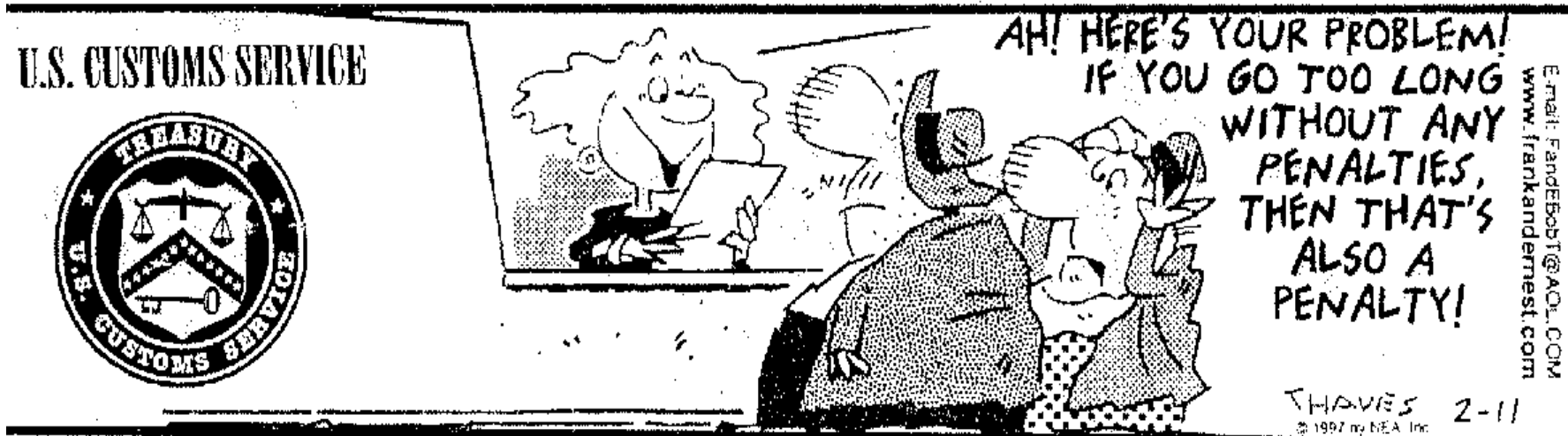


Fundamentals of Customs Valuation



by

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Customs Valuation Webinar Topics

- Part 1: Overview of Customs Valuation Rules
- Part 2: Related Party Pricing: what's acceptable and what's not
- Part 3: The new "First Sale" Value Declaration requirements
- Part 4: "Assists" and Supplemental payments
- Part 5: Valuing of returns and repairs
- Part 6: Problem solving: Risk Assessments and Internal Controls

--Value Question--

My company has a manufacturing site in the UK that produces finished goods and then imports them via transfers to our facility in the US for sales to our customers.

We are considered as one company and no sales takes place when the product is imported.

We have been using the cost of manufacturing the goods as our customs value when importing.

Are we considered a Related Party?

Are we using the correct value?



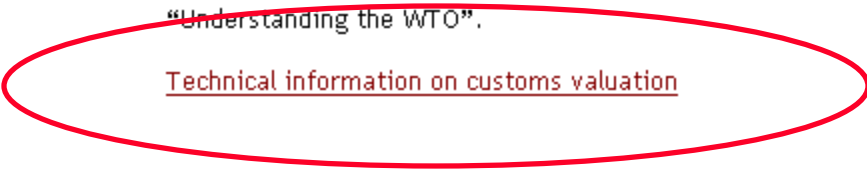
Customs Valuation



For importers, the process of estimating the value of a product at customs presents problems that can be just as serious as a fair, uniform and neutral system for the valuation of goods for customs purposes – a system that conforms to commercial practice. The Committee on Customs Valuation of the Council for Trade in Goods (CGT) carries out work in the WTO on customs valuation.

Introduction [back to top](#)

[Brief information on customs valuation](#)
links to the customs valuation section of the WTO Guide "Understanding the WTO".



