. There is a transaction value, and the U.S. company is a selling agent. The commission the U.S. customer incurs for the U.S. company's services as a selling agent should be added to the price actually paid or payable.
**544949 dated Mar. 17, 1993.**

The issue in this case is whether the transaction between the seller and the supplier, and/or that between the supplier and ultimate consignee are bona fide sales such that the price actually paid or payable constitutes a valid transaction value. The supplier took possession of the merchandise at the seller's plant for an instant, before title and risk of loss passed to the ultimate consignee. In essence, the supplier never held title nor did it bear the risk of loss. The supplier acted as a selling agent for the seller, and the merchandise should be appraised under transaction value based on the price paid by the ultimate consignee. The difference between the seller's price and that of the supplier is a selling commission.
**545105 dated Nov. 9, 1993.**

Based upon the facts presented, the protesting party has not offered sufficient evidence to indicate that it is operating other than as a selling agent. Consequently, the selling commission should be added to the price actually paid or payable in determining transaction value.
**545376 dated July 29, 1994.**

Based upon the information presented, the importer is operating as a selling agent rather than as the purchaser of merchandise. The amounts deducted from the invoice are the selling agent’s commissions for arranging the sale. The shipping terms obligate the seller to bear the risk of loss for the merchandise until it reaches the U.S. customer’s place of business. The property or ownership of the imported merchandise never transfers to the agent, but rather, remains with the seller until it reaches the U.S. customer’s place of business. The selling commission is added to the price actually paid or payable in the determination of transaction value.
**546037 dated Jan. 31, 1996.**

There is no bona fide sale between the foreign seller and its wholly-owned subsidiary in the United States. The U.S. subsidiary is a selling agent for the seller and the alleged discount is in fact a selling commission and should be included in the price actually paid or payable in the determination of transaction value.
**545958 dated Apr. 12, 1996.**

Based upon conflicting information and documentation provided, Customs cannot conclude whether the middleman acted as a buyer/seller or as a selling agent regarding the transactions in question. The shipping terms on the submitted invoices are

inconclusive as to whether property or ownership was transferred to the middleman. No invoices from the ultimate purchasers were submitted. Evidence such as proof of payment demonstrating the manner in which payment passed between the parties is lacking. Assuming that the middleman served as a selling agent, as opposed to an independent buyer/seller, transaction value would be based on the price actually paid or payable by the U.S. purchasers with additions, as appropriate, for selling commissions incurred by the U.S. purchasers pursuant to section 402(b)(1)(B) of the TAA.
**546015 dated Dec. 13, 1996.**

Based on the evidence available, the sale for exportation occurred between the U.S. customer and the foreign supplier. The importer is the selling agent for the foreign supplier and the commissions paid are included in the price actually paid or payable. Transaction value is the appropriate method of appraisement. The price actually paid or payable does not include the costs associated with post-import services, international freight, duties and taxes, and any domestic sourced goods.
**546858 dated June 2, 2000.**

A company operates an electronic commerce business that facilitates international trade in apparel and textiles by providing a platform for direct communication between buyers and sellers. Buyers may post requests for quotations on the company's website and sellers may list the goods for sale on the website, either in an auction format or a fixed price format. Fees, based on the percentage of the sales price, are paid to the company if the buyer procures goods as a result of the posting or if the seller sells the goods as a result of the posting on the web site. The company is not acting as an agent for the seller when posting the seller's goods for sale. Therefore, the fees paid by such buyers and sellers to the company posting the merchandise on its website are not dutiable selling commissions within the meaning of 19 U.S.C. 401a(b)(1)(B) and 19 C.F.R. 152.102(b).
**547596 dated July 13, 2000.**

Based on the lack of documentation demonstrating that the importer controls the seller or buyer's actions and the unclear roles of the buying agents and the U.S. seller/agent, the existence of a bona fide buying agency relationship between the importer and the seller is rejected. Thus, the fees paid to the seller/agent are to be added to the price actually paid or payable for the imported merchandise and should be included in the transaction value of the imported merchandise.
**547417 dated Nov. 9, 2001.**

The sales between the importer and the manufacturer are conducted pursuant to an agreement that is lengthy and comprehensive. It is presumed that the agreement reflects entirely the intentions of its drafters. The delivery arrangements of the agreement clearly indicate that a sale took place between the manufacturer and its subsidiary, the importer. The importer is not a principal in these arrangements; it is an

agent facilitating the delivery of payment for the subject merchandise via the trading companies. Under the manufacturer's orders, foreign trading companies delivered subject merchandise to the importer. Even if property rights were exchanged, the transactions between the trading companies and the importer are not actual sales for exportation. Thus the importer and the trading companies are agents of the manufacturer. For the purposes of determining the transaction value, the only bona fide sale is between the importer and the manufacturer. The selling commissions are already included in the price actually paid or payable, so there should not be an addition made for these amounts.
**547158 dated Mar. 1, 2002.**

A multinational corporation (MNC) entered into an agreement with a company that serves as the U.S. importer of record. The agreement stipulates that the latter serves as both the sales representative and the exclusive distributor of the MNC's products to U.S. purchasers. In this case, a foreign subsidiary of the MNC produced the subject merchandise. The U.S. company did not function as an independent buyer of the imported merchandise, but rather as a selling agent on behalf of MNC. Therefore, the commissions received by the U.S. company constitute dutiable selling commissions. In the absence of a bona fide sale between the foreign subsidiary of the MNC and the U.S. company, the price paid by the U.S. purchasers, which already includes the selling commission, is the appropriate transaction value to be used for customs valuation purposes.
**548173 dated Dec. 6, 2002.**

# SEQUENTIAL ORDER

## INTRODUCTION

Regarding the methods of valuation and the order in which they are used, 19 U.S.C. 1401a(a)(1) states:

In General. - (1) Except as otherwise specifically provided for in this Act, imported merchandise shall be appraised, for the purposes of this Act, on the basis of the following:
(A) The transaction value provided for under subsection (b).
(B) The transaction value of identical merchandise provided for under subsection (c), if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2).
(C) The transaction value of similar merchandise provided for under subsection (c), if the value referred to in subparagraph (B) cannot be determined.
(D) The deductive value provided for under subsection (d), if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).
(E) The computed value provided for under subsection (e), if the value referred to in subparagraph (D) cannot be determined.
(F) The value provided for under subsection (f), if the value referred to in subparagraph (E) cannot be determined.

The parallel Customs regulation is 19 CFR 152.101(b).

**GATT Valuation Agreement:**

Article 4 provides for the sequential order used in the valuation of merchandise.

Interpretative Notes, General Note, Paragraphs 1 through 4, provide for the sequential application of valuation methods.

**Headquarters Rulings:**

### hierarchy of valuation methods

Imported merchandise must be appraised pursuant to transaction value if that value can be determined in accordance with the TAA. There is no option under the TAA to use the deductive value method of appraisement in situations where transaction value can be determined.
**542972 dated Jan. 6, 1983.**

Appraised value shall be determined by proceeding sequentially through the alternative bases of appraisement to the first such basis that can be determined. These alternative bases, listed in order of precedence for use, are: transaction value of identical or similar merchandise, section 402(c) of the TAA; deductive value, section 402(d); and computed value, section 402(e).
**543581 dated Sep. 3, 1985; 544409 dated Nov. 20, 1989.**

If in fact a transaction value or transaction value of identical or similar merchandise is available, then neither Customs nor the importer has the authority to waive or disregard such an appraisement. If transaction value and transaction value of identical or similar merchandise cannot be determined, then the Customs value will be based upon deductive value, unless the importer has elected computed value.
**543912 dated Apr. 19, 1988.**

At the time of entry, the price actually paid or payable between the related parties was submitted to Customs by the importer and that price was accepted by Customs. Transaction value was accepted as a means of appraisement and, therefore, the determination that the relationship between the parties did not influence the price was made. In reviewing the valuation method, there is no basis for rejecting transaction value and proceeding through the remaining bases of appraisement.
**544189 dated Aug. 11, 1988.**

Prior to resorting to a section 402(f) appraisement, it is necessary to proceed sequentially through the statutorily enumerated appraisement methods. If it becomes necessary to appraise pursuant to section 402(f) of the TAA, the value should be based, to the greatest extent possible, on a previously determined value.
**544239 dated Nov. 18, 1988.**

There were five entries that failed to report accurately the quantity of entered merchandise. There is no provision in the contract between the seller and the importer defining which party is responsible for shortages and overages. In addition, according to the importer, there was no post entry adjustment in the amount paid to the seller for the additional merchandise. The transaction value of identical or similar method is the most appropriate method for determining the value of the unreported merchandise. Therefore, the value of the unreported merchandise should be based on the transaction value of the sales of reported merchandise between the seller and the importer. In addition, in cases where there is an unexpected overage or shortage, importers should notify Customs pursuant to 19 U.S.C. 1499(a)(3) and 19 C.F.R.1414. Furthermore, importers should use one of the available administrative remedies to correct errors in the quantity of merchandise reported at the time of entry.
**547978 dated Dec. 11, 2001.**

# SOFTWARE

## INTRODUCTION

### GATT Valuation Agreement:

CCC Technical Committee Commentary 13.1 discusses the valuation of carrier media bearing software for data processing equipment, and states:

1. This commentary examines the question of the valuation of carrier media bearing software for data processing equipment in the specific context of the application of paragraph 2 of the decision adopted by the Committee on Customs Valuation.
2. The principle to be taken into consideration in this respect is that in determining the Customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account. The Customs value shall not, therefore include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium.
3. A problem encountered in applying this decision relates to the provision to distinguish the cost or value of the data or instructions from the cost or value of the carrier medium; sometimes, only one price of the software and the carrier medium is available, at other times, only the price of the carrier medium is invoiced or only cost or value of the data or instructions is known.
4. As there is an option to apply or not to apply paragraph 2 of the decision, countries which choose to apply that decision should interpret this paragraph in the widest possible terms so as not to negate the intention of the decision. Therefore, the expression "distinguish" should be interpreted in such a manner that if only the cost or value of the carrier medium is known the cost or value of the data or instructions should be considered as distinguished.
5. If for any reason an administration considers that a separate declaration of the two costs or values is necessary and only one of the two is available, the second one could be determined by estimation, using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of the General Agreement. Similar estimation for arriving at separate values can be done in cases where only the total price of the two elements is available. Customs administrations which choose to follow the practice of estimation may find that consultation with the importer is necessary in arriving at a reasonable solution.
6. When at the time of importation the importer is not in a position to furnish sufficient information for this purpose, the provisions of Article 13 may apply [delay of final determination of Customs value].
7. The practice recommended in this commentary is applicable to the valuation for Customs purposes of carrier media bearing software and does not take into account other requirements such as the collection of statistics.

**Treasury Decision:**

U.S. Valuation of Imported Carrier Media Bearing Data of Instructions for Use in Data Processing Equipment, T.D. 85-124, dated Aug. 7, 1985:

On September 24, 1984, the Committee on Customs Valuation of the GATT decided that the valuation of software imported into the United States is based solely upon the value of the carrier medium itself and does not include a value element for data, instructions, or information components contained on such software.

Annex A- General Agreement on Tariffs and Trade, Committee on Customs Valuation, Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment Adopted by the Committee on September 24, 1984:

The Committee on Customs Valuation DECIDES as follows:
1. It is reaffirmed that transaction value is the primary basis of valuation under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement) and that its application with regard to data or instructions (software) recorded on carrier media for data processing equipment is fully consistent with the Agreement.
2. Given the unique situation with regard to data or instructions (software) recorded on carrier media for data processing equipment, and that some Parties have sought a different approach, it would also be consistent with the Agreement for those Parties which wish to do so to adopt the following practice:

In determining the customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account. The customs value shall not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium.

For purposes of this Decision, the expression Acarrier medium@ shall not be taken to include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices; the expression Adata or instructions@ shall not be taken to include sound, cinematic or video recordings.

3. Those Parties adopting the practice referred to in paragraph 2 of this Decision shall notify the Committee of the date of its application.
4. Those Parties adopting the practice in paragraph 2 of this Decision will do so on a most-favoured-nation (m.f.n.) basis, without prejudice to the continued use by any Party of the transaction value practice.

**Headquarters Rulings:**

The carrier medium of CDs should be valued in accordance with the methods described in section 402 of the TAA. Transaction value is the preferred method of appraisement.

Section 402(b) of the TAA defines transaction value as the "price actually paid or payable for the merchandise when sold for exportation to the U.S.," plus certain enumerated additions. Assuming that the relationship between the parties does not influence the price and none of the other prohibitions in 19 C.F.R. 152.103(j) exist, then transaction value would be the appropriate method of valuation for the CDs. The CDs imported containing data or instructions (i.e. software) are subject to duty on the basis of the value of the carrier medium. The price of the data and/or instructions and the value of the carrier medium should be distinguished on the invoice for entry purposes.
**547946 dated Nov. 30, 2001.**

The importer purchases a yearly subscription that entitles it to the receipt of a fixed number of CD-ROMs. The CD-ROMs contain information that will be used to test automotive electronic systems. The importer's annual subscription fee also includes the periodic importation of additional CD-ROMs. The additional CD-ROMs are used to update the testing system throughout the year. Customs will not evaluate the value of the information stored on the CD-ROMs. The customs value of the imported CD-ROMs is the value of the carrier medium, at the time of entry.
**548190 dated Nov. 25, 2002.**

# TRANSACTION VALUE

## INTRODUCTION

19 U.S.C. 1401a(b)(1) provides for the following:

TRANSACTION VALUE OF IMPORTED MERCHANDISE- (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to-
(A) the packing costs incurred by the buyer with respect to the imported merchandise;
(B) any selling commission incurred by the buyer with respect to the imported merchandise;
(C) the value, apportioned as appropriate, of any assist;
(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and
(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.
The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included in the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

The corresponding Customs regulation is 152.103(b)(1) and (2).

Note: For the restrictions on the use of transaction value, see chapters on RESTRICTIONS ON THE USE OF IMPORTED MERCHANDISE, CONDITIONS OR CONSIDERATION FOR WHICH A VALUE CANNOT BE DETERMINED, PROCEEDS OF A SUBSEQUENT RESALE, and RELATED PARTY TRANSACTIONS, <u>supra.</u>

**<u>GATT Valuation Agreement:</u>**

Article 1, paragraph 1, of the Agreement provides that "the customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. . . ."

Paragraph I(a) through (d) corresponds with 19 U.S.C. 1401a(b)(2)(A) which provides for restrictions on the use of transaction value. Paragraph 2(a) through (c) is equivalent

to 19 U.S.C. 1401a(b)(2)(B), i.e., the use of transaction value by a related buyer and seller.

With respect to the Interpretative Notes, Note to Article 1, Paragraphs I(a)(iii) and (1)(b), Paragraphs 2 and 2(b), see chapters on RESTRICTIONS ON THE USE OF IMPORTED MERCHANDISE, CONDITIONS OR CONSIDERATION FOR WHICH A VALUE CANNOT BE DETERMINED, and RELATED PARTY TRANSACTIONS, supra.

CCC Technical Committee Advisory Opinion 2.1 deals with the Acceptability of a Price Below Prevailing Market Prices for Identical Goods, and states:

1. The question has been asked whether a price lower than prevailing market prices for identical goods can be accepted for the purposes of [transaction value].
2. The Committee considered this question and concluded that the mere fact that a price is lower than prevailing market prices for identical goods should not cause it to be rejected for the purposes of [transaction value] . . . .

**Judicial Precedent:**

Skaraborg Invest USA v. United States, 9 F.Supp.2d 706 (Ct. Int'l Trade 1998).

The court held that Customs properly appraised the imported machines at $700,000. The importer claimed that the invoice value was the insured value of the machines which included the actual value of the merchandise at $289,051 and the value of the legal fees incurred to claim clear title at $410,949. In addition, the importer claimed that the machines were imported subject to a lease agreement, rendering transaction value inapplicable. The importer further argued that the machines should be appraised pursuant to section 402(f) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), with the appraised value of $289,051. This value was based upon the written opinion of the machines' manufacturer prepared specifically for the court case. The court agreed with Customs' appraisement and indicated that the clear language in the invoice submitted unequivocally provided that the Customs value of the machines was $700,000. The court stated that the importer did not demonstrate that a lease situation existed, and even if a lease was in existence, there is no authority requiring Customs to resort to a manufacturer's or other expert's appraisal of the merchandise.

**Headquarters Rulings:**

## assists

See chapter on ASSISTS, supra.

## condition or consideration for which a value cannot be determined

See chapter on CONDITIONS OR CONSIDERATION FOR WHICH A VALUE CANNOT BE DETERMINED, supra.

At the time HQ 547798 was issued, Customs had no indication that insufficient information had been submitted to warrant the issuance of a ruling as per the terms of sections 177.3 and 177.7 of the Customs Regulations. Based on the omission of relevant facts and supporting documentation in connection with the issuance of HQ 547798, we find that the ruling was *void ab initio* (i.e., null from the beginning). Thus, there remains insufficient facts and evidence to determine whether transaction value is the proper basis of appraisement.
**547926 dated Nov. 20, 2001.**

## consignments

See chapter on CONSIGNMENTS, supra.

## countertrade

See also, chapter on COUNTERTRADE, supra.