[Technical information on customs valuation](#)

The mandate [back to top](#)

[Summary of Article VII on customs valuation](#)

Browse or download the from the legal texts gateway:

- [Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994](#)
- [Decision Regarding Cases where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value](#)

CASE STUDIES

> [Philippines: Adopting the Transaction Basis for Customs Valuation](#)



The new Agreement [back to top](#)

The Tokyo Round Code was replaced by the WTO Agreement on Implementation of Article VII of the GATT 1994 following conclusion of the Uruguay Round. This Agreement is essentially the same as the Tokyo Round Valuation Code and applies only to the valuation of imported goods for the purpose of levying ad valorem duties on such goods. It does not contain obligations concerning valuation for purposes of determining export duties or quota administration based on the value of goods, nor does it lay down conditions for the valuation of goods for internal taxation or foreign exchange control.

Basic principle: Transaction value [back to top](#)

The Agreement stipulates that customs valuation shall, except in specified circumstances, be based on the actual price of the goods to be valued, which is generally shown on the invoice. This price, plus adjustments for certain elements listed in Article 8, equals the transaction value, which constitutes the first and most important method of valuation referred to in the Agreement.

The 6 Methods [back to top](#)

For cases in which there is no transaction value, or where the transaction value is not acceptable as the customs value because the price has been distorted as a result of certain conditions, the Agreement lays down five other methods of customs valuation, to be applied in the prescribed hierarchical order. Overall the following six methods are considered in the Agreement:

Method 1 – Transaction value

Method 2 – Transaction value of identical goods

Method 3 – Transaction value of similar goods

Method 4 – Deductive method

Method 5 – Computed method

Audit Findings & Demands

- **General Merchandise Importer**
 - Inadequate GSP documentation -- LOR \$ 493,000
- **SEM Supplier**
 - Classification errors, Inadequate GSP and 9801 documentation -- LOR \$ 1,160,000
- **Medical Equipment Supplier**
 - Inadequate 9801 documentation-- Projected LOR (Duty and MPF) -- \$ 5.1 Million

Audit Findings & Demands

- Computer Peripherals Importer
 - Intercompany Transfer pricing – Est. LOR \$ 650,000 (MPF)
- Integrated Circuit Importer
 - Intercompany Transfer pricing –
 - MPF LOR \$ 1,462,000 (MPF)
- Integrated Circuit Importer
 - Intercompany Transfer pricing -- Est. MPF LOR \$ 600,000

The “Reasonable Care” Requirement



- The Law (19 U.S.C. 1484) requires importers (and their agents) to use “reasonable care” when providing Customs with information regarding:
 - classification
 - Value
 - Rate of duty
 - Admissibility