Unless barter transactions specify monetary value of the merchandise involved, inherent difficulties in ascertaining a value for such goods precludes a finding of transaction value.
**543209 dated Jan. 25, 1984.**

An exchange agreement between a foreign supplier and a U.S. importer provides for the importer to send the supplier copper cathodes in exchange for the supplier shipping certain merchandise in return. Because the contract involved does not specify a monetary value for the goods, they are precluded from valuation pursuant to transaction value.
**543400 dated Apr. 16, 1985.**

The use of transaction value is precluded in countertrade transactions if the parties have not made reference in their contracts to some reasonable monetary standard representing the price actually paid or payable.
**543644 dated Nov. 20, 1985.**

## hang tags/labels

Subject to an adjustment for American goods returned, the cost of price tickets and hang tags is a dutiable portion of the transaction value. Thus, hang tangs and labels made in the United States may be eligible for duty-free treatment.
**544708 dated Feb. 13, 1992; aff'd by 545154 dated June 3, 1994.**

## limitations on use of transaction value

In a transaction between unrelated parties, transaction value may be used to appraise merchandise, even though qualification for a duty-free entry provision is a primary factor in setting the price. In addition, the seller's profits and general expenses may be inconsistent with those of other manufacturers. If there are no statutory limitations that preclude the use of transaction value, and there is sufficient information to determine the value of any statutory additions to the price actually paid or payable, then transaction value is applicable.
**545063 dated Sep. 8, 1992.**

Due to post-importation market condition price adjustments referred to in the sales contract between the parties, and negotiated after importation, as well as post-importation lump-sum payments, there is no firm price actually paid or payable for the merchandise at the time of importation. Therefore, transaction value is inapplicable as a means of appraisement. However, there is a transaction value of identical merchandise available to appraise the merchandise.
**544726 dated Nov. 3, 1992.**

Transaction value may not be used as a method of appraisement because there is insufficient information to ascertain the price actually paid or payable. Although it appears as though an assist is being provided, there is insufficient information available to accurately value the assist. Accordingly, it is necessary to proceed sequentially through the valuation statute in order to properly appraise the imported merchandise, beginning with the transaction value of identical or similar merchandise.
**547168 dated Apr. 12, 1999.**

In this case, an airline hires a company to install aircraft furnishings. The company that installs the aircraft furnishings serves as the importer of record and ultimate consignee. The airline is billed for time, labor, cost of any parts necessary for installation, Customs brokerage fees, delivery costs and U.S. Customs Service duties (if any). The installation company was unable to provide the requested information which would have verified the quantity of the goods received and the price paid for the goods; therefore, the merchandise cannot be appraised using the valuation methods of transaction value of identical or similar merchandise, deductive value, or computed value. Accordingly, the merchandise must be appraised under 19 U.S.C 1401a(f) as a modified transaction value, which uses the prices between the purchasing airline and the supplier. Thus, it appears that the purchasing airline procured the goods with the intent to have them shipped to the U.S. for installation into its airlines.
**547604 dated Apr. 10, 2001.**

The importer imports and distributes chemical products from its related vendors. Because the parties are related, the importer uses a transfer price to report its transaction value to Customs. The importer states that the prices for the imported goods are negotiated between the vendors and it on an annual basis. Although the

elements of the proposed transfer price appear to be the same as those in the current transfer price, the proposed price is not fixed or determinable by some formula at the time of importation. Therefore, transaction value is not applicable as a means of appraisement. The merchandise may be appraised under 402(f) of the TAA (19 U.S.C. 1401(a)(f)) using a modified transaction value approach.
**547654 dated Nov. 9, 2001.**

The carrier medium of CDs should be valued in accordance with the methods described in section 402 of the TAA. Transaction value is the preferred method of appraisement. Section 402(b) of the TAA defines transaction value as the "price actually paid or payable for the merchandise when sold for exportation to the U.S.," plus certain enumerated additions. Assuming that the relationship between the parties does not influence the price and none of the other prohibitions in 19 C.F.R. 152.103(j) exist, then transaction value would be the appropriate method of valuation for the CDs. The CDs imported containing data or instructions (i.e. software) are subject to duty on the basis of the value of the carrier medium. The price of the data and/or instructions and the value of the carrier medium should be distinguished on the invoice for entry purposes.
**547946 dated Nov. 30, 2001.**

The sale from the manufacturer to the middleman may be used as the basis of appraisement where there is a legitimate choice between two statutorily viable transaction values in a multi-tiered transaction. The importer must demonstrate that the sale from the manufacturer to the middleman is a bona fide, arm's length sale of goods clearly destined for export to the United States. However, in this case, the United States importer failed to provide sufficient proof of the price for the assists provided to the foreign manufacturers by the Danish middleman. Therefore, transaction value is inapplicable as a means of appraisement for the sale between the manufacturer and the middleman. The basis of appraisement for this transaction must be based on the sale between the middleman and the importer.
**547588 dated Jan. 18, 2002.**

## packing costs

See chapter on PACKING COSTS, supra.

## price actually paid or payable

See also chapter on PRICE ACTUALLY PAID OR PAYABLE, supra.

Transaction value does not exist when there is no price actually paid or payable for imported merchandise when sold for exportation to the United States. The absence of a transaction value leads to the use of deductive or superdeductive value.
**542476 dated June 10, 1981 (TAA No. 28); partially revoked by 542930 dated Mar. 4, 1983 (TAA No. 59).**

There is no price actually paid or payable for certain foreign made components purchased as part of a system which also includes domestically manufactured components, and where there is no basis on which the price for the foreign components can be quantified. In the absence of alternative bases of valuation, a method of valuation derived from computed value may be used to value the foreign components pursuant to section 402(f) of the TAA.
**543226 dated Jan. 3, 1984; modifies 542930 dated Mar. 4, 1983 (TAA No. 59).**

Merchandise is imported and placed into a bonded warehouse. The importer refuses to pay for the merchandise and the seller locates a new buyer in the United States who is willing to purchase the merchandise. In this case, there is no price actually paid or payable for the merchandise when sold for exportation to the United States.
**543485 dated Feb. 26, 1985.**

Transaction value cannot be determined with respect to the merchandise in question because there is insufficient information from which to ascertain the price actually paid or payable. The actual costs for individual parts cannot be determined accurately and supplemental payments, resulting from a reconciliation between estimated and actual costs, are determined on a project rather than individual part basis.
**543412 dated Apr. 3, 1985.**

In cases where there is no price actually paid or payable for merchandise expressed in monetary terms, an average of prices charged for similar merchandise by producers in the country of exportation may not be used to represent transaction value.
**543400 dated Apr. 16, 1985.**

The buyer advances cash amounts to the seller in order for the seller to prepare for the production of cantaloupes. The money is used in land preparation, seed purchase, crop maintenance, harvest, and packing. These advances are treated as being part of the price actually paid or payable. Where the prices and the amount and means of recovering the advances are clear, transaction value is proper in appraising the merchandise.
**544375 dated July 16, 1990.**

A through bill of lading was presented to establish that the goods were sold for export and placed with a carrier for through shipment to the United States pursuant to 19 CFR 152.103(a)(5). As long as the documentation is consistent with its representative through bill of lading, the foreign inland freight costs can be excluded from the transaction value as transportation costs incident to the international shipment of merchandise from the country of exportation.
**547196 dated Jan. 28, 1999.**

The importer enters into an agency agreement with the supplier. The importer pays for merchandise shipped to it, plus the costs of transportation and importation into the United States. Further, based on the terms of sale stated on the invoice, the importer

may take title to the fabric. However, the mere taking of title to merchandise does not preclude a finding that importer was acting as an agent. Based on the functions of the parties as delineated in the agreement, the importer acts as a selling agent for the supplier in sales to the customers in the United States. Based on the information submitted, no bona fide sale occurs between the importer and supplier. Accordingly, transaction value based on the price actually paid or payable by the U.S. customer is the appropriate basis of appraisement under 19 U.S.C. 1401a(b).
**547917 dated Nov. 2, 2001.**

The antidumping duties to be deducted from the price actually paid or payable pursuant to 19 U.S.C. 1401a(b)(3) are the actual antidumping duties, which are determined at the time of liquidation based on the rate in effect for the subject entries. Therefore, the rate of antidumping duties deductible from the price actually paid or payable is $21.83 per metric ton. Post-importation price adjustments do not affect the transaction value of the imported merchandise.
**547612 dated Dec. 27, 2001.**

## proceeds of a subsequent resale, i.e., appropriate adjustment

See also chapter on PROCEEDS OF A SUBSEQUENT RESALE, supra.

The amounts required to be paid by the importer to the supplier out of the importer's net profits on the resale of vodka are proper additions to the transaction value of the imported merchandise as proceeds of a subsequent resale that accrue directly to the seller.
**542729 dated Mar. 29, 1982.**

The price actually paid or payable for the merchandise is known at the time of exportation to the United States, that is, the base price agreed upon by the parties. If the price of the product is increased subsequent to importation due to a change in the resale price in the United States, then the amount remitted becomes the proceeds of any subsequent resale and the amount is added to the price actually paid or payable. Transaction value is the proper means of appraisement.
**542746 dated Mar. 30, 1982.**

Transaction value is not precluded as a basis of appraisement merely because the amount of the subsequent proceeds to be paid to the seller is not quantifiable until sometime after importation.
**542701 dated Apr. 28, 1982 (TAA No. 47).**

Transaction value does not exist where sufficient information is unavailable to determine within a reasonable period and with reasonable accuracy the extent of proceeds due the seller.
**542928 dated Jan. 21, 1983 (TAA No. 57).**

An addition to the price actually paid or payable for proceeds of a subsequent resale which accrue to the seller must be based upon sufficient information. If such information is unavailable, transaction value is inapplicable.
**543281 dated Aug. 9, 1984**.

## related party transactions

See chapter on RELATED PARTY TRANSACTIONS, supra.

All of the importer's imported products are covered by an Advanced Pricing Agreement (APA) for its related party transactions. An APA is a prospective agreement between a taxpayer and the IRS regarding the correct transfer pricing methodologies under tax law to be applied to transactions between related parties. Based on the review of the information and the information provided to the IRS, the importer has demonstrated that the price has not been influenced by the relationship for purposes of the circumstances of sale test. Thus, transaction value is the proper basis of appraisement for the related party transactions.
**546979 dated Aug. 30, 2000.**

Insufficient evidence was presented to determine whether either a bona fide sale occurred between the manufacturer and the middleman or the merchandise was clearly destined for export to the United States. If the transaction value between the middleman and the importer is determined to be acceptable, the royalty fee paid is part of the transaction value. The importer/buyer is the party directly paying the royalty fees to a party related to the middleman/seller. As such, unless the payments are unrelated to the imported merchandise, they are considered payments included in the transaction value of the imported merchandise.
**547155 dated Mar. 22, 2001.**

For purposes of this ruling request, we are assuming that two bona fide sales exist, the first between the middleman and the foreign suppliers and the second between the U.S. importer and the middleman. However, the merchandise is not clearly destined for the United States, in that there is no evidence to refute the possibility that a contingency of diversion may exist. Also, under a cost sharing agreement, the U.S. importer reimburses its sister company in Canada for services associated with the merchandise ordered. Accordingly, the presumption in this matter is that all monies remitted by the importer to its sister company in Canada pursuant to the cost sharing agreement shall constitute part of the transaction value of the imported merchandise. This presumption may be rebutted by evidence that clearly establishes that payments are completely unrelated to the imported merchandise. The imported merchandise should be appraised under transaction value based on the transaction between the U.S. importer and its sister company in Canada, provided the relationship between the parties did not influence the price.
**547825 dated July 16, 2001.**

In this case, counsel contends that the transaction involves three-tiers, that is, an importer, a middleman, and a factory. However, there is insufficient evidence to conclude that a sale for export occurred between the factory and middleman. As such, for the entry in question this transaction between the factory and middleman may not be used as the basis for transaction value. The transaction value should be based on the price paid by the importer.
**547625 dated Nov. 2, 2001.**

In this case, the importer paid selling commissions to a U.S. related company. The evidence submitted does not indicate the existence of a bona fide buying agency relationship between the importer and the U.S. related company. The importer has not presented any evidence showing that it directs the activities of the U.S. and foreign related companies. In addition, it appears that the U.S. related company is not acting primarily for the benefit of the importer (but rather for its own benefit) or that it functions in support of the seller. As such, the importer does not exercise sufficient control over the purported buying agent. Therefore, a bona fide buying agency relationship does not exist between the importer and the related U.S. company. Thus, the commissions in the immediate situation constitute dutiable selling commissions and, accordingly, should be included in the transaction value of the merchandise.
**547225 dated Nov. 9, 2001.**

The importer imports and distributes chemical products from it related vendors. Because the parties are related, the importer uses a transfer price to report its transaction value to Customs. The importer states that the prices for the imported goods are negotiated between the vendors and it on an annual basis. Although the elements of the proposed transfer price appear to be the same as those in the current transfer price, the proposed price is not fixed or determinable by some formula at the time of importation. Therefore, transaction value is not applicable as a means of appraisement. The merchandise may be appraised under 402(f) of the TAA (19 U.S.C. 1401(a)(f)) using a modified transaction value approach.
**547654 dated Nov. 9, 2001.**

The importer purchases lamps from a related company and from other unrelated manufacturers. Although the method described by the importer's written transfer pricing policy may be acceptable for establishing an arm's length transaction, the documentation does not support that the calculations are acceptable for purposes of transaction value. Thus, based on the facts provided, it is appropriate to appraise the subject merchandise using the deductive value method.
**547231 dated Dec. 16, 2001.**

## restrictions on disposition or use of imported merchandise

See chapter on RESTRICTIONS ON THE USE OF IMPORTED MERCHANDISE, supra.

## royalty and license fees

See chapter on ROYALTY PAYMENTS AND LICENSE FEES, supra.

Insufficient evidence was presented to determine whether either a bona fide sale occurred between the manufacturer and the middleman or that the merchandise was clearly destined for the United States. If the transaction value between the middleman and the importer is determined to be acceptable, then the royalty fee paid is part of the transaction value. The importer/buyer is the party directly paying the royalty fees to a party related to the middleman/seller. As such, unless the payments are unrelated to the imported merchandise, they are considered payments included in the transaction value of the imported merchandise.
**547155 dated Mar. 22, 2001.**

The cost of the license fee is included in the negotiated price actually paid or payable for the imported merchandise. Nothing in the statute or regulations allows for a deduction for an amount representing the license fee where it is already included in the price. Due to the license fees being included in the price actually paid or payable, it is not necessary to also determine whether they could be regarded as additions to the price actually paid or payable, within the meaning of 19 U.S.C. 1401a(b)(1)(D). Accordingly, the amounts representing the license fees may not be deducted from the price actually paid or payable for the imported merchandise.
**547958 dated July 23, 2001.**

Under a license agreement, the importer has agreed, in exchange for the right to manufacture and sell the licensed products worldwide, to pay its subsidiary percentages of its worldwide sales of the licensed products. Assuming transaction value is the appropriate basis of appraisement, royalties paid in respect of the licensed products for the imported raw materials purchased by the importer from its related companies are not part of the price actually paid or payable for the imported raw materials, nor do they constitute additions thereto under section 402(b)(1)(D)-(E) of the TAA.
**547710 dated Dec. 16, 2001.**

## sale for exportation to the United States

See also chapter on SALE FOR EXPORTATION, supra.

Merchandise sold in Italy to a U.S. buyer and stored in France for an indefinite amount of time is not sold for export to the United States. In order for transaction value to apply, merchandise must be destined for export to the United States at the time of the sale.
**542310 dated May 22, 1981.**

Transaction value may not be derived from the original contract price for imported merchandise where, subsequent to importation, the alleged buyer refused to accept or pay for the goods. In such an instance, no sale for exportation to the United States exists, because there was no transfer of ownership to the buyer.
**542895 dated Aug. 27, 1981 (TAA No. 51); 544262 dated June 27, 1989.**

Merchandise dutiable under transaction value does not include the value of repairs for in-transit damage made in a third country which merely restore the merchandise to its original condition, even if replacement parts are needed. However, the addition to merchandise of parts in a third country which enhances the value may be sufficient to make the third country the country of exportation, in which transaction value is inapplicable.
**542516 dated Oct. 7, 1981 (TAA No. 39); <u>modified</u> <u>by</u> 543737 dated July 21, 1986.**

In the instant case, merchandise is not sold for exportation to the United States but, rather, it is consigned to the importer until it is subsequently sold in the United States. The fact that the merchandise entered a foreign trade zone after importation into the United States does not in any way negate the proper application of section 402 of the TAA.
**542748 dated Mar. 31, 1982.**

Jewelry purchased six years prior to date of export to the United States is not "sold" for export within the meaning of section 402(b)(1) of the TAA.
**542791 dated June 10, 1982.**

The fact that title to merchandise may pass at some time subsequent to its importation into the United States does not preclude a sale for exportation to the United States which may be used to establish transaction value.
**542930 dated Mar. 4, 1983 (TAA No. 59); <u>partially</u> <u>revokes</u> 542476 dated June 10, 1981 (TAA No. 28).**

Under circumstances in which merchandise is to be imported pursuant to an agreement to lease with an option to purchase, the merchandise cannot be considered as sold for exportation to the United States. Transaction value is eliminated as a means of appraisement.
**542996 dated Mar. 4, 1983.**

In a transaction where two joint owners import a machine and only one of these importers "purchases" its portion prior to exportation, the machine is not sold for export to the United States and, therefore, transaction value is inapplicable.
**543243 dated Apr. 30, 1984.**

Defective parts returned to the United States for replacement are not considered "sold" for exportation to the U.S., and transaction value is eliminated as a means of appraisement.
**543288 dated Nov. 26, 1984.**

A U.S. importer purchases oil well tubing from an unrelated manufacturer in Japan. The tubing is shipped to Canada where another unrelated party applies a plastic protective coating to the tubing. The importer makes separate payments to the Japanese manufacturer and to the Canadian company which performs the further processing. The transaction between the importer and the Canadian processor represents a "sale for exportation to the United States." The transaction value is represented by the price paid by the importer to the Canadian processor, plus the value, as an assist, of the tubing furnished without charge by the importer to the Canadian processor. The value of the assist equals the sum of the price paid to the Japanese manufacturer and the transportation and related costs incurred in shipping the merchandise from Japan to the processing site in Canada.
**543737 dated July 21, 1986; modifies 542516 dated Oct. 7, 1981 (TAA No. 39).**

Based upon the facts presented and the documentation provided, the transactions between the Canadian importer of record and its non-related Far East suppliers are bona fide sales of merchandise that are clearly destined for the United States. Therefore, transaction value is the proper method of appraisement for the merchandise imported into the United States by the importer, provided that the transactions meet the standards established in 19 U.S.C. 1401a.
**547594 dated June 27, 2000.**

The importer orders and purchases all of its imports from its subsidiary company. The subsidiary in turn purchases the merchandise from foreign suppliers. Based on the evidence presented, the transactions between the subsidiary and the unrelated overseas supplier consist of bona fide sales conducted at arm's length, wherein the merchandise is clearly destined for the U.S. importer. Accordingly, the manufacturer's price is the appropriate basis for determining the value of the imported merchandise.
**547844 dated Feb. 15, 2001.**

Insufficient evidence was presented to determine whether a bona fide sale occurred between the manufacturer and the middleman or that the merchandise was clearly destined for the United States. If the transaction value between the middleman and the importer is determined to be acceptable, the royalty fee paid is part of the transaction value. The importer/buyer is the party directly paying the royalty fees to a party related to the middleman/seller. As such, unless the payments are unrelated to the imported merchandise, they are considered payments included in the transaction value of the imported merchandise.
**547155 dated Mar. 22, 2001.**

For purposes of this ruling request, we are assuming that two bona fide sales exist, the first between the middleman and the foreign suppliers and the second between the U.S. importer and the middleman. However, the merchandise is not clearly destined for the United States, in that there is no evidence to refute the possibility that a contingency of diversion may exist. Also, under a cost sharing agreement, the U.S. importer reimburses its sister company in Canada for services associated with the merchandise ordered. Accordingly, the presumption in this matter is that all monies remitted by the importer to its sister company in Canada pursuant to the cost sharing agreement shall constitute part of the transaction value of the imported merchandise. This presumption may be rebutted by evidence that clearly establishes that the payments are completely unrelated to the imported merchandise. The imported merchandise should be appraised under transaction value based on the transaction between the U.S. importer and its sister company in Canada, provided the relationship between the parties did not influence the price.
**547825 dated July 16, 2001.**

There is insufficient evidence to determine that the imported merchandise was clearly destined for the United States at the time of sale. Transaction value cannot be based on the sale between the middleman and the exporter. Therefore, the transaction value should be based on the sales between the middleman and the importer.
**547435 dated Oct. 30, 2001.**

The importer, which is also the seller/middleman of the merchandise, took orders from U.S. purchasers and then placed those orders with unrelated suppliers in France. The goods did not meet the Nissho standard of being clearly destined for the United States in a multi-tiered transaction. Therefore, appraisement under transaction value cannot be used based on the transaction between the Canadian firm and the foreign suppliers. Accordingly, the merchandise is subject to appraisement based on the sale between the importer and the middleman.
**547901 dated Dec. 7, 2001.**

## selling commissions

19 U.S.C. 1401a(b)(1)(B); 19 CFR 152.103(b)(1)(ii); GATT Valuation Agreement, Article 8, paragraph l(a)(i); See chapter on SELLING COMMISSIONS, supra.

The importer enters into an agency agreement with the supplier. The importer pays for merchandise shipped to it, plus the costs of transportation and importation into the United States. Further, based on the terms of sale stated on the invoice, the importer may take title to the fabric. However, the mere taking of title to merchandise does not preclude a finding that importer was acting as an agent. Based on the functions of the parties as delineated in the agreement, the importer acts as a selling agent for the

supplier in sales to the customers in the United States. Based on the information submitted, no bona fide sale occurs between the importer and supplier. Accordingly, transaction value based on the price actually paid or payable by the U.S. customer is the appropriate basis of appraisement under 19 U.S.C. 1401a(b).
**547917 dated Nov. 2, 2001.**

In this case, the importer paid selling commissions to a U.S. related company. The evidence submitted does not indicate the existence of a bona fide buying agency relationship between the importer and the U.S. related company. The importer has not presented any evidence showing that it directs the activities of the U.S. and foreign related companies. In addition, it appears that the U.S. related company is not acting primarily for the benefit of the importer, but rather for its own benefit, or that it functions in support of the seller. As such, the importer does not exercise sufficient control over the purported buying agent. Therefore, a bona fide buying agency relationship does not exist between the importer and the related U.S. company. Thus, the commissions in the immediate situation constitute dutiable selling commissions and, accordingly, should be included in the transaction value of the merchandise.
**547225 dated Nov. 9, 2001.**

## unrelated parties

Under the circumstances of this particular transaction, all parties are clearly unrelated. The material obtained for the imported merchandise was obtained at no cost to the seller. The invoice price to the importer does not reflect any cost for this material. The merchandise should be appraised under transaction value and, because the material was not provided directly or indirectly by the buyer, or any party related to the buyer, the material is not an assist.
**545172 dated May 6, 1993.**

The importer orders and purchases all of its imports from its subsidiary company. The subsidiary in turn purchases the merchandise from foreign suppliers. Based on the evidence presented, the transactions between the subsidiary and the unrelated overseas supplier consist of bona fide sales conducted at arm's length, wherein the merchandise is clearly destined for the U.S. importer. Accordingly, the manufacturer's price is the appropriate basis for determining the value of the imported merchandise.
**547844 dated Feb. 15, 2001.**

# TRANSACTION VALUE OF IDENTICAL OR SIMILAR MERCHANDISE

## INTRODUCTION

19 U.S.C. 1401a(c) states the following:

TRANSACTION VALUE OF IDENTICAL MERCHANDISE AND SIMILAR MERCHANDISE.- (1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this Act under subsection (b) but adjusted under paragraph (2) of this subsection) of imported merchandise that is -
(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and
(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.
(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest or such values.

The terms "identical merchandise" and "similar merchandise" are defined in 19 U.S.C. 1401a(h)(2) and (4) as follows:

(2) The term "identical merchandise" means -
(A) merchandise that is identical in all respect to, and was produced in the same country and by the same person as, the merchandise being appraised; or
(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), [test value for related party transaction] regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all respects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised.
Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that- (I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production

or the sale for export to the United States of the merchandise; and (II) is not an assist because undertaken within the United States.

(4) The term "similar merchandise" means -
(A) merchandise that- (i) was produced in the same country and by the same person as the merchandise being appraised, (ii) is like the merchandise being appraised in characteristics and
components material, and (iii) is commercially interchangeable with the merchandise being appraised; or
(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), [test value for related party transaction] regardless of whether merchandise meeting such requirements can be found), merchandise that- (i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and (ii) meets the requirement set forth in subparagraph (A) (ii) and (iii).
Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that- (I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and (II) is not an assist because undertaken within the United States.

The corresponding Customs regulation is found in 19 CFR 152.104 and it states the following:

(a) General. The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value under [section] 152.103 but adjusted under paragraph (e) of this section) of imported merchandise that is -
(I) With respect to the merchandise being appraised, either identical merchandise, or similar merchandise; and
(2) Exported to the United States at or about the time that the merchandise being appraised is exported to the United States.
(b) Identical merchandise. Minor differences in appearance will not preclude otherwise conforming merchandise from being considered "identical". See [section] 152.102(d).
[Note: 19 CFR 152.102(d) referred to under 19 CFR 152.104(b) is similar to language used in the definitional section of the TAA quoted above, 19 U.S.C. 1401a(h)(2) regarding identical merchandise.]
(c) Similar merchandise. The quality of the merchandise, its reputation, and the existence of a trademark will be factors considered to determine whether merchandise is "similar". See [section] 152.102(i).
[Note: 19 CFR 152.102(i) referred to under 19 CFR 152.104(c) is similar to language used in the definitional section of the TAA quoted above, 19 U.S.C. 1401a(h)(4) regarding similar merchandise.]
(d) Commercial level and quantity. Transaction values determined under this section will be based on sales of identical merchandise, or similar merchandise, at the same commercial level and in substantially the same quantity as the sales of the merchandise

being appraised. If no such sale is found, sales of identical merchandise, or similar merchandise, at either a different commercial level or in different quantities, or both, will be used, but adjusted to take account of that difference. Any adjustment made under this section will be based on "sufficient information". See [section] 152.102(j). If in applying this section to any merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, the merchandise will be appraised on the basis of the lower or lowest of those values.
(e) Adjustments.
(1) Adjustments for identical merchandise, or similar merchandise, because of different commercial levels or quantities, or both, whether leading to an increase or decrease in the value, will be made only on the basis of sufficient information; e.g., valid price lists containing prices referring to different levels or quantities.
(2) Interpretative note. If the imported merchandise being valued consists of a shipment of 10 units and the only identical imported merchandise for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list had been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions for transaction value of identical or similar merchandise is not appropriate.

## GATT Valuation Agreement:

Article 2 provides for the use of transaction value of identical goods and states:

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, [transaction value] the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.
(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in Article 8.2 [cost of transport of the goods to the port or place of importation; loading, unloading and handling charges associated with the transport of the goods to the port or place of importation; and cost of insurance] are included in the transaction value, an adjustment shall be made to take account of

significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3 provides for the use of transaction value of similar goods (same language as Article 2).

Article 15, paragraph 2(a), defines identical goods as:

"[I]dentical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.

Article 15, paragraph 2(b), defines similar goods as:

"[S]imilar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

Article 15, paragraph 2(c) through (e), provides for the following:

(c) The terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 8.1(b)(iv) because such elements were undertaken in the country of importation.
(d) Goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.
(e) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

The Interpretative Notes, Notes to Articles 2 and 3, are similar in language to the Customs regulation regarding transaction value of identical merchandise and similar merchandise, i.e., 19 CFR 152.104(d) and (e).

In addition, CCC Technical Committee Commentary 1.1 provides examples of whether goods are identical or similar in accordance with the Agreement.

CCC Technical Committee Commentary 10.1 discusses and cites examples of situations involving questions of adjustments for different commercial levels and quantities.

**Judicial Precedent:**

Four Seasons Produce v. United States, 24 I.T.R.D. 1022 (Ct. Int'l Trade 2001).

The court upheld a Customs ruling concerning the valuation of imported merchandise. The case arose from the appraisement of imported asparagus. Because the asparagus was imported on a consignment basis, there was no transaction value available to appraise the asparagus. In accordance with section 402(c)(1)(B), Customs appraised the produce based on the transaction value of "identical or similar merchandise . . . exported to the United States *at or about the time"* that the importer's merchandise was exported. The issue before the court was Customs' interpretation of the phrase "at or about the time [of export]". Customs interpreted "at the time" of export as being the date of exportation. Customs determined that in the case of perishable produce, "about the time" of export should encompass a time period beginning one week before and extending until one week after the date of exportation. Customs further concluded values on the date of exportation are considered first, but if not available, that comparable values closest to the date of exportation should be preferred over earlier or later values. Customs noted that determinations of the proper timeframe may vary depending on the kind of good and the circumstances of the industry at issue. Also, if several transaction values are provided for the merchandise being appraised on the exact or closest date of exportation, the lowest value for that date should be utilized. The court affirmed Customs' interpretation of the phrase "at or about the time [of exportation]." In this case, the CIT found Customs' reasoning persuasive noting, "[i]n light of Customs' specialized experience in valuing exported merchandise, the thoroughness of Customs' reasoning in interpreting the phrase 'at or about the time,' the rank of the Customs officer who issued the Decision Letter, and Customs' serious consideration of Plaintiff's position as to the meaning of the phrase 'at or about the time,' the court finds that Customs' interpretation, as it applies to the valuation of Plaintiff's merchandise, is persuasive and, therefore, entitled to respect."

**Headquarters Rulings:**

## consignment transactions

Consigned goods cannot be used as "identical" or "similar" merchandise for purposes of appraising goods under transaction value of identical or similar merchandise. Such goods must similarly be sold for export to the United States. Accordingly, transaction value of identical or similar merchandise cannot be used in consignment transactions.
**542568 dated Nov. 16, 1981; 543112 dated May 10, 1984; 543128 dated June 4, 1984; overruled by 543641 dated Aug. 22, 1986.**

The fact that merchandise is consigned rather than sold is not a basis for denying the use of transaction value of identical or similar merchandise. Of course, it is necessary

that sufficient information be available in order to make any adjustment that may be necessary.
**543641 dated Aug. 22, 1986; overrules 542568 dated Nov. 16, 1981, 543112 dated May 10, 1984, 543128 dated June 4, 1984.**

The fact that merchandise is consigned rather than sold is not a basis for denying the use of transaction value of identical or similar merchandise.
**544469 dated Aug. 16, 1990.**

## exported to the United States at or about the same time

19 U.S.C. 1401a(c)(1)(B); 19 CFR 152.104(a)(2); GATT Valuation Agreement, Article 2, paragraph l(a), and Article 3, paragraph l(a)

Transaction value is inapplicable because the relationship between the parties influences the price of the imported merchandise. The importer submits evidence of liquidated entries from other ports of entry for merchandise that is "identical" to the merchandise being appraised. Assuming the identical merchandise was exported to the United States at or about the same time as the merchandise being appraised, then the importer has established the existence of transaction value of identical or similar merchandise.
**543605 dated Mar. 13, 1987; aff'd by 543927 dated May 13, 1987; overruled by T.D. 91-15 dated Mar. 29, 1991, Cust. B. & Dec., Vol. 25, (1995).**

Customs previously ruled that the values at which the entries of imported merchandise had been liquidated were to be taken as representing the transaction value of identical or similar merchandise in the appraisement of merchandise that was exported to the United States at or about the same time. However, Customs has reconsidered this matter because of a question on the use of the value from an entry that, although liquidated, does not meet the conditions of transaction value under section 402(b).
**T.D. 91-15, Cust. B. & Dec., Vol. 25, (1991); overrules 543605 dated Mar. 13, 1987, 543927 dated May 13, 1987.**

The terms "at" or "about" included in the "at or about the time of exportation" language of section 402(c) are to be applied in a hierarchical fashion, with resort to values "at" and then "about" the time of exportation. In selecting a transaction value of identical or similar merchandise in accordance with section 402(c), it is appropriate to consider transaction values for merchandise that has been exported "at" the same time as the instant merchandise, that is, by using transaction values exported on the exact date as the merchandise being appraised. If no transaction value is available for merchandise exported on the exact date as the merchandise under appraisement, it is then appropriate to consider transaction values for merchandise exported "about" the same time, that is, by using transaction values for merchandise exported on the date closest to the date of export of the merchandise being appraised. In the case of perishable produce such as asparagus, "about" is construed to mean one week, seven calendar

days, before or after the date of exportation of the instant merchandise being appraised, that is, a total of fourteen days.
**546217 dated Apr. 8, 1998.**

The merchandise should be appraised pursuant to transaction value for identical or similar merchandise. The terms "at" or "about" included in the "at or about the time of exportation," under section 402(c) of the TAA, are applied in a hierarchical fashion, with resort to values "at" and then "about" the time of exportation. In selecting a transaction value of identical or similar merchandise in accordance with section 402(c), it is appropriate to consider transaction values for merchandise that has been exported "at" the same time as the instant merchandise, that is, by using transaction values exported on the exact date as the merchandise being appraised. If no transaction value is available for merchandise exported on the exact date as the merchandise under appraisement, it is then appropriate to consider transaction values for merchandise exported "about" the same time, that is by using transaction values for merchandise exported on the date closest to the date of export of the merchandise being appraised. In the case of perishable produce such as watermelons, "about" is construed to mean one week, seven calendar days, before or after the date of exportation of the instant merchandise being appraised (a total of 14 days).
**546999 dated Apr. 12, 1999.**

Merchandise was exported to the United States, but upon its arrival the buyer was unable to pay for the merchandise. The duties were also not paid; therefore, the merchandise was placed in the custody of the port director. There was no transfer of title at the time of importation. A different buyer subsequently purchased the merchandise. Transaction value is not applicable as a means of appraisement because there was no completed "sale for exportation" to the United States. At the time of the subsequent purchase, the merchandise was already located in the United States. Transaction value of identical or similar merchandise is the most appropriate method for determining the value of the subject merchandise pursuant to section 402(c) of the TAA.
**547850 dated Jan. 12, 2001.**

## identical or similar merchandise

19 U.S.C. 1401a(h)(2) and (4); 19 CFR 152.102(d) and (i); 19 CFR 152.104(b) and (c); GATT Valuation Agreement, Article 15, paragraph 2

Transaction value of identical or similar merchandise refers to a previously accepted and adjusted transaction value of identical and similar merchandise which was exported at or about the same time as the goods being valued. Merchandise is not regarded as identical or similar unless it was produced in the same country as the merchandise being valued. Under no circumstances may imported merchandise be appraised on the basis of the selling price in the United States of merchandise produced in the United States.
**543628 dated Nov. 4, 1985.**

The imported merchandise was appropriately appraised on the basis of transaction value of similar merchandise. The requirement of section 402(h)(4)(B)(i) of the TAA is met by the fact that both shipments of caviar were produced in the former Soviet Union. The subject caviar was appraised on the basis of the lowest grade of caviar exported from the former Soviet Union and, in this case, the two shipments of caviar are "commercially interchangeable."
**545308 dated Jan. 19, 1995.**

Transaction value is eliminated as a method of appraisement because the relationship between the parties influences the price actually paid or payable. The transaction value does not approximate available test values. Therefore, transaction value of identical or similar merchandise is proper. If there exist two or more transaction values for similar merchandise exported to the United States at or about the same time as the subject merchandise, then appraisement shall be based on the lower or lowest of such values in accordance with section 402(c)(2) of the TAA.
**545638 dated Feb. 13, 1995.**

Asparagus is shipped on a consignment basis from Mexico to a U.S. importer. Several other brands from the same Mexican asparagus producer are exported to the United States at or about the same time. These brands are all sold at the same commercial level and in substantially the same quantity as the sale of the merchandise being appraised. The importer alleges that the other brands are selectively chosen from the top asparagus grown by the producer and that it is super packed using costly U.S. origin wood crates as opposed to Mexican cardboard or plastic. Without adequate documentation or sufficient evidence indicating that the other brands of asparagus possesses different characteristics than the instant asparagus and that the other brands of asparagus are not commercially interchangeable with the instant asparagus, the other brands of asparagus are considered to be "identical or similar" to the merchandise at issue and will serve as the basis of transaction value. There is no legal authority under section 402(c) to make adjustments for any packing costs that may have been included in the value of the asparagus. It would be appropriate to make adjustments only for packing if necessary to account for different commercial levels. If there are two acceptable transaction values under section 402(b), then the merchandise must be appraised based on the lowest of these values.
**545755 dated May 18, 1995.**

Transaction value is inapplicable because there is insufficient information available to determine the price actually paid or payable. However, the merchandise may be appraised pursuant to the transaction value of similar merchandise under section 402(c) of the TAA. A previously accepted transaction value is available, and is based on a sale from the seller to an unrelated customer which was made at the same commercial level as the instant sale. Although that merchandise was allegedly produced with different components and had different production costs from the subject importations, it is still

considered Alike the merchandise being appraised in characteristics and component material" pursuant to section 402(h)(4) of the TAA.
**546161 dated May 7, 1996.**

The merchandise at issue was properly appraised using transaction value of identical or similar merchandise pursuant to section 402(c) of the TAA. The imported wearing apparel was manufactured in Indonesia. The similar merchandise used to appraise the wearing apparel was manufactured in Indonesia and exported to the United States at or about the same time as the wearing apparel at issue. Based on the evidence presented, the information submitted is insufficient to support the claim that the wearing apparel should be appraised at the invoice value between the related seller and the importer.
**546536 dated Aug. 29, 1997.**

Based on the evidence available, transaction value is not the proper basis of appraisement for the subject wearing apparel, in that no sale for exportation occurred between the exporter and the importer in the United States, but, rather, the merchandise is consigned to the importer. Thus, transactions involving goods that are shipped on a consignment basis do not constitute bona fide sales and cannot be appraised pursuant to transaction value. Appraisement of the imported wearing apparel should proceed sequentially through the subsequent provisions of section 402 of the TAA, with the first alternative basis of appraisement being the transaction value of identical or similar merchandise in section 402(c) of the TAA.
**547591 dated Apr. 21, 2000; 547573 dated Apr. 21, 2000; 547628 dated Apr. 21, 2000.**

There was insufficient information to base an appraisement on transaction value because the value of the assists was unavailable. Therefore, the appraisement was based on the transaction value of identical or similar merchandise pursuant to information available to Customs. As such, Customs properly appraised the merchandise according to the transaction value of identical or similar merchandise.
**547738 dated Nov. 13, 2001.**

## related parties

In a related party situation, transaction value of identical or similar merchandise is acceptable if an examination of the circumstances of sale indicates that the relationship between the buyer and seller did not influence the price actually paid or payable, or if such value closely approximates one of the test values.
**542310 dated May 22, 1981.**

## sufficient information

19 U.S.C. 1401a(c) (2); 19 CFR 152.104(e)

The importer submitted a copy of the Journal of Commerce Import Statistics in support of its position regarding the applicability of transaction value of identical or similar merchandise. The document shows shipments of the product at issue from the same country of export that arrived in the United States during the time period at issue. However, the evidence does not show the terms of sale, the price, or the method of appraisement for any of the shipments. Therefore, there is a lack of sufficient information to appraise the merchandise pursuant to transaction value of identical or similar merchandise.
**544252 dated Dec. 21, 1988**.