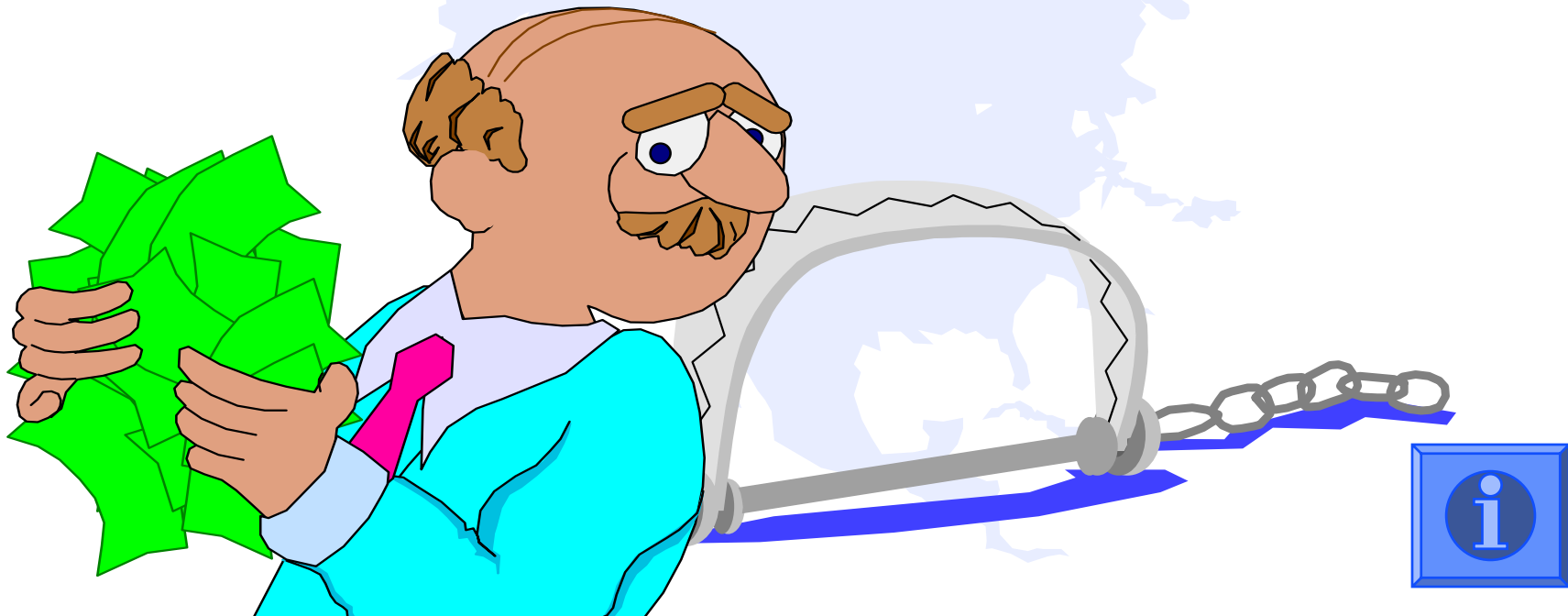
Importance of Correct Customs Values

- Obligation to Report The Correct Value
 - All invoices for imported merchandise are required to set forth . . . "the purchase price of each item" *19 U.S.C. § 1481(a)(5)*.
 - An importer making an entry . . . must file a declaration under oath stating . . . "the prices set forth in the invoice are true . . . [and that] all other statements in the invoice . . . or in the entry itself, are true and correct . . ." *19 U.S.C. § 1485(a)(2) & (3)*.



Importance of Correct Customs Values

- 19 U.S.C. § 1952
 - . . . No person, by fraud, gross negligence, or negligence--(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—
 - (i) any document, written or oral statement, or act which is material and false, or
 - (ii) an omission which is material



UNITED STATES v. FORD MOTOR COMPANY; *491 F. Supp. 2d 1248 (2007)*

- Court imposed a maximum penalty of \$ 11,755,825, against Ford Motor Co. plus LOR of \$ 5,877,912
- Ford did not inform CBP that the values provided in the entry documents were not final and
- failed to adhere to an agreement with port to report lump sum payments and reconcile with entries.

CBP Reasonable Care Guidelines: Valuation

- Customs Informed Compliance Publication on “Reasonable Care”
- To determine correct value:
 - ✓ Consult the Customs Value laws and regulations
 - ✓ Customs Valuation Encyclopedia
 - ✓ Informed compliance publications
 - ✓ Rulings (CROSS) and court cases
 - ✓ Consult with a “Customs” expert
 - ✓ Obtain a Customs ruling



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- [ABC's of Prior Disclosure](#)
 - 04/01/2004
 pdf - 330 KB.
- [Accreditation of Laboratories and Gaugers](#)
 - (04/09/1999, Revised 03/01/2000)
 Reprinted in 34 Customs Bulletin No.25, June 21, 2000
 pdf - 250 KB.
- [African Growth and Opportunity Act](#)
 - 08/01/2003
 pdf - 304 KB.
- [Agglomerated Stone](#)
 - 03/13/2008
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pdf - 656 KB.

- **Customs Brokers**

- 1/01/2005

pdf - 361 KB.

- **Customs Enforcement of Intellectual Property Rights**

- 03/08/2006

- CBP has determined to remove the informed publication covering IPR from this site until further notice.

- **Customs Value**

- 07/17/2006

pdf - 106 KB.