An importer submits an invoice to Customs, and the invoice was specifically prepared for the foreign government. This invoice is accompanied by a worksheet that adjusts the values to the price actually paid by the importer. The invoice is approximately equal to half of the actual payment made by the importer to the seller. Identical merchandise, shipped from the same region on the same day, is often invoiced at different prices. The submission of this prepared invoice along with the adjusted worksheet that cannot be verified does not provide sufficient information to appraise pursuant to transaction value of identical or similar merchandise.
**544375 dated July 16, 1990.**

Transaction value was properly eliminated as a basis of appraisement. However, under section 402(c) of the TAA, there is no authority to adjust the transaction value of similar merchandise in a manner that accounts for differences other than commercial levels or quantities. In addition, there is no authority under section 402(f) to add an arbitrary, albeit reasonable, percentage to the invoice price in reaching an appraised value. Alternatively, appraisement may be based on a method derived from the transaction value of similar merchandise, adjusted in accordance with section 402(f) and 19 CFR 152.107(b).
**545999 dated Dec. 12, 1995.**

## transaction value readily available

In order for transaction value of identical or similar merchandise to be applicable as a means of appraisement, it must be demonstrated that the transaction value upon which the importer is basing the transaction value of identical or similar merchandise is fully acceptable under section 402(b) of the TAA.
**T.D. 91-15 dated Mar. 29, 1991; overrules 543605 dated Mar. 13, 1987, 543927 dated May 13, 1987.**

It must be demonstrated that transaction value is fully acceptable under section 402(b) of the TAA at the time of appraisement of the merchandise under consideration in order to be applied as the transaction value of identical or similar goods under section 402(c). The information necessary for the determination of transaction value of identical or similar merchandise may be made on the basis of information provided by the importer or already available to Customs. In this case, at the time of the importations, two

importers of fresh asparagus had established transaction value pursuant to section 402(b). The importer claims that the asparagus should have been appraised pursuant to resale prices, less appropriate deductions. With regard to the application of the transaction value as established by the two other asparagus importers for the merchandise at issue, the importer has not demonstrated either (1) why such values were not fully acceptable under section 402(b) at the time of the appraisement of the subject merchandise; or (2) why such values cannot serve, pursuant to section 402(c), as the basis of the transaction value for the subject importations. The asparagus was appropriately appraised based on the transaction value of identical or similar merchandise.
**546151 dated Dec. 6, 1995.**

It must be demonstrated that the transaction value of the merchandise under consideration is fully acceptable under section 402(b) of the TAA, in order to be applied as the transaction value of identical or similar goods pursuant to section 402(c). The determination concerning the acceptability of the transaction value may be based on information provided by the importer or information that is available to Customs (citing T.D. 91-15, 25 Cust. B. & Dec. 31 (1991)).
**546057 dated Mar. 14, 1996.**

Raw components and parts are shipped from a related party assembler in Mexico to the importer in the United States. The components are not sold to the importer, but rather, an internal accounting procedure occurs that takes the product of the assembler's account and a corresponding entry is made indicating the acquisition of the raw components or part. There is no transaction value available for appraising the raw components and parts. In addition, the other methods of appraisement are not available. In addition, transaction value of identical or similar merchandise is unavailable as well. In order to satisfy the requirements of section 402(c), it must be demonstrated that a transaction value of the merchandise under consideration is fully acceptable under section 402(b). Basing the transaction value of identical or similar merchandise on the transaction between the assembler in Mexico and a supplier in Mexico is not in accordance with section 402(c). The merchandise is properly appraised using section 402(f), value if other values cannot be determined. The invoice values between the Mexican assembler and suppliers coupled with accounting entries between the assembler and importer for the same merchandise is appropriate using a section 402(f) appraisement. In addition, when the Mexican assembler manufactures products for the importer, there is a certain amount of scrap material that results from the manufacturing operations. Some of the scrap material is disposed of or is sold in Mexico; however, on occasion, scrap material is shipped to the importer. Again, the proper method of appraising the scrap material is section 402(f), value if other values cannot be determined. It appears as though a modified transaction value of identical or similar merchandise may be available, i.e., using the market price that is available for either identical or similar scrap materials.
**548247 dated Mar. 10, 2003.**

Automobiles imported into the United States that are purchased pursuant to a program whereby the ultimate purchaser takes delivery abroad and uses the automobile for a specified amount of time in a foreign country prior to exportation to the United States may not be appraised pursuant to transaction value. There is no sale for exportation to the United States with respect to these automobiles. However, if there is a transaction value of identical or similar merchandise available, then it is proper to appraise the automobiles imported pursuant to the program using the transaction value of identical or similar merchandise method. However, it must be demonstrated that the transaction value of the merchandise under consideration is fully acceptable under section 402(b) in order to be applied as the transaction value of the identical or similar goods pursuant to section 402(c).
**548371 dated Nov. 19, 2003; aff'g 547197 dated Aug. 22, 2000 (regarding the issue of the acceptability of transaction value.)**

## two or more values

19 U.S.C. 1401a(c)(2); 19 CFR 152.104(d); GATT Valuation Agreement, Article 2, paragraph 3 and Article 3, paragraph 3

If two or more transaction values for identical or similar merchandise are found, the appraisement must be based upon the lowest of such value.
**542717 dated Apr. 2, 1982.**

# TRANSPARENCY

## INTRODUCTION

**GATT Valuation Agreement:**

Article 12 of the Agreement states:

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of the General Agreement by the country of importation concerned.

**Treasury Decision:**

T.D. 81-7, dated Jan. 12, 1981:

This document amends the Customs Regulations to enable the Customs Service (Customs) to implement and administer the provisions of Title II of Public Law 96-39, the Trade Agreements Act of 1979, relating to the valuation of imported merchandise for customs purposes.

# TRANSPORTATION COSTS

## INTRODUCTION

In defining the "price actually paid or payable", the TAA states the following:

The term price actually paid or payable means the total payment (whether direct or indirect, and exclusive of any 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) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller. (emphasis added) 19 U.S.C. 1401a(b)(4)(A).

(See also, 19 U.S.C. 1401a(d)(3)(A)(ii) and (iii) regarding deductive value adjustment for transportation, supra.)

The equivalent Customs regulations regarding the "price actually paid or payable" is 19 CFR 152.102(f). The corresponding regulation with respect to deductive value is 19 CFR 152.105(d)(2) and (3).

In addition, the regulations supplement the TAA in 19 CFR 152.103(a)(5), also known as T.D. 84-235, dated Nov. 29, 1984:

Foreign inland freight and other inland charges incident to the international shipment of merchandise. - (i) Ex-factory sales. If the price actually paid or payable by the buyer to the seller for imported merchandise does not include a charge for foreign inland freight and other charges for services incident to the international shipment of merchandise (an ex-factory price), those charges will not be added to the price.
(ii) Sales others than ex-factory. As a general rule, in those situations where the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, whether or not itemized separately on the invoices or other commercial documents, that charge will be part of the transaction value to the extent included in the price. However, charges for foreign inland freight and other services incident to the shipment of the merchandise to the United States may be considered incident to the international shipment of that merchandise within the meaning of [section] 152.102(f) 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.
(iii) Evidence of sale for export and placement for through shipment. A sale for export and placement for through shipment to the United States under paragraph (a)(5)(ii) of this section shall be established by means of a through bill of lading to be presented to the district director. Only in those situations where it clearly would be impossible to ship merchandise on a through bill of lading (e.g., shipments via the seller's own conveyance) will other documentation satisfactory to the district director showing a sale

for export to the United States and placement for through shipment to the United States be accepted in lieu of a through bill of lading.
(iv) Erroneous and false information. This regulation shall not be construed as prohibiting Customs from making appropriate additions to the dutiable value of merchandise in instances where verification reveals that foreign inland freight charges or other charges for services incident to the international shipment of merchandise have been overstated.

## GATT Valuation Agreement:

Article 8, paragraph 2, states:

In framing its legislation, each Party shall provide for the inclusion or the exclusion from the customs value, in whole or in part, of the following:
(a) the cost of transport of the imported goods to the port or place of importation;
(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
(c) the cost of insurance.

In addition, the Interpretative Notes, Note to Article 1, Price actually paid or payable, among other things, states:

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods . . . the cost of transport after importation; . . . .

## Judicial Precedent:

All Channel Products v. United States, 16 Ct. Int'l Trade 169 (1992), aff'd, 982 F.2d 513 (Fed. Cir. 1992).

In this case involving foreign-inland freight, the importer had not submitted a through bill of lading to Customs. The court held that the charges in question, foreign inland freight and related charges included in the CIF prices, did not "occur after the merchandise ha[d] been sold for export to the United States and placed with a carrier for through shipment to the United States," as required by 19 CFR 152.103(a)(5)(iii). Therefore, Customs was correct in not deducting foreign-inland freight and related charges from the CIF prices.

The appellate court affirmed, indicating that the application of 19 CFR 152.103(a)(5)(iii) to the transaction did not allow for a deduction for foreign-inland freight.

**Headquarters Notices:**

General Notice, Actual Freight and Insurance Deductions, Cust. B. & Dec., Vol. 31, No. 8, Feb. 19, 1997.

The amount to be deducted from the transaction value of imported merchandise for freight, insurance, and other costs incident to the international shipment of merchandise, including foreign inland freight costs, are the actual, as opposed to the estimated, costs. Pursuant to 19 U.S.C. 1484(a)(1), the importer of record is required, using reasonable care, to make and complete entry by filing with Customs, among other things, the declared value of the merchandise. The importer's declaration of a transaction value excluding an amount for freight/shipment charges based on estimated costs may constitute a failure to exercise reasonable care.

**Headquarters Rulings:**

## deductive value

The proper amount to be deducted for appraisement purposes pursuant to deductive value is the actual cost of the transportation. An airway bill submitted in this case serves as evidence of the actual costs of transportation.
**544236 dated Oct. 31, 1988.**

## estimated freight costs versus actual

Where shipments are made on a C & F basis, the actual expenses for ocean freight as opposed to estimated charges are deducted to establish the dutiable value.
**542206 dated Mar. 23, 1981.**

It is the actual transportation costs that are to be deducted from a C.I.F. price in determining transaction value. In determining the deduction for duties which are "currently payable," the actual rate at the time of liquidation must be used.
**542467 dated Aug. 13, 1981; modified by 542874 dated Aug. 27, 1982.**

The proper amount to be deducted pursuant to deductive value is the actual costs of the transportation. An airway bill submitted in this case serves as sufficient evidence of the actual costs of transportation.
**544236 dated Oct. 31, 1988.**

In determining the cost of international transportation or freight, Customs looks to documentation from the freight company, as opposed to documentation between the buyer and seller which often contains estimated freight costs or charges. Documentation from the freight company is required because the actual cost for freight, and not the estimated charges, is the amount that is excluded from the price actually paid or payable in determining transaction value.
**545201 dated Jan. 27, 1995.**

The international shipping charges paid by the importer to a buying agent for actual shipping costs incurred are not part of the transaction value of the imported merchandise. It is in the discretion of the appraising officer to require evidence of the actual shipping charges incurred to verify that the buying agent is not receiving payments in addition to those described.
**545422 dated Mar. 13, 1995.**

A related party buyer purchases merchandise from its parent on a F.O.B. basis, freight prepaid. The seller invoices the buyer a fixed price and deducts estimated expenses for freight charges. The price does not change if these estimated costs are ultimately different from the actual cost. The seller subsequently receives freight rebates from certain carriers. Regardless of the statutory exemption for freight costs, if payments are made to the seller for merchandise sold for export, even though not for the value of the goods themselves, they are part of the price actually paid or payable. Accordingly, if the buyer of imported merchandise pays the seller more than the actual cost of prepaid freight charges, the overpayment is part of the "total" payment for the imported merchandise and is, therefore, part of the dutiable value of the merchandise.
**545349 dated Mar. 24, 1995.**

In determining the cost of international transportation or freight, Customs looks to documentation from the freight company, as opposed to the documentation between the buyer and seller which often contains estimated transportation costs or charges. Customs requires documentation from the freight company because the actual cost for the freight, and not the estimated charges, is the amount to be excluded from the price actually paid or payable.
**546111 dated Mar. 1, 1996; 546273 dated July 25, 1996.**

Freight costs are included in the price actually paid or payable for the imported merchandise. The actual freight costs, not the estimated freight costs, are to be excluded from the price actually paid or payable in determining transaction value. No documentation from the importer, such as a contract between the seller and shipping company, or an invoice from the shipping company and confirmation of payment of the actual freight cost, has been submitted. If documentation is available which establishes the actual freight costs, then these costs should be deducted from the invoice price in determining transaction value.
**546226 dated Mar. 25, 1996.**

The documentation presented was insufficient to establish the actual costs of the international shipment, and only actual expenses incurred for transportation, insurance, etc. are permissible exclusions from transaction value. In addition, Customs does not have the legal authority to reduce the importer's current duty liability to account for prior duty overpayments that were not protested by the importer. In this case, the liquidation of the merchandise is deemed final and conclusive, in that over 90 days passed since notice of liquidation of the entries issued in the compliance assessment and the importer did not file a protest pursuant to 19 U.S.C. 1514.
**547037 dated July 12, 1999.**

## foreign-inland freight charges

19 CFR 152.103(a)(5), T.D. 84-235, dated Nov. 29, 1984; GATT Valuation Agreement, Article 8, paragraph 2

If the buyer's total payment to the seller includes charges for foreign inland freight, then these charges form part of the price actually paid or payable.
**542101 dated Mar. 4, 1980 (TAA No. 1); 542231 dated Mar. 26, 1981; 542546 dated Aug. 14, 1981.**

In this transaction, the seller's price actually paid or payable for the imported merchandise includes an amount for foreign inland freight. Foreign inland freight charges are dutiable under transaction value, unless the merchandise was purchased on an ex-factory basis.
**542561 dated Aug. 25, 1981.**

Where foreign inland freight charges are paid by the buyer to a third party who is unrelated to the seller and where those charges are not remitted by the third party to the seller, then the charges are not included in the dutiable value of the merchandise.
**543141 dated Oct. 19, 1983.**

Insufficient evidence was submitted to establish that the foreign inland freight charges are non-dutiable charges. A "through bill of lading" issued by a carrier or forwarder, which indicates that one carrier or forwarder was in sole control of the shipment from the place of manufacture through the interior point of port of exportation, is required.
**543534 dated June 3, 1985.**

A through bill of lading has not been made available because two parties who issue two separate documents are responsible for portions of the shipment of the goods from the point or place of manufacture to the port of importation in the United States. Accordingly, the foreign inland freight charges are not deductible from the price actually paid or payable.
**543585 dated Aug. 26, 1985.**

In sales other than ex-factory, where the price includes a charge for foreign inland freight, that cost will be part of transaction value to the extent included in the price.

However, charges for foreign inland freight may be considered incident to the international shipment of the merchandise and, therefore, non-dutiable if: (1) these charges are identified separately; (2) they occur after the merchandise has been sold for export to the United States; and (3) the merchandise is placed with a carrier for through shipment to the United States.
**543687 dated May 6, 1986.**

Foreign inland freight is not dutiable where such charges 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. A through bill of lading must be presented to Customs.
**543744 dated July 30, 1986; 544003 dated Jan. 21, 1988; 544393 dated Nov. 3, 1989; 544374 dated Nov. 6, 1989; 544373 dated Feb. 21, 1990; 544204 dated Feb. 23, 1990; 544400 dated Feb. 23, 1990.**

Insufficient evidence was submitted to establish through shipment from the point of manufacture to the port of importation in the United States for purposes of excluding foreign inland freight from transaction value.
**543801 dated Jan. 8, 1987.**

The "shipping charges" identified by the protesting party as foreign-inland freight charges were properly included in the transaction value of the imported merchandise. The sale for exportation was based upon an F.O.B. price rather than an ex-factory price, as alleged. No through bill of lading was furnished.
**544875 dated Mar. 2, 1992.**

Although separately itemized, foreign inland freight charges and related brokerage fees are part of the transaction value of the merchandise, unless an appropriate through bill of lading is presented to Customs pursuant to 19 CFR 152.103(a)(5).
**544881 dated Mar. 8, 1993.**

The foreign inland freight charges shown on the seller's invoices are properly included in the price actually paid or payable for the imported merchandise. There is insufficient evidence that the merchandise was purchased on an ex-factory basis, and Customs has not been provided with either a through bill of lading or documentation of shipment by a single carrier or forwarder.
**545223 dated Sep. 3, 1993.**

The transaction in this case is a C.I.F. sale and is governed by 19 CFR 152.103(a)(5)(ii) and (iii) regarding foreign inland freight. The importer has not submitted sufficient documentation indicating through shipment from the point of manufacture to the United States. The foreign inland freight charges may not be deducted from the price actually paid or payable.
**545128 dated Sep. 9, 1993.**

The foreign inland freight charges were properly included in the transaction value of the imported merchandise because the sale for exportation was based on a C&F price, and not an ex-factory price. In addition, the importer did not furnish a through bill of lading.
**545592 dated Sep. 15, 1994.**

In situations where the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, whether or not itemized separately on the invoices or other commercial documents, that charge will be part of the transaction value to the extent included in the price. However, charges for foreign inland freight and other services incident to the shipment of the merchandise to the United States may be considered incident to the international shipment of that merchandise if: (1) they are identified separately; (2) they occur after the merchandise has been sold for export to the United States; and (3) they are placed with a carrier for through shipment to the United States. A sale for export and placement for through shipment to the United States shall be established by means of a through bill of lading presented to the port director. In this case, a through bill of lading was not presented to Customs. Therefore, the inland freight charges may not be considered incident to the international shipment of the merchandise and are part of the price actually paid or payable for the imported merchandise.
**546803 dated Feb. 25, 1998.**

A through bill of lading was presented to establish that the goods were sold for export and placed with a carrier for through shipment to the United States pursuant to 19 CFR 152.103(a)(5). As long as the documentation is consistent with its representative through bill of lading, the foreign inland freight costs can be excluded from the transaction value, as transportation costs incident to the international shipment of merchandise from the country of exportation.
**547196 dated Jan. 28, 1999.**

The amounts for freight forwarder commissions, when paid entirely to, and retained by, a separate party that is related to the seller/shipper, may be excluded from the price actually paid or payable as international transportation or shipment costs. However, in cases where such compensation inures to the benefit of the seller, those remitted amounts must be taken into account in determining the transaction value. In this case, the amounts for foreign inland freight and loading may be excluded from the price actually paid or payable as international transportation or shipment costs. In all cases, such deductions would be permissible assuming the appropriate documentation is presented.
**547074 dated Sep. 17, 1999.**

In this case, a through bill of lading was not presented to Customs. Although the importer claims that the freight was provided by its suppliers as an accommodation, the fact remains that the merchandise was off-loaded in Nogales, Sonora, Mexico. Therefore, the subject inland freight charges may not be considered incident to the

international shipment of the merchandise. Consequently, the subject inland freight charges are part of the price actually paid or payable of the subject merchandise.
**547714 dated Nov. 7, 2001.**

## freight and related charges incurred in transporting assists

19 CFR 152.103(d)(1) and (2)

Freight paid by a U.S. buyer in sending components to its related overseas assembler is not an assist, and does not form part of transaction value.
**543003 dated Feb. 25, 1983 (TAA No. 58); rev'd by 543096 dated June 21, 1983 (TAA No. 63).**

Freight and related transportation charges paid by a buyer in connection with shipments of material to a foreign assembler are assists.
**543096 dated June 21, 1983 (TAA No. 63); rev'g 543003 dated Feb. 25, 1983 (TAA No. 58).**

If in accordance with generally accepted accounting principles, the value of an assist provided to the seller is fully depreciated according to the importer's records, then the value of the assist is limited to the cost of transporting the assist to the place of production.
**544243 dated Oct. 24, 1988; 544256 dated Nov. 15, 1988.**

Defective watches are returned to the U.S. importer for repair. The defective watches are then exported from the United States to the importer's related party in the Philippines for repair and return. The watches are then repaired and then sold back to the importer at prices that cover the cost of repairs plus a mark-up. Under these circumstances, the defective watches acquired by the importer and sent to the related party for repair are considered assists. The value attributed to the assists in this case is equal to the costs incurred in transporting the watches to the related party's plant.
**544241 dated Jan. 12, 1989.**

The importer purchases merchandise manufactured by a related party in the Philippines. The importer consigns to its related party seller certain materials and supplies for use in production of the imported merchandise. The importer has a New York based shipping department that arranges for the transportation of the materials to the related party seller's factory. These activities are incidental to the transportation of the materials and the costs associated with arranging the shipment of the materials are included in the value of the assists.
**544323 dated Mar. 8, 1990.**

## international freight deduction

19 U.S.C. 1401a(b) (4) (A); 19 CFR 152.102(f)

Freight charges that are incurred by the buyer for the benefit of the seller, prior to the exportation of the merchandise, are not considered international freight charges for Customs purposes. International freight charges are those charges that are incurred after the merchandise leaves the country of exportation for the United States.
**542231 dated Mar. 26, 1981.**

Loading charges included in a F.O.B. invoice price are part of the price actually paid or payable for the merchandise and are, therefore, dutiable under transaction value.
**542554 dated July 29, 1981; rev'd by 543518 dated Sep. 3, 1985.**

A shipment of merchandise to be transported via ocean freight was not ready in time. Rather than avoid cancellation of the order, the seller shipped the merchandise via air freight at a higher cost. The proper deduction from the price actually paid or payable is the full cost of the international freight, i.e., the cost of the air freight.
**542780 dated June 3, 1982.**

Freight charges to the U.S. port of exportation are regarded as part of the cost or value of U.S. components for purposes of determining a partial exemption from duty. No deduction is made for the cost of transportation from the U.S. port of exportation to the assembler's plant, and such charges are part of the dutiable value of the assembled article.
**542832 dated Sep. 22, 1982 (TAA No. 53).**

A contract for sale of seasonal goods contains a clause obligating the vendor to reduce the cost of the merchandise by an amount equal to the difference between straight ocean shipment and ocean/air shipment for failure to meet delivery schedules. This price reduction is effected prior to shipment of the goods and is invoiced as such. The price actually paid or payable is the invoiced unit price, which reflects the reductions due to late delivery.
**542933 dated Oct. 13, 1982.**

The seller of imported merchandise agrees to effect a refund to the buyer based upon the difference between air and sea freight. This refund occurs after the merchandise is imported to the United States. The refund is disregarded in determining the price actually paid or payable in that it is effected after the date of importation.
**543246 dated Jan. 9, 1984.**

Loading charges are not considered to be included in the costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise.
**543141 dated Oct. 19, 1983; rev'd by 543518 dated Sep. 3, 1985.**

Loading charges included in either a F.O.B. price or a C.I.F. price are part of the price actually paid or payable and are dutiable under transaction value. Moreover, as the

stowing of merchandise is an integral part of the process of loading merchandise, stowage charges are considered as part of the expense of loading merchandise.
**543270 dated Oct. 24, 1984; rev'd by 543518 dated Sep. 3, 1985.**

Warehousing and storage charges are not considered to be "incidental to the international shipment of the merchandise." These charges are incurred before the international shipment commences.
**543501 dated May 2, 1985.**

The loading of merchandise onto a vessel destined for the United States and the stowing of that merchandise once it is aboard the vessel are "services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States." The loading and stowage charges included in the invoice price between a buyer and seller are not part of the price actually paid or payable for the merchandise and, therefore, are not dutiable under transaction value.
**543518 dated Sep. 3, 1985; rev'g 543270 dated Oct. 24, 1984, 542554 dated July 29, 1981, and 543141 dated Oct. 19, 1983.**

The proper deduction from transaction value for freight charges is the amount charged from the port of exportation; here, the shipping terms are F.O.B. Hamburg, to the United States. Although the instant merchandise is manufactured in Czechoslovakia, the evidence indicates that the sale for export to the United States was not between the importer and the Czechoslovakian manufacturer.
**543643 dated Sep. 24, 1986.**

A party related to the exporter handles all transportation requirements with respect to the merchandise imported on a duty-paid basis. The related party prepares all necessary documentation, and is subsequently billed by the trucking company. The related party is responsible for payment. The exporter reimburses this related party for the transportation costs, and the exporter also pays a fee for the service. The costs incurred by the exporter and paid to the related party are not dutiable provided that there is proper evidence relating to sales for export, placement for through shipment, and the reasonableness of the fee that can be provided to Customs.
**543799 dated Oct. 10, 1986; aff'd by 544152 Dec. 27, 1988.**

The merchandise in question is sold to the importer, placed on feeder barges in Norway, and transported to Antwerp, Belgium, where it is loaded onto a vessel and then transported to the United States. The transportation costs of the merchandise after it is exported from Norway are considered to be non-dutiable as international shipment costs within the meaning of section 402(b)(1) of the TAA.
**544685 dated July 30, 1991.**

The buyer and seller agreed to a price for imported merchandise pursuant to an initial contract. Subsequently, they entered into a late delivery agreement whereby the delivery terms would change to C&F by air for goods shipped fifteen days later than the

agreed upon completion date. Although it was entered into prior to exportation, the late delivery agreement does not support the finding that the price actually paid or payable was ever changed. It would, therefore, be inappropriate to make an adjustment for freight charges since because charges do not appear to have been reflected in the price for the merchandise.
**544646 dated Dec. 23, 1991.**

When the price of imported merchandise is renegotiated prior to the exportation of the merchandise, and there is no change in the delivery terms, the renegotiated price becomes the price actually paid or payable for the merchandise. When the price is renegotiated prior to exportation of the merchandise, and the delivery terms are changed from F.O.B. to C & F. The C & F price, which includes freight charges, less the international freight charge included therein, is the price actually paid or payable for the merchandise.
**544911 dated Apr. 6, 1993.**

The importer contracts with various sellers for the purchase of wearing apparel. Delivery dates are specified with a provision made for late delivery. If the seller fails to make delivery within a specified time, then the seller is obligated to ship the merchandise by air and to assume the cost of the air freight in excess of the sea freight which the importer would have paid had the merchandise been shipped by ocean on an F.O.B. basis. Even though the parties enter into the agreement prior to the exportation of the goods, no adjustment for freight charges can be made to transaction value because there is insufficient evidence to support a finding that the freight charges are included in the price actually paid or payable. The late delivery agreement makes no reference to a reduction in the price actually paid or payable should the goods be late. If the original purchase order contained a provision acknowledging that the price actually paid or payable is reduced in the event of a late shipment, then it is possible that the reduced amount paid would represent transaction value.
**545121 dated Jan. 31, 1994**.

The importer purchases wearing apparel from a seller in Hong Kong. The articles are manufactured in China. An amount for freight charges in shipping the merchandise from China to Hong Kong is presented. The merchandise is subsequently exported from Hong Kong to the United States. No evidence has been submitted to indicate that the merchandise was destined for the United States at the time of original shipment from China. Hong Kong is the exporting country and the transportation charges incurred prior to the time the merchandise was exported from Hong Kong may not be deducted from the price actually paid or payable.
**545096 dated May 31, 1994.**

The importer claims that the price of imported merchandise was renegotiated prior to the exportation of merchandise, and the delivery terms were changed from F.O.B. to C&F, and the freight charges were included in the C&F renegotiated invoice price. Were this the actual case, then the price actually paid or payable is thus determined by the

C&F price, less the international freight charges. In this case, however, the actual transaction appears to have occurred on a F.O.B. basis and, notwithstanding the attempted change of delivery terms on the purchase orders, the buyer paid for the freight costs.
**545257 dated July 6, 1994.**

For international freight charges, the amount to be deducted from the entered value of imported merchandise is the actual cost of such freight. In this case, the freight costs submitted by the importer based upon forty-nine percent of the total freight costs are estimates and do not reflect actual costs. The importer has submitted only the freight consolidator invoices, and has failed to submit documentation regarding the actual costs charged by the shipper.
**545579 dated Sep. 14, 1994.**

The actual costs of freight and brokerage fees should be excluded in determining the transaction value of imported merchandise. In this case, the terms of sale are "delivered duty paid" and include freight and brokerage fees. The price actually paid or payable should be adjusted so as to exclude the actual costs of transportation and related services incident to the international shipment of the imported merchandise.
**545173 dated Sep. 19, 1994.**

The seller of imported merchandise failed to meet production shipping schedules and, in order to compensate the buyer, the seller agreed to take responsibility for freight costs and ship the merchandise by air freight. The transaction was originally arranged on a F.O.B. basis, but was subsequently changed to C & F prior to exportation. The importer initially submitted invoices indicating the transaction terms as F.O.B., but claims a clerical mistake occurred. A second set of invoices was submitted indicating the terms to be C & F, along with two order confirmations prepared by the seller. The change in shipping terms is supported by the documentation. The importer did not directly or indirectly pay for, assume, or reimburse the seller for any portion of the freight. The international freight costs should be deducted from the price actually paid or payable to arrive at the transaction value for the imported merchandise.
**545625 dated Nov. 4, 1994.**

The importer claims that the value of the subject shipments was overstated by an amount erroneously characterized on the invoices as freight collect charges, instead of as freight prepaid charges. However, insufficient evidence has been submitted to substantiate its claim that the international freight charges were included in the invoice price. It is incumbent upon the importer to submit evidence that supports its claim for a lower entered value and to request for duty refund. The merchandise was properly appraised and the importer is not entitled to a freight adjustment in the appraised value.
**545590 dated Nov. 20, 1994.**

The importer has submitted sufficient documentation indicating that the freight costs in question were paid. These records consisted of freight orders, invoices for loading

charges, and bank statements. The records demonstrate that funds were transferred to pay the shipping line for the freight costs involved in transporting the merchandise. Therefore, the actual freight costs should be excluded in determining the transaction value of the imported merchandise.
**545494 dated Dec. 9, 1994.**

Pursuant to section 402(b)(4)(A) of the TAA, the cost of international transportation is to be excluded from the price actually paid or payable. However, in determining the cost of the international transportation or freight, documentation from the freight company is considered, rather than documentation between the buyer and seller which often contains estimated freight costs. Customs requires documentation from the freight company because the actual cost for the freight, and not the estimated charges, is the amount that is excluded from the price actually paid or payable. In this case, the importer has provided proper documentation establishing the actual freight and unloading costs to be excluded. Therefore, the actual costs for freight and unloading are deducted in determining the transaction value.
**546029 dated Dec. 12, 1995.**

The terms of sale indicated on the invoice are “Free Delivered Duty Paid” to the U.S. purchaser of imported merchandise. The seller fulfills its obligation to deliver when the goods have been made available at the named place in the country of importation. The actual charges incurred for international freight and insurance are listed on the invoice and should be deducted from the price actually paid or payable. In addition, the U.S. duties are also to be deducted, because the terms of sale include the U.S. duties.
**546037 dated Jan. 31, 1996.**

The importer purchased wearing apparel from unrelated suppliers, and the terms of sale were F.O.B. Port of Origin. In the situation where the supplier could not meet the required delivery date and the importer needed the merchandise, both parties agreed to air transportation where the importer paid what would have been the sea freight cost and the supplier paid the additional air freight cost. Prior to exportation, the parties intended to change the terms of sale to C&F Port of Destination. The importer’s letter of credit included a clause to cover late production, a statement that if the merchandise was accepted late the terms of sale would change, and a notation indicating payment for the high priced air transportation. If a price reduction clause is inserted in the original purchase order, supply or sales agreement, or other such document closely tied to the purchase and sale, then Customs could find the C&F Port of Destination invoice price to represent a reduction in the price, and to appropriately represent transaction value. However, merely providing the language in the letter of credit or altering the terms of sale on a commercial invoice does not suffice as evidence of a price reduction. Therefore, an adjustment to the price for the actual costs of the international air as opposed to ocean freight is inappropriate.
**546422 dated May 7, 1997.**

In order to deduct international freight charges, insurance, U.S. duty, brokerage charges, and U.S. freight, these costs must first be included in the price actually paid or payable. From the evidence submitted, it is unclear as to what was included in the price the importer paid for the merchandise. No purchase orders, supply agreements, or contracts were submitted as evidence of the parties' contractual arrangement. No deduction from the invoice price should be made for international freight from Malaysia to the United States, insurance, U.S. duty, brokerage charges, and U.S. freight in determining the price actually paid or payable.
**546363 dated July 15, 1997.**

The consolidated charges and survey fees do not constitute costs incident to the international shipment of the merchandise to the United States. The charges cover the following activities: receiving of cargo from inland transport vehicle by receiving authority; placement into secure compound; provision of secure compound by port authority; movement from secure compound to alongside vessel prior to loading; labeling and tallying cargo; payment of port authority goods dues; and documentation costs for bill of lading preparation and customs presentation. It appears as if the fees at issue are for services conducted before the loading and stowing of the merchandise. In addition, a through bill of lading has not been presented to Customs. As such, fees paid for foreign inland freight and other fees relating to storage at the port and other incidental services are dutiable.
**547026 dated July 31, 1998.**

Despatch and demurrage payment amounts at the loading port are to be taken into account when determining the amount of non-dutiable actual international freight costs paid in connection with the importation. The despatch and demurrage amounts at issue are associated with the cost of actual freight involved in moving the cargo to the United States, and they constitute part of the actual freight costs.
**546868 dated Aug. 19, 1998.**

A written agreement between the buyer and seller provided that in the event of late shipment, the shipping terms were to be considered C&F, rather than F.O.B. While the purchase order called for a F.O.B. price, the commercial invoice shows the shipping terms as C&F. Based upon the written agreement, the purchaser order, and the commercial invoice, it is clear that the parties changed the shipping terms from F.O.B. to C&F. Because freight charges are included in the C&F price, the change in shipping terms reduces the price actually paid or payable by the amount of the international freight paid by the seller.
**547069 dated Nov. 16, 1998.**

A documentation fee is assessed on cargo originating from Japan and exported by sea or air to the United States. A bill of lading is provided to Customs and it identifies the actual amount of the documentation charges incurred as part of the international transportation of the imported merchandise. In this case, the documents presented represent the actual amount of the charge, at the time of the importation of the merchandise; however, Customs may request additional documents, such as an invoice from the seller and any contracts that may exist between the buyer and seller which have provisions regarding freight charges. If the additional documentation is provided, and assuming the payments are made by the shipping company and not to or through the seller or a party related to the seller, then the documentation charges incurred in connection with the international transportation of the imported merchandise should not be included in the transaction value of the merchandise.
**547302 dated Mar. 29, 1999.**