- **Customs Valuation Encyclopedia (1980 - 2003)**

- 06/01/2004

- Available for sale through the Superintendent of Documents, U.S. Government Printing Office

pdf - 2,604 KB.

- **Decals, Decorative Stickers and Window Clings**

- 01/24/2007

pdf - 96 KB.

- **Decorative Glassware**

- 03/13/2008

pdf - 594 KB.

- **Determining the Acceptability of Transaction Value for Related Party Transactions**

- 04/26/2007

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- **Distinguishing Bolts from Screws**

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- **Drawback**

- 12/01/2004

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- **Entry**

- 03/01/2004

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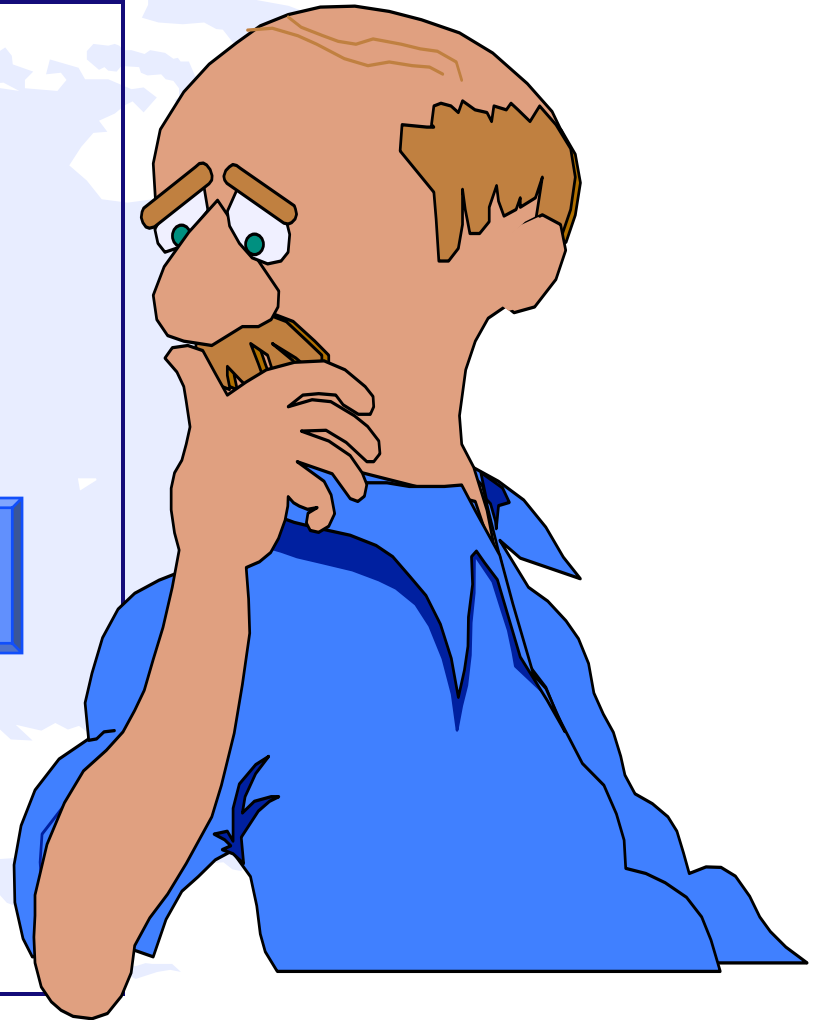
Common Value Issues

- ✓ Inadequate justification of intercompany transfer prices
- ✓ Additional payments &/ or Assists
- ✓ Fictitious values (e.g. returns & defective goods)
- ✓ CIF Deductions
- ✓ 1st Sale Issues (Nissho Case)
- ✓ Royalty and Licensing fee payments

Methods Of Customs Valuation

19 USC 1401a(a)

- Customs Value law provides for five methods of valuation, in order of preference:
 - Transaction value
 - Transaction value of identical or similar merchandise
 - Deductive value
 - Computed value
 - a derived (fall-back) method reasonably adjusted to circumstances



Subpart C--APPRAISEMENT

§§152.20-152.22 [Reserved]

[§152.23](#) Merchandise imported from intermediate countries.