The terminal handling charges that the buyer pays to the seller includes the services of inspecting, weighing, and loading containers which have already been delivered to the dock. These terminal handling charges are costs incident to the international shipment of the merchandise. As such, they are excluded from the price actually paid or payable as costs incident to the international shipment of the merchandise pursuant to section 402(b)(4)(A) of the TAA.
**547146 dated May 14, 1999.**

The amounts for freight forwarder commissions, when paid entirely to, and retained by, a separate party that is related to the seller/shipper, may be excluded from the price actually paid or payable as international transportation or shipment costs. However, in cases where such compensation inures to the benefit of the seller, those remitted amounts must be taken into account in determining the transaction value. In this case, the amounts for foreign inland freight and loading may be excluded from the price actually paid or payable as international transportation or shipment costs. In all cases such deductions would be permissible assuming the appropriate documentation is presented.
**547074 dated Sep. 17, 1999.**

## post-importation transportation

19 U.S.C. 1401a(b) (3)(A)(ii); 19 CFR 152.103(i)(1)(ii); GATT Valuation Agreement, Interpretative Notes, Note to Article 1, Price actually paid or payable

The cost of printing and packaging T-shirts in the United States, after their importation but prior to delivery to the buyer, is not part of transaction value. Likewise, in a transaction made on a C.I.F. duty brokerage paid basis, international freight, U.S. freight, brokerage, and duties are not parts of transaction value.
**543059 dated May 5, 1983 (TAA No. 62).**

Transaction value of imported merchandise does not include any reasonable cost or charge that is incurred for the transportation of the merchandise after its importation into the United States.
**543267 dated Mar. 16, 1984.**

The buyer pays a handling charge to a subsidiary of the seller. The handling charge is paid for the following duties: processing purchase orders, selecting a customs broker, arranging for the unloading of the vessel and delivery of the merchandise to the inland carrier, preparing delivery instructions for the end-users in the United States, and processing insurance claims for damage incurred during transportation and unlading of the merchandise. While this fee is for services *related* to the post-importation transportation of the merchandise, it is not for the actual cost of the transportation itself. This fee is not deductible under section 402(b)(3)(A)(ii) of the TAA, which allows for a post-importation transportation cost deduction. Accordingly, the fee is part of the price actually paid or payable for the imported merchandise.
**544332 dated Nov. 19, 1990.**

The transaction value of merchandise does not include reasonable costs incurred for post-importation transportation of the merchandise that is identified separately from the price actually paid or payable. However, in this case, inadequate evidence is submitted and it is unclear whether the invoiced amount is for foreign inland freight or for post-importation freight costs. Because sufficient evidence is not available to make the adjustment, no adjustment is made to the transaction value for these costs.
**544501 dated Oct. 18, 1991.**

Chemicals are shipped from Canada to U.S. purchasers by rail in tank cars operated by the seller under a lease agreement. The seller charges the purchasers for extended possession of the tank cars. The purchasers are allowed a certain number of free days. Subsequent to the expiration of the time frame, the seller charges the buyer on a per day basis. The additional charge reflecting the lease cost of the rail cars for days beyond the free period pertains to transportation related charges incurred after importation of the merchandise. These charges are separately identified from the price actually paid or payable, they are incurred in the U.S. after importation, and they are not for the imported merchandise. Accordingly, the charges are not part of the transaction value of the imported merchandise.
**545554 dated June 30, 1994.**

Transportation charges to the U.S. port of exportation, while part of the appraised value of assembled merchandise, are not included in the dutiable value. As set forth in 19 CFR 10.17, in situations where no purchase of fabricated components is made, the value of the components to be subtracted from the full value of the assembled merchandise is the value of components at the time of their shipment for exportation, F.O.B., U.S. port of exportation or point of border crossing. In this case, the value of the components does not include separately identified U.S. handling and documentation charges. These charges, while part of the transportation costs making up the appraised

value of the merchandise, accrue to the value of the U.S. components to be subtracted from the value of the assembled article for purposes of determining dutiable value.
**545789 dated Apr. 19, 1995.**

## vessel loading charges

Vessel loading charges are incurred by the buyer of imported merchandise in ex-factory sales and in C&F foreign port sales. With regard to the ex-factory sales, no freight costs or costs associated with freight costs are included in the price actually paid or payable and there exists no authority to add such costs to the price. Therefore, the vessel loading charges incurred in the ex-factory sales are not dutiable. Regarding the vessel loading charges incurred in association with the C&F foreign port sales, such charges are paid to a third party (other than the seller) through an agent. Consequently, they cannot be considered to be part of the price actually paid or payable. This determination is based upon the facts as presented. That is, that the third party to which such charges are paid, is unrelated to the seller and no part of such charges inure to the benefit of the seller.
**545075 dated Dec. 23, 1992.**

# TREATMENT

The auditors and the port reviewed voluminous amounts of material and both agreed that the related party price was acceptable for determining the transaction value. Counsel for the importer also agreed that transaction vale was appropriate. Accordingly, Customs determined that the transaction value was acceptable for the subject entries. Counsel for the importer then claimed that the related party price was unacceptable for determining transaction value. Customs is not required to question the accountability of the related party price and there is no compelling reason to question the related party price for the purposes of determining the transaction value of the subject merchandise.
**548065 dated Sep. 6, 2002; aff'g 547108 dated Mar. 28, 2000.**

# USED MERCHANDISE

## INTRODUCTION

**Headquarters Rulings:**

### depreciation allowed for used merchandise

19 U.S.C. 1401a(f); 19 CFR 152.107

Current U.S. silver prices along with consideration of an appraisal in the exporting country may be used to value a silver service dating back to at least World War I.
**542557 dated Aug. 11, 1981.**

A vehicle which is purchased in a foreign country and used for an extended period of time in that country prior to its exportation cannot be considered to have been sold for export to the United States. The proper dutiable value can be obtained by adjusting downward the price paid for the vehicle to reflect reasonable depreciation.
**542962 dated Dec. 29, 1982.**

The value of imported used motor vehicles should reflect reasonable depreciation for the period the vehicle was used prior to importation, as reflected by all credible evidence available.
**543210 dated Apr. 11, 1984.**

Appraised value of imported used merchandise should be determined by adjusting downward the article's purchase price to reflect reasonable depreciation for the period that the article was used abroad. However, this method is valid only if the value resulting from its use approximates the actual market value of the article at the time of its exportation to the United States.
**543265 dated July 2, 1985; 543970 dated Mar. 13, 1989.**

Components imported into the United States for repair or replacement cannot be appraised pursuant to transaction value. There is no sale for exportation to the United States upon which to base a transaction value. The importer has provided information regarding the cost for the repair parts and depreciation for replacement parts. The method employed by the importer based on cost for repair parts and depreciation for replacement parts is an acceptable method of appraisement based upon 19 USC 1401a(f), Value if Other Values Cannot be Determined.
**548211 dated July 2, 2003.**

## elimination of transaction value

Jewelry purchased six years prior to date of export to the United States is not "sold" for export within the meaning of section 402(b)(1) of the TAA.
**542791 dated June 10, 1982.**

Cellular telephones are imported into the United States on a temporary basis pursuant to a rental agreement between a company and its customers. The imported telephones are subject to multiple leases and may be imported into the United States on numerous occasions. Transaction value is inapplicable as a means of appraisement because the merchandise is not sold for exportation to the United States. There is no transaction value of identical or similar merchandise available upon which to appraise the merchandise. Similarly, neither deductive nor computed value is proper in this case. Pursuant to section 402(f) of the TAA, the transaction value method can be reasonably adjusted to permit the rental value of the equipment over its full economic life to be used as the basis of appraised value.
**546020 dated Apr. 17, 1996.**

The merchandise in this case is not sold for exportation to the United States; therefore, transaction value is not applicable as a means of appraisement. Similarly, there is no transaction value of identical or similar merchandise, deductive value, or computed value available for appraisement purposes. The merchandise may be appraised pursuant to section 402(f) of the TAA, providing for a value if other values cannot be determined. The section 402(f) appraisement may be derived from a modified transaction value, that is, the value at which the importer is invoiced based upon estimates of the price to be charged by the unrelated manufacturers to the middleman (related to the importer).
**546149 dated May 29, 1996.**

The imported merchandise consists of two models of defective telephone answering systems that were sent to the United States by a distributor in Canada. The defective equipment was shipped to a dismantling facility in the United States. Transaction value is not applicable because there is no sale for exportation to the United States. The merchandise should be appraised pursuant to section 402(f) of the TAA based upon the salvage value of the parts. The charges associated with dismantlement in the United States should not be added to the appraised value of the goods.
**545690 dated May 31, 1996.**

The imported merchandise was purchased in Lithuania in November of 1992 by the importer and entered temporarily under bond into the United States in January 1993. It was then exported for sale to Canada. However, the Canadian sale was not finalized and the merchandise was returned to the United States, where it was entered for consumption in August 1993. Transaction value is not applicable in appraising the merchandise because there was no sale for exportation to the United States. Based upon the available evidence, the merchandise cannot be appraised on the basis of transaction value of identical or similar merchandise, deductive value, or computed

value. Accordingly, the merchandise should be appraised in accordance with section 402(f) of the TAA based on the transaction value of similar merchandise adjusted for the country of production.
**546092 dated Sep. 16, 1996.**

Based upon the available evidence, the merchandise cannot be appraised on the basis of transaction value of identical or similar merchandise, deductive value, or computed value. The merchandise ordered by Canadian customers which was returned to the U.S. seller for refund or for credit should be appraised based on the amount of the refund or credit extended by the importer to the Canadian customers who are returning the merchandise. This is a reasonably adjusted transaction value pursuant to section 402(f) of the TAA.
**546941 dated Aug. 11, 1999.**

A vehicle is purchased from a foreign manufacturer for export to the United States; however, the vehicle is not exported immediately to the United States, but rather it is used overseas. The buyer and seller developed a program to provide bona fide retail customers an opportunity to drive their vehicle in Europe before shipment to the United States and to tour the vehicle production facilities. The only time limit in the program is when the U.S. customer must return the vehicle to the factory within twelve months of delivery to receive free shipment. Also, the only penalty for non-compliance with the program is the possible removal of buyer from the program, and no penalty is imposed on the U.S. customer if the vehicle is not exported to the United States. Thus, based on the evidence submitted, the transactions between the buyer and foreign seller do not involve goods that are destined for export to the United States such that a sale for exportation exists. Therefore, the price between buyer and the foreign seller is not an acceptable transaction value.
**547197 dated Aug. 22, 2000; aff'd by 548371 dated Nov. 19, 2003.**

Automobiles imported into the United States that are purchased pursuant to a program whereby the ultimate purchaser takes delivery abroad and uses the automobile for a specified amount of time in a foreign country prior to exportation to the United States may not be appraised pursuant to transaction value. There is no sale for exportation to the United States with respect to these automobiles. However, if there is a transaction value of identical or similar merchandise available, then it is proper to appraise the automobiles imported pursuant to the program using the transaction value of identical or similar merchandise method. However, it must be demonstrated that the transaction value of the merchandise under consideration is fully acceptable under section 402(b) in order to be applied as the transaction value of the identical or similar goods pursuant to section 402(c).
**548371 dated Nov. 19, 2003; aff'g 547197 dated Aug. 22, 2000 (regarding the issue of the acceptability of transaction value.)**

## waste material

A Canadian exporter ships a certain waste product to the importer and pays the U.S. importer a fee for disposal of the waste. Transaction value, transaction value of identical or similar merchandise, deductive value and computed value are all inapplicable as a means of appraisement. The remaining method that must necessarily be utilized is valuation pursuant to section 402(f) of the TAA.
**543904 dated Mar. 20, 1987**.

The imported merchandise at issue consists of sixty-seven entries of hazardous and non-hazardous waste material. The importer contends that the imported waste has no commercial value in its condition as imported, and that appraising the waste on the basis of a disposal fee paid to the "seller" is unreasonable. Customs appraised the waste based upon the disposal fee, and such was the only available information that can be quantitatively documented. Customs used all reasonable ways and means in appraising the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all of the evidence made available and used "all reasonable ways and means in his power" to ascertain the value of the imported merchandise.
**547061 dated Mar. 19, 1999.**

A U.S. corporation, whose subsidiaries provide services throughout North America, contracts with domestic and foreign customers for the disposal of domestic and imported waste in the United States. A disposal fee is charged for these services. This payment is an amount agreed upon by the parties to the transaction and it represents the consideration for which the U.S. corporation is willing to accept and process the imported waster. As such, the basis for determining the value of the waste is the disposal fee. It is the only available information that can be quantitatively documented. Customs employed reasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f) of the TAA, appraised the imported waste based on the disposal fee. Under this fallback method of appraisement, Customs appropriately considered all the evidence made available and used all reasonable ways and means to appraise the imported waste at issue.
**547147 dated Mar. 23, 1999; <u>aff'g</u> 545017 dated Aug. 19, 1994.**

The proper method of appraisement for merchandise entered into the foreign trade zone (FTZ), consisting of non-privileged foreign status plastic housing, domestic status bulbs, and domestic status blister pack & carton, should include the value of the foreign plastic housing. It should not include the domestic packaging on the foreign status cartons, which are crushed in the FTZ and entered into Customs territory separately as scrap or waste. Thus, non-privileged foreign status cartons, which have been crushed and bundled in the FTZ, should be appraised pursuant to 19 CFR 146.65(b)(2) at either the price actually paid to the importer for the recyclable waste as set forth on the commercial invoice or the price paid to the zone seller for the recyclable waste.
**547142 dated May 12, 1999.**

Insufficient evidence was submitted to establish that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f) of the TAA, appraised the imported waste based on the disposal fee. Under this "fallback" method of appraisement, the Customs officer appropriately considered all the evidence made available and used "all reasonable ways and means in his power" to appraise the imported waste at issue. The basis for determining that value, the disposal fee, is the only available information that can be

quantitatively documented. In addition, the payment is an amount agreed upon by the two parties to the transaction and it represents the consideration for which the importer is willing to accept and process the imported waste.
**547416 dated June 2, 2000; aff'g 547147 dated Mar. 23, 1999, and 545017 dated Aug. 19, 1994.**

# VALUE IF OTHER VALUES CANNOT BE DETERMINED

## INTRODUCTION

19 U.S.C. 1401a(f) states:

VALUE IF OTHER VALUES CANNOT BE DETERMINED OR USED.-(1) If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this Act, under subsections (b) through (e), the merchandise shall be appraised for purposes of this Act on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.
(2) Imported merchandise may not be appraised, for purposes of this Act, on the basis of -
(A) the selling price in the United States of merchandise produced in the United States;
(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;
(C) the price of merchandise in the domestic market of the country of exportation;
(D) a cost of production, other than a value determined under subsection (e) for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;
(E) the price of merchandise for export to a country other than the United States;
(F) minimum values for appraisement; or
(G) arbitrary or fictitious values.
This paragraph shall not apply with respect to ascertainment, determination, or estimation of foreign market value or United States price under title VII.

In 19 CFR 152.107, the regulations state:

(a) Reasonable adjustments. If the value of imported merchandise cannot be determined or otherwise used for the purposes of this subpart, the imported merchandise will be appraised on the basis of a value derived from the methods set forth in [sections] 152.103 through 152.106, reasonably adjusted to the extent necessary to arrive at a value. Only information available in the United States will be used.
(b) Identical merchandise or similar merchandise. The requirement that identical merchandise, or similar merchandise, should be exported at or about the same time of exportation as the merchandise being appraised may be interpreted flexibly. Identical merchandise, or similar merchandise, produced in any country other than the country of exportation or production of the merchandise being appraised may be the basis for customs valuation. Customs values of identical merchandise, or similar merchandise, already determined on the basis of deductive value or computed value may be used.
(c) Deductive value. The "90 days" requirement for the sale of merchandise referred to in [section] 152.105(c) may be administered flexibly.

**GATT Valuation Agreement:**

Article 7, paragraph 1, provides for the following:

If the customs value of the imported goods cannot be determined under the provisions of Article 1 to 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of the General Agreement and on the basis of data available in the country of importation.

Article 7, paragraph 2, lists methods of valuation which are prohibited. These are similar to those cited in 19 U.S.C. 1401a(f)(2)(A) through (G).

In addition, Article 7, paragraph 3, states:

If he so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Interpretative Notes, Note to Article 7, corresponds with the Customs regulations, 19 CFR 152.107. Value if other values cannot be determined or used.

CCC Technical Committee Advisory Opinion 12.2 states:

1. When applying Article 7, is it necessary to follow the hierarchical order with respect to the methods of valuation in Articles 1 to 6?
2. The Technical Committee on Customs Valuation expressed the following view:
There is no provision in the Agreement that specifically provides that the hierarchical order of Articles 1 to 6 should be followed when Article 7 is applied. However, with the principles and general provisions of the Agreement and this indicates that where reasonably possible, the hierarchical order should be followed. Thus where several acceptable methods can be used to determine Customs value under Article 7, the hierarchy should be maintained.

**Headquarters Rulings:**

## computed value

There is no transaction value for certain foreign made components purchased as part of a system which also includes domestically manufactured components, In this case, there is no basis on which the price for the foreign components can be quantified. In the absence of alternative bases of valuation, a method of valuation derived from computed value may be used to value the foreign components pursuant to section 402(f) of the TAA.
**543226 dated Jan. 3, 1984; modifies 542930 dated Mar. 4, 1983 (TAA No. 59).**

The importer's proposed method of appraising the merchandise on the basis of the "declaration value" pursuant to section 402(f) of the TAA is not appropriate. The proposed "declaration value" represents the average cost of the products and is calculated by allocating gross costs to all such items by means of simple averaging. While the "declaration value" is an attempt at some form of modified computed value, section 402(f)(2)(D) of the TAA unambiguously prohibits using a cost of production, other than a value determined under section 402(e) for merchandise that is identical or similar to that being appraised. The importer's "declaration value," which is not determined in accordance with section 402(e), is therefore unacceptable under section 402(f). The imported merchandise should be appraised using all other ways and means consistent with sections 19 U.S.C. 1401a(f) and 1500.
**546112 dated July 5, 1996.**

Based on the information provided, the appropriate basis of appraisement is the fallback method pursuant to section 402(f) of the TAA, value if other values cannot be determined. The appraising officer made reasonable adjustments to the computed value method, e.g., in determining packing costs, in determining the appraised value of the merchandise under section 402(f). Adjustments made to the cost of materials, including the disallowance of duty free treatment under heading 9802 and the denial of the insurance claim, were proper.
**545611 dated Jan. 2, 2001.**

A manufacturing plant incurred damages from a fire and the importer claimed an $80,000 business interruption expense resulting therefrom. A credit could not be allowed against foreign operating expenses that represent an opportunity loss rather than an actual expense incurred by the importer, on which duties were paid. There is no authority, either in determining the appraised value of the imported merchandise under sections 402(e) or 402(f) of the TAA, or in determining the dutiable value of the imported merchandise, to effect adjustments with respect to claimed business interruption credit where the underlying credit is not offset by expenses incurred.
**545611 dated Jan. 2, 2002.**

The pharmaceutical company's internal research and development processes are complex, involving numerous phases that occur both domestically and abroad. The

company has five research facilities worldwide that produce research active pharmaceutical ingredients (APIs). The research APIs are used for further research only and their value is unknown at the time of entry into the United States. With respect to imported research APIs, no sale occurs from one of the company's foreign facilities to the United States facility, nor are these APIs resold in the United States. When the product is imported into the United States, its research and development value must be declared to customs. Transaction value and deductive value are inapplicable because the research APIs are not subject to a sale. The transaction value of identical or similar merchandise is inapplicable because no such merchandise exists. Additionally, computed value is unavailable because the cost of the materials, processing, profit, and general expenses are unknown at the time of entry. Based on the information presented, we conclude that it is reasonable to accept the importer's proposal regarding the appraisement of APIs under section 402(f) of the TAA. The importer may use a modified computed value based on a weighted average value of the APIs instead of the actual computed value.
**548164 dated Sep. 20, 2002.**

## defective merchandise

Defective parts imported to be repaired and resold in the United States should be appraised under the superdeductive value method of appraisement, reasonably adjusted under section 402(f) of the TAA.
**543123 dated Dec. 20, 1983.**

A related party in the U.S. imports goods from Canada to be repaired at its U.S. repair facility. There is no sale between the parties nor are there any sales of identical or similar merchandise. The importer does not resell the merchandise in the U.S., thereby eliminating deductive value. Insufficient information is available to appraise pursuant to computed value. The merchandise is properly appraised pursuant to section 402(f) according to seventy percent of the standard cost of new equipment. This is the inventory value of the goods in the Canadian company's accounting records.
**544377 dated Sep. 1, 1989.**

The imported merchandise consists of two models of defective telephone answering systems, which were sent to the United States by a distributor in Canada. The defective equipment was shipped to a dismantling facility in the United States. Transaction value is not applicable because there is no sale for exportation to the United States. The merchandise should be appraised pursuant to section 402(f) of the TAA based upon the salvage value of the parts. The charges associated with dismantlement in the United States should not be added to the appraised value of the goods.
**545690 dated May 31, 1996.**

Components imported into the United States for repair or replacement cannot be appraised pursuant to transaction value. There is no sale for exportation to the United States upon which to base a transaction value. The importer has provided information

regarding the cost for the repair parts and depreciation for replacement parts. The method employed by the importer based on cost for repair parts and depreciation for replacement parts is an acceptable method of appraisement based upon 19 USC 1401a(f), Value if Other Values Cannot be Determined.
**548211 dated July 2, 2003.**

## foreign trade zone

A U.S. company purchases bearings from a related seller and admits the bearings into a foreign trade zone (FTZ) under nonprivileged foreign status. The U.S. company resells the bearings to an unrelated purchaser, which transfers the merchandise to another FTZ where nonprivileged foreign status is retained. The bearings are incorporated into finished automobiles and withdrawn from the FTZ. The automobiles are neither produced in nor sold for exportation from a foreign country. Therefore, transaction value, deductive value, and computed value cannot be satisfactorily determined. Resort must be made to an alternative value under section 402(f).
**543396 dated Aug. 23, 1984.**

The proper method of appraisement for merchandise entered into the foreign trade zone (FTZ), consisting of non-privileged foreign status plastic housing, domestic status bulbs, and domestic status blister pack & carton, should be based upon the value of the foreign plastic housing. It should not include the domestic packaging on the foreign status cartons, which are crushed in the FTZ and entered into Customs territory separately as scrap or waste. Thus, non-privileged foreign status cartons which have been crushed and bundled in the FTZ, should be appraised pursuant to 19 CFR 146.65(b)(2) at either the price actually paid to the importer for the recyclable waste as set forth on the commercial invoice or the price paid to the zone seller for the recyclable waste.
**547142 dated May 12, 1999.**

## previously established transaction value, reasonably adjusted

Transaction value may not be used to appraise merchandise imported pursuant to a lease agreement with an option to buy. In the absence of an alternative basis of appraisement, a value may be based upon transaction value, reasonably adjusted to arrive at a value.
**542996 dated Mar. 4, 1983.**

A U.S. company imports equipment leased from a related company. The leased equipment cannot be properly appraised under 19 U.S.C. 1401a(b)-(e) of the TAA. The equipment should be appraised pursuant to section 402(f), using the transaction value method reasonably adjusted to permit the rental value of the equipment over its full economic life to represent the value of the merchandise.
**545112 dated June 7, 1993.**

Transaction value is eliminated because the components are imported on consignment. In addition, the alternative bases of appraisement, i.e., 19 U.S.C. 1401a(c)-(e), are not applicable. Under section 402(f), the imported components should be appraised under transaction value established by a formula negotiated between the parties. The formula is set forth in an agreement between the parties and is fixed prior to exportation.
**544845 dated Nov. 9, 1993.**

Based upon the circumstances presented, the appraising officer used reasonable ways and means to determine the appropriate value for the imported merchandise. Transaction value could not be used to appraise the merchandise because the price actually paid or payable for the imported merchandise could not be ascertained. That is, the total number of checks written by the buyer to the foreign suppliers did not correlate with the invoices submitted. Therefore, utilizing an appraisement method in accordance with 402(f) of the TAA and the authority provided for in section 500, the import specialist ascertained the price actually paid or payable for the imported merchandise in accordance with the amount indicated by the checks written.
**545069 dated Dec. 23, 1993.**

The imported merchandise should be appraised in accordance with section 402(f) of the TAA, pursuant to which the imported components should be appraised under a modified transaction value method based upon the price determined under the pricing arrangement negotiated between the parties. In this case, the components are consigned to the importer so they cannot be appraised pursuant to transaction value.
**545313 dated Jan. 31, 1995; <u>clarified</u> <u>by</u> 545840 dated Aug. 11, 1995 (additional information presented).**

The merchandise in this case is not sold for exportation to the United States; therefore, transaction value is not applicable as a means of appraisement. Similarly, there is no transaction value of identical or similar merchandise, deductive value, or computed value available. The merchandise may be appraised pursuant to section 402(f) of the TAA, a value if other values cannot be determined. The section 402(f) appraisement may be derived from a modified transaction value, i.e., the value at which the importer is invoiced based upon estimates of the price to be charged by the unrelated manufacturers to the middleman (related to the importer).
**546149 dated May 29, 1996.**

With regard to appraising merchandise imported and placed in inventory for sale in the United States and based on the information presented, it appears that the portion of the merchandise that is resold within ninety days after importation must be appraised using a deductive value method of appraisement. The merchandise sold after the ninetieth day after importation must be appraised under the fallback method, i.e. section of 402(f) of the TAA, using a modified deductive value approach. It is incumbent on the importer to provide sufficient information and to correctly appraise the imported merchandise. However, the final determination regarding the appropriateness of the proposed figures, including the deductions, will be subject to the discretion of the Customs officer at the port of entry.
**546442 dated Mar. 23, 1999.**

Insufficient evidence is available to appraise the imported merchandise pursuant to transaction value of identical or similar merchandise set forth in section 402(c) of the TAA, the deductive value set forth in section 402(d) of the TAA, or the computed value set forth in section 402(e) of the TAA. As such information is available, appraisement should proceed pursuant to the hierarchy established in section 402(b) of TAA. Given the evidence presented, appraisement should be based on the related party's invoice price to the importer, as a reasonably adjusted transaction value pursuant to section 402(f) of the TAA. To appraise the merchandise at the price list is an arbitrary value and is precluded from serving as the basis of appraisement under section 402(f) of the TAA.
**546953 dated May 5, 1999.**

In this case, an airline hires a company to install aircraft furnishings. The company that installs the aircraft furnishings serves as the importer of record and ultimate consignee. The airline is billed for time, labor, cost of any parts necessary for installation, Customs brokerage fees, delivery costs, and U.S. Customs Service duties (if any). The installation company was unable to provide the requested information which would have verified the quantity of the goods received and the price paid for the goods; therefore, the merchandise cannot be appraised using the valuation methods of transaction value of identical or similar merchandise, deductive value, or computed value. Therefore, the merchandise must be appraised under 19 U.S.C 1401a(f) as a modified transaction value, which uses the prices between the purchasing airline and the supplier. Thus, it appears that the purchasing airline procured the goods with the intent to have them shipped to the United States for installation into its airlines.
**547604 dated Apr. 10, 2001.**

The importer is unable to identify the price actually paid or payable for a specific import of the product at the time of entry. Additionally, the importer is unable to tie to a given entry the cost of the material it supplies and the assist with which it is supplied. In light of these circumstances, the importer uses published price indicators to value both the assist or importer-purchased material and the service provided. Although the importer's method is reasonable, the port prefers an alternative method where the appraisement of the imported merchandise is based on an average of the previous year's price of

services invoiced in that year for all of the importer's product entered into the United States. Because the importer enters into long-term contracts, typically lasting several years, this method more closely approximates prices for services provided by the importer, rather than published market prices of the most recent contracts signed. Under both methods, the valuation of the assist is the same, using published prices. The port's proposed method is acceptable under 19 U.S.C. section 1401a(f)(1), the fallback method, and it trumps the importer's current methodology.
**548111 dated Aug. 23, 2001.**

## returned merchandise

Under 19 U.S.C. 1401a(f), the statute provides for an appraisal of the imported merchandise on the basis of a value that is derived from 1401a(b)-(e), with such methods being reasonably adjusted to the extent necessary to arrive at a value. The merchandise in this case may be appraised under section 402(f) of the TAA, using repair charges calculated by the application of a specific formula. The formula provided by the importer takes into account the originally discounted price to related parties and also the depreciation on returned products.
**547877 dated Jan. 23, 2002**.

## sequential order

19 U.S.C. 1401a(a); 19 CFR 152.101(b)(1) through (6); GATT Valuation Agreement, Article 4

Prior to resorting to a section 402(f) appraisement, it is necessary to proceed sequentially through the statutorily enumerated appraisement methods. If it becomes necessary to appraise pursuant to section 402(f) of the TAA, the value should be based, to the greatest extent possible, on a previously determined value.
**544239 dated Nov. 18, 1988.**

Bicycle parts were imported from 1985-1987 and appraised pursuant to transaction value. The importer was unable to sell the merchandise in the United States and returned the merchandise to the exporter. The exporter refused the merchandise and subsequently returned it to the importer in September 1991. Upon re-importation of the bicycle parts, the importer consigned the parts to a bicycle shop and finally sold the merchandise. Transaction value is inapplicable upon re-importation because there is no sale transaction. No identical or similar merchandise is imported into the United States. Likewise, neither deductive nor computed value is available as a means of appraisement. The bicycle parts may properly be appraised based on a value derived pursuant to section 402(f) of the TAA by means of an independent appraiser.
**545141 dated Apr. 15, 1994.**

The protestant has not provided sufficient evidence to establish that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all the evidence made available and used "all reasonable ways and means in his power" to appraise the merchandise.
**545017 dated Aug. 19, 1994; aff'd by 547147 dated Mar. 23, 1999.**

The first time a value is attributed to the merchandise prior to sale in the United States at auction is when the auctioneer/marketing agent negotiates at arm's length a "reserve price" with the consignor. The reserve price is the confidential threshold price, below which the consignor will not sell. In addition, the reserve price is the only mutually accepted value which reflects both the seller's and the auctioneer's assessment of the item's current market value, and is the only price at which the seller is obligated to sell the merchandise at auction. The negotiated reserve price of each item reflects judgments from both a professional appraiser (either an independent appraiser or one employed by the auctioneer) and the seller. Therefore, the reserve price is acceptable as a method of appraisement set forth in section 402(f) of the TAA for merchandise imported into the U.S. for auction.
**547381 dated Mar. 14, 2000.**

Insufficient evidence was submitted to establish that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f) of the TAA, appraised the imported waste based on the disposal fee. Under this "fallback" method of appraisement, the Customs officer appropriately considered all the evidence made available and used "all reasonable ways and means in his power" to appraise the imported waste at issue. The basis for determining that value, the disposal fee, is the only available information that can be quantitatively documented. In addition, the payment is an amount agreed upon by the two parties to the transaction and represents the consideration for which the importer is willing to accept and process the imported waste.
**547416 dated June 2, 2000; aff'g 547147 dated Mar. 23, 1999, and 545017 dated Aug. 19, 1994.**

Raw components and parts are shipped from a related party assembler in Mexico to the importer in the United States. The components are not sold to the importer, but rather, an internal accounting procedure occurs that takes the product of the assembler's account and a corresponding entry is made indicating the acquisition of the raw components or part. There is no transaction value available for appraising the raw components and parts. In addition, the other methods of appraisement are not available. In addition, transaction value of identical or similar merchandise is unavailable as well. In order to satisfy the requirements of section 402(c), it must be demonstrated that a transaction value of the merchandise under consideration is fully

acceptable under section 402(b). Basing the transaction value of identical or similar merchandise on the transaction between the assembler in Mexico and a supplier in Mexico is not in accordance with section 402(c). The merchandise is properly appraised using section 402(f), value if other values cannot be determined. The invoice values between the Mexican assembler and suppliers coupled with accounting entries between the assembler and importer for the same merchandise is appropriate using a section 402(f) appraisement. In addition, when the Mexican assembler manufactures products for the importer, there is a certain amount of scrap material that results from the manufacturing operations. Some of the scrap material is disposed of or is sold in Mexico; however, on occasion, scrap material is shipped to the importer. Again, the proper method of appraising the scrap material is section 402(f), value if other values cannot be determined. It appears as though a modified transaction value of identical or similar merchandise may be available, i.e., using the market price that is available for either identical or similar scrap materials.
**548247 dated Mar. 10, 2003.**

The importer, through its supplier and independent warehouse contracts, operates a just-in-time inventory management program whereby inventory management warehouses are located near the importer's various manufacturing facilities. The program is designed to assure adequate supplies of product that are readily available to the importer. The importer does not take title, nor does it become obligated to pay for the product until it is withdrawn from the warehouse. The commercial invoice price is not the agreed upon price, and the price is not known until the merchandise is withdrawn from the warehouse. There is no sale for exportation to the United States upon which to base a transaction value. With respect to the use of deductive value, merchandise is appraised on the basis of the price at which it is sold in the United States in its condition as imported and in the greatest aggregate quantity either at or about the time of importation, or before the close of the 90th day after the date of importation. This price is subject to certain enumerated deductions. For any specific entry, the importer is not able to provide the price for merchandise when it is withdrawn and the price for the sales that take place in the greatest aggregate quantity. The merchandise cannot be appraised under the deductive value method. The imported merchandise should be appraised pursuant to section 402(f), value if other values cannot be determined. In this case, the commercial invoice price is acceptable under a section 402(f) appraisement.
**548236 dated Mar. 27, 2003.**

A factory located in Germany is the parent company to the importer and designer, both located in the United States. The factory intends to contract with the designer to design and engineer items that the factory subsequently produces and sells worldwide, including to the importer. The imported merchandise is a prototype that is actually produced in the United States, exported to Germany, then re-imported and consigned to the importer in the United States. Based upon the circumstances, a modified

transaction value pursuant to section 402(f) is appropriate in appraising the merchandise.
**548276 dated Apr. 29, 2003.**

## used merchandise

Current U.S. silver prices along with consideration of an appraisal in the exporting country may be used to value a silver service dating back to at least World War I.
**542557 dated Aug. 11, 1981.**

A vehicle which is purchased in a foreign country and used for an extended period of time in that country prior to its exportation cannot be considered to have been sold for export to the United States. The proper dutiable value can be obtained by adjusting downward the price paid for the vehicle to reflect reasonable depreciation.
**542962 dated Dec. 29, 1982.**

The dutiable value of imported used vehicles should reflect reasonable depreciation for the period that the vehicle was used abroad, as reflected by all credible evidence available.
**543210 dated Apr. 11, 1984.**

The appraised value of imported used merchandise should be determined by adjusting downward the article's purchase price to reflect reasonable depreciation for the period that the article was used abroad. However, this method is valid only if the value resulting from its use approximates the actual market value of the article at the time of its exportation to the United States.
**543265 dated July 2, 1985; 543970 dated Mar. 13, 1989.**

Cellular telephones are imported into the United States on a temporary basis pursuant to a rental agreement between a company and its customers. The imported telephones are subject to multiple leases and may be imported into the United States on numerous occasions. Transaction value is inapplicable because the merchandise is not sold for exportation to the United States. There is no transaction value of identical or similar merchandise available upon which to appraise the merchandise. Similarly, neither deductive nor computed value is proper in this case. Pursuant to section 402(f) of the TAA, the transaction value method can be reasonably adjusted to permit the rental value of the equipment over its full economic life to be used as the basis of appraised value.
**546020 dated Apr. 17, 1996.**

The imported merchandise was purchased in Lithuania in November 1992 by the importer and entered temporarily under bond into the United States in January 1993. It was then exported for sale to Canada. However, the Canadian sale was not finalized and the merchandise was returned to the United States and entered for consumption in August 1993. Transaction value is not applicable in appraising the merchandise because there was no sale for exportation to the United States. Based upon the

available evidence, the merchandise cannot be appraised on the basis of transaction value of identical or similar merchandise, deductive value, or computed value. Accordingly, the merchandise should be appraised in accordance with section 402(f) of the TAA based on the transaction value of similar merchandise adjusted for the country of production.
**546092 dated Sep. 16, 1996.**