§152.24 [Reserved]

[§152.25](#) Conversion of foreign currency.

[§152.26](#) Furnishing value information to importer.

Subpart D--[RESERVED]

Subpart E--VALUATION OF MERCHANDISE

[§152.100](#) Interpretative notes.

[§152.101](#) Basis of appraisalment.

[§152.102](#) Definitions.

[§152.103](#) Transaction value.

[§152.104](#) Transaction value of identical merchandise and similar merchandise.

[§152.105](#) Deductive value.

[§152.106](#) Computed value.

[§152.107](#) Value if other values cannot be determined or used.

[§152.108](#) Unacceptable bases of appraisalment.

Transaction Value

- What is Transaction Value?
 - Defined as:

“transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States”
 - 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.

Transaction Value

- Transaction value includes certain **statutory additions** if not otherwise included in the price:
 - packing costs
 - selling commissions
 - assists
 - royalty or license fees paid as a condition of importation
 - Proceeds of a subsequent resale, disposition, or use

Transaction Value

Deductions: International Freight

- 19 USC 1401a(b)(4) excludes costs incurred for international:
 - transportation, insurance related services
- Importer must be able to document actual payments for int'l transportation, insurance and related services
- See Customs informed compliance publication on - Proper Deductions for Freight & Other Costs Reprinted in 34 Customs Bulletin No.25, June 21, 2000

Transaction Value

Other Deductions (1401a(b)(1)(c)(3))

- Other deductions, if separately itemized:
 - Construction, erection, assembly, or maintenance of, or technical assistance provided with respect to the merchandise **after** importation
 - transportation of the merchandise after importation.
 - Customs duties and other Federal taxes
 - In HRL 543263, Customs affirmed that State sales tax was a non-dutiable construction or erection cost

Transaction Value (1401a(b))

- When is transaction value appropriate?
 1. Must have a **sale** of the goods for export to the United States.
 2. No restrictions on disposition or use, except those
 - Imposed by law
 - Geographical resale territory
 3. **Value** and all additions must be **capable** of determination
 4. Are the parties **related**?

Transaction Value Sale for Exportation

- What is a “sale”?
 - the word "sale" is generally defined as a transfer of ownership in property from one party to another for a price or other consideration.
 - J.L. Wood v. United States, 62 CCPA, 25, 33, C.A.D. 1139, 505 F.2d 1400, 1406 (1974)
 - Did the transaction “**cause**” the export to the country of importation?

Transaction Value: Sale for Exportation

- Is there a “**sale**”?
 - The primary factors to consider
 - Has buyer assumed the risk of loss and
 - acquired title to the imported merchandise.
 - Ruling HQ 544835, dated June 15, 1994
 - When does title and ownership transfer?
 - Problem with Vendor Managed Inventory agreements
 - Intcoterms do not define the moment of transfer of title

PRICE ACTUALLY PAID OR PAYABLE

- The term "price actually paid or payable" is:
 - “the total payment (whether direct or indirect) . . . for imported merchandise by the buyer to, or for the benefit of, the seller.”
 - Example Indirect Payment:
 - Importer pays 3rd party supplier for materials purchased by foreign subsidiary and incorporated into finished goods imported into the United States.
 - Importer receives a reduction in the invoice price equal to the value of the payments

The Generra Presumption

- All payments made by a buyer to a seller are part of the price actually paid or payable for the imported merchandise.
 - (Generra Sportswear Co. v. U.S., 8 CAFC 132 (1990)) HQ 545526 dated Nov. 30, 1995.
 - Burden of establishing payments are unrelated rests on the importer.
 - Moss Mfg. Co. v. United States, 896 F. 2d 535, 539 (Fed. Cir. 1990)

PRICE ACTUALLY PAID OR PAYABLE

- Importers are often invoiced separately by vendors / suppliers for:
 - tooling, molds, packaging
 - Expedited or “hot