The imported merchandise at issue consists of sixty-seven entries of hazardous and non-hazardous waste material. The importer contends that the imported material has no commercial value in its condition as imported, and that appraising the waste on the basis of a disposal fee paid to the "seller" is unreasonable. Customs appraised the waste based upon the disposal fee, and such was the only available information that can be quantitatively documented. Customs used all reasonable ways and means in appraising the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all the evidence made available and used "all reasonable ways and means in his power" to ascertain the value of the imported merchandise.
**547061 dated Mar. 19, 1999.**

A U.S. corporation, whose subsidiaries provide services through North America, contracts with domestic and foreign customers for the disposal of domestic and imported waste in the United States. A disposal fee is charged for these services. This payment is an amount agreed upon by the parties to the transaction and represents the consideration for which the U.S. corporation is willing to accept and process the imported waster. As such, the basis for determining the value of the waste is the disposal fee. It is the only available information that can be quantitatively documented. Customs employed reasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f) of the TAA, appraised the imported waste based on the disposal fee. Under this fallback method of appraisement, Customs appropriately considered all the evidence made available and used all reasonable ways and means to appraise the imported waste at issue.
**547147 dated Mar. 23, 1999; aff'g 545017 dated Aug. 19, 1994.**

Based upon the available evidence, the merchandise cannot be appraised on the basis of transaction value of identical or similar merchandise, deductive value, or computed value. The goods ordered by Canadian customers and which are returned to the U.S. seller for refund or credit should be appraised on the amount of the refund or credit extended by the importer to the Canadian customers who are returning the merchandise. This is a reasonably adjusted transaction value pursuant to section 402(f) of the TAA.
**546941 dated Aug. 11, 1999.**

## waste material

A Canadian exporter ships a certain waste product to the importer and pays the U.S. importer a fee for disposal of the waste. Transaction value, transaction value of identical or similar merchandise, deductive value, and computed value are all inapplicable as a means of appraisement. The remaining method which must necessarily be utilized is valuation pursuant to section 402(f) of the TAA.
**543904 dated Mar. 20, 1987.**

The protestant has not provided sufficient evidence to establish that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all of the evidence made available and used "all reasonable ways and means in his power" to appraise the merchandise.
**545017 dated Aug. 19, 1994; aff'd by 547147 dated Mar. 23, 1999.**

The imported merchandise at issue consists of sixty-seven entries of hazardous and non-hazardous waste material. The importer contends that the imported material has no commercial value in its condition as imported, and that appraising the waste on the basis of a disposal fee paid to the "seller" is unreasonable. Customs appraised the waste based upon the disposal fee, and such was the only available information which could be quantitatively documented. Customs used all reasonable ways and means in appraising the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all the evidence made available and used "all reasonable ways and means in his power" to ascertain the value of the imported merchandise.
**547061 dated Mar. 19, 1999.**

A U.S. corporation, whose subsidiaries provide services through North America, contracts with domestic and foreign customers for the disposal of domestic and imported waste in the United States. A disposal fee is charged for these services. This payment is an amount agreed upon by the parties to the transaction and represents the consideration for which the U.S. corporation is willing to accept and process the imported waster. As such, the basis for determining the value of the waste is the disposal fee. It is the only available information that can be quantitatively documented. Customs employed reasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f) of the TAA, appraised the imported waste based on the disposal fee. Under this fallback method of appraisement, Customs appropriately considered all the evidence made available and used all reasonable ways and means to appraise the imported waste at issue.
**547147 dated Mar. 23, 1999; aff'g 545017 dated Aug. 19, 1994.**

The proper method of appraisement for merchandise entered into the foreign trade zone (FTZ), consisting of non-privileged foreign status plastic housing, domestic status bulbs, and domestic status blister pack & carton, should be appraised based upon the value of the foreign plastic housing. The appraised value should not include the domestic packaging on the foreign status cartons, which are crushed in the FTZ and entered into Customs territory separately as scrap or waste. Thus, non-privileged foreign status cartons which have been crushed and bundled in the FTZ should be appraised pursuant to 19 CFR '146.65(b)(2) at the price actually paid to the importer for the recyclable waste, as set forth on the commercial invoice or the price paid to the zone seller for the recyclable waste.
**547142 dated May 12, 1999.**

Insufficient evidence was submitted to establish that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f) of the TAA, appraised the imported waste based on the disposal fee. Under this "fallback" method of appraisement, the Customs officer appropriately considered all the evidence made available and used "all reasonable ways and means in his power" to appraise the imported waste at issue. The basis for determining that value, the disposal fee, is the only available information that can be quantitatively documented. In addition, the payment is an amount agreed upon by the two parties to the transaction and it represents the consideration for which the importer is willing to accept and process the imported waste.
**547416 dated June 2, 2000; aff'g 547147 dated Mar. 23, 1999, and 545017 dated Aug. 19, 1994.**

Raw components and parts are shipped from a related party assembler in Mexico to the importer in the United States. The components are not sold to the importer, but rather, an internal accounting procedure occurs that takes the product of the assembler's

account and a corresponding entry is made indicating the acquisition of the raw components or part. There is no transaction value available for appraising the raw components and parts. In addition, the other methods of appraisement are not available. In addition, transaction value of identical or similar merchandise is unavailable as well. In order to satisfy the requirements of section 402(c), it must be demonstrated that a transaction value of the merchandise under consideration is fully acceptable under section 402(b). Basing the transaction value of identical or similar merchandise on the transaction between the assembler in Mexico and a supplier in Mexico is not in accordance with section 402(c). The merchandise is properly appraised using section 402(f), value if other values cannot be determined. The invoice values between the Mexican assembler and suppliers coupled with accounting entries between the assembler and importer for the same merchandise is appropriate using a section 402(f) appraisement. In addition, when the Mexican assembler manufactures products for the importer, there is a certain amount of scrap material that results from the manufacturing operations. Some of the scrap material is disposed of or is sold in Mexico; however, on occasion, scrap material is shipped to the importer. Again, the proper method of appraising the scrap material is section 402(f), value if other values cannot be determined. It appears as though a modified transaction value of identical or similar merchandise may be available, i.e., using the market price that is available for either identical or similar scrap materials.
**548247 dated Mar. 10, 2003.**

## 19 U.S.C. § 1500

Based upon the circumstances presented, the appraising officer used reasonable ways and means to determine the appropriate value for the imported merchandise. Transaction value could not be used to appraise the merchandise because the price actually paid or payable could not be ascertained. That is, the total number of checks written by the buyer to the foreign suppliers did not correlate with the invoices submitted. Therefore, utilizing an appraisement method in accordance with 402(f) of the TAA and the authority provided for in section 500, the import specialist ascertained the price actually paid or payable for the merchandise in accordance with the amount indicated by the checks written.
**545069 dated Dec. 23, 1993.**

The protestant has not provided sufficient evidence to establish that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all the evidence made available and used "all reasonable ways and means in his power" to appraise the merchandise.
**545017 dated Aug. 19, 1994; aff'd by 547147 dated Mar. 23, 1999.**

The importer has not provided sufficient evidence to indicate that Customs unreasonably ascertained the value of the merchandise by using a price applicable to importations of ninety bunches of cilantro per crate. Under the authority of section 500

of the TAA, the appraising officer appropriately considered all the evidence made available by the importer and used "all reasonable ways and means in his power" to appraise the merchandise.
**545735 dated Jan. 31, 1995.**

The importer protests Customs' appraisement of the merchandise based on the declared value as shown on the foreign seller's invoices. The importer claims that the declared value was based upon provisional or estimated pricing information, and that the final price will not be known until after the equipment is installed. However, no evidence has been presented to substantiate the importer's claim. The appraising officer had no choice but to rely upon the invoiced prices. Under the authority of section 500 of the TAA, the merchandise was correctly appraised.
**545861 dated May 26, 1995.**

Customs appraised the imported merchandise based upon the declared value as shown on the foreign seller's invoices. The importer indicated that it would subsequently present a reconciliation package to demonstrate that the seller adjusts the prices for the merchandise. The importer has failed to provide the information. Because no evidence has been presented to indicate that the appraisement of the imported merchandise was incorrectly determined, the Customs officer properly appraised the imported merchandise based upon the seller's invoices.
**545949 dated Aug. 24, 1995.**

The importer claims that the entered value of imported merchandise was overstated and requests an adjustment. In order for Customs to properly assess the merits of a claim, sufficient evidence must be provided. The importer has failed to submit any evidence whatsoever that supports its claim for a lower entered value. The Customs officer correctly appraised the imported merchandise.
**546053 dated Nov. 7, 1995.**

Transaction value is not applicable because the relationship between the parties influences the price actually paid or payable. In addition, neither transaction value of identical or similar merchandise, deductive value, nor computed value is available as a means of appraisement. The merchandise is appraised pursuant to section 402(f) of the TAA. Additional payments made by the buyer to the seller are included in a modified transaction value pursuant to section 402(f). The additional payments should be prorated over all of the appropriate entries and not applied as lump sum amounts on the two protested entries at issue. Accordingly, duty should be collected on the entries to which the payments may pertain but, by reason of liquidation, are no longer at issue. The method of apportionment must be reasonable and in accordance with generally accepted accounting principles.
**546430 dated Jan. 6, 1997.**

The imported merchandise at issue consists of sixty-seven entries of hazardous and non-hazardous waste material. The importer contends that the imported material has no commercial value in its condition as imported, and that appraising the waste on the basis of a disposal fee paid to the "seller" is unreasonable. Customs appraised the waste based upon the disposal fee, and such was the only available information that can be quantitatively documented. Customs used all reasonable ways and means in appraising the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all of the evidence made available and used "all reasonable ways and means in his power" to ascertain the value of the imported merchandise.
**547061 dated Mar. 19, 1999.**

A U.S. corporation, whose subsidiaries provide services through North America, contracts with domestic and foreign customers for the disposal of domestic and imported waste in the United States. A disposal fee is charged for these services. This payment is an amount agreed upon by the parties to the transaction and represents the consideration for which the U.S. corporation is willing to accept and process the imported waster. As such, the basis for determining the value of the waste is the disposal fee. It is the only available information that can be quantitatively documented. Customs employed reasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f) of the TAA, appraised the imported waste based on the disposal fee. Under this fallback method of appraisement, Customs appropriately considered all the evidence made available and used all reasonable ways and means to appraise the imported waste at issue.
**547147 dated Mar. 23, 1999; aff'g 545017 dated Aug. 19, 1994.**

Insufficient evidence was submitted to establish that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f) of the TAA, appraised the imported waste based on the disposal fee. Under this "fallback" method of appraisement, Customs appropriately considered all of the evidence made available and used "all reasonable ways and means in his power" to appraise the imported waste at issue. The basis for determining that value, the disposal fee, is the only available information that can be quantitatively documented. In addition, the payment is an amount agreed upon by the two parties to the transaction and represents the consideration for which the importer is willing to accept and process the imported waste.
**547416 dated June 2, 2000; aff'g 547147 dated Mar. 23, 1999, and 545017 dated Aug. 19, 1994.**

The importer is unable to identify the price paid or payable for a specific import of the product at the time of entry. Additionally, the importer is unable to tie to a given entry the cost of the material it supplies and the assist with which it is supplied. In light of these circumstances, the importer uses published price indicators to value both the

assist or importer-purchased material and the service provided. Although the importer's method is reasonable, the port prefers an alternative method where the appraisement of the imported merchandise is based on an average of the previous year's price of services invoiced in that year for all of the importer's product entered into the United States. Because the importer enters into long-term contracts, typically lasting several years, this method more closely approximates prices for services provided by the importer, rather than published market prices of the most recent contracts signed. Under both methods, the valuation of the assist is the same, using published prices. The port's proposed method is acceptable under 19 U.S.C. 1401a(f)(1), the fallback method, and it trumps the importer's current methodology.
**548111 dated Aug. 23, 2001.**

The importer provides a lump sum value for the imported merchandise. Under proper classification, certain components of the merchandise must be separately appraised. Transaction value is therefore inapplicable because the importer did not provide sufficient documentation for the value of certain component parts. Alternatively, the goods may be appraised under a modified transaction value approach. In this case, under a modified transaction value approach, the import specialist used reasonable ways and means to appraise the relevant component.
**548167 dated Aug. 14, 2002.**

# VERIFICATION

## INTRODUCTION

### GATT Valuation Agreement:

Article 17 of the Agreement states:

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

In addition, with regard to computed value, Article 6, Paragraph 2, states:

No Party may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

In the Interpretative Notes, Note to Article 6, Paragraph 1, states:

As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

CCC Technical Committee Advisory Opinion 10.1 states:

1. Does the Agreement require Customs administrations to rely on fraudulent documentation?
2. The Technical Committee on Customs Valuation expressed the following view:
Imported goods have to be valued under the Agreement on the basis of actual facts. Therefore any documentation which contained false information as to the facts would be

contrary to the intention of the Agreement. In this respect it is noted that Article 17 of the Agreement and paragraph 7 of the Protocol underline the right of Customs administrations to satisfy themselves as to the truth and accuracy of any statement, document or declaration presented to them for Customs valuation purposes. It follows that an administration cannot be required to rely on fraudulent documentation. Further, should documentation prove to be fraudulent subsequent to the determination of a Customs value, invalidation of that value would be a matter for national legislation.

**Headquarters Rulings:**

## insufficient evidence

The merchandise was properly appraised using the invoice price. In view of the importer's inability to provide Customs with a correct breakdown of the claimed non-dutiable charges or to furnish any other evidence to substantiate the claims, the refund request must be denied.
**545395 dated Sep. 30, 1993.**

The importer has the burden of proving the validity of information on entry documents and the veracity of a transaction in question in order to properly appraise merchandise. In order for Customs to properly assess the merits of a claim, sufficient evidence must be provided. In this case, the importer neither submitted adequate records to warrant Customs granting the request for a duty refund, nor has the importer adequately explained how the documents relate to or prove the claim.
**545138 dated Oct. 19, 1993.**

## 19 U.S.C. § 1500

Entries were submitted which included documentation containing invoice notations: "No commercial value" and/or "Value for Customs purposes only." The notations were not accompanied by further explanation about the transactions. The import specialist requested further information from the importer concerning the pricing of the imported merchandise. The limited documentation submitted failed to establish the price actually paid or payable for certain entries. No thorough explanation of pricing was provided. 19 U.S.C. 1500 authorizes the appraising officer to weigh the nature of the evidence in appraising the merchandise under the constraints of section 402.
**544824 dated May 4, 1993.**

Based upon the circumstances presented, the appraising officer used reasonable ways and means to determine the appropriate value for the imported merchandise. Transaction value could not be used to appraise the merchandise because the price actually paid or payable could not be ascertained. That is, the total number of checks written by the buyer to the foreign suppliers did not correlate with the invoices submitted. Therefore, utilizing an appraisement method in accordance with 402(f) of the TAA and the authority provided for in section 500, the import specialist ascertained the

price actually paid or payable for the merchandise in accordance with the amount indicated by the checks written.
**545069 dated Dec. 23, 1993.**

Transaction value was rejected as a means of appraisement because the importer was unable to provide any proof of payment for the imported merchandise. No checks, money orders, evidence of wire transfers, bank records, or book keeping records were presented. No actual receipts from the seller were submitted. The only documentation presented consisted of letters allegedly written from the seller indicating the price of the imported merchandise. It was reasonable for the appraising officer to conclude that these letters were not a reliable indicator of the price of the imported merchandise. Accordingly, it was proper for the appraising officer to reject transaction value as the method of appraising the merchandise.
**546122 dated Jan. 11, 1996.**

Importers are required to file such documentation as is necessary to enable Customs to assess properly the duties on the imported merchandise. The importer has the burden of proving the validity of information on entry documents and the veracity of a transaction in question, in order to properly appraise the merchandise. In this case, the importer was unable to provide information to establish a valid transaction value. In addition, transaction value of identical or similar merchandise, deductive value, and computed value could not be established, so the merchandise was appraised pursuant to 19 U.S.C. 1401a(f).
**546824 dated Nov. 4, 1998.**

Insufficient evidence was submitted to establish that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f) of the TAA, appraised the imported waste based on the disposal fee. Under this fallback method of appraisement, Customs appropriately considered all of the evidence made available and used reasonable ways and means to appraise the imported waste at issue. The basis for determining that value, the disposal fee, is the only available information that can be quantitatively documented.
**547147 dated Mar. 23, 1999; <u>aff'g</u> 545017 dated Aug. 19, 1994.**

Jewelry was appraised under the transaction value method based on prices set forth in an invoice submitted by the importer. The evidence submitted is insufficient to support a finding that the price actually paid or payable is properly represented by the first invoice submitted to Customs; nor is it sufficient to prove the amount reflected in the fourth invoice is not the price actually paid or payable for the subject merchandise. Thus, Customs fixed the final appraisement in accordance with 19 U.S.C. 1500 and determined that the last invoice submitted reflected the price actually paid or payable for the imported merchandise and, therefore, was the proper basis for the determination of transaction value.
**547368 dated June 28, 2000.**

At the time of entry, the importer presented invoices from the buyer to the seller representing the sale of the merchandise. Appraisement was based on the invoices as sufficient evidence to establish the transaction value of the merchandise. No other objective evidence has been presented to demonstrate that the prices shown on the invoices do not accurately reflect the prices actually paid or payable. In fact, the invoices carry a statement attesting to the accuracy of the information. The merchandise was properly appraised using the transaction value method of appraisement.
**548234 dated Jan. 15, 2003.**

# ADDITIONAL INFORMATION

The U.S. Customs and Border Protection's home page on the Internet's World Wide Web, provides the trade community with current, relevant information regarding Customs operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, Customs publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site contains the most current electronic versions of, or links to:

- Customs Regulations and statutes
- Federal Register and public information notices
- The Customs Bulletin and Decisions
- Binding Rulings
- Publications including-
- *Importing Into the U.S*.
- Other Informed Compliance Publications in the "*What Every Member of the Trade Community Should Know About:…"* series
- *Customs Valuation Encyclopedia*
- Video Tape availability and ordering information
- Information for small businesses

The web site links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. The web site also links to the Customs Electronic Bulletin Board (CEBB), an older electronic system on which Customs notices and drafts were posted. Since December 1999, the CEBB has been only accessible through the web site. Finally, Customs web site contains a wealth of information of interest to a broader public than the trade community -- to international travelers, for example.

The Customs Service's web address is http://www.cbp.gov.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed customs broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will usually be found under U.S. Government, Treasury Department.

## "Your Comments are Important"

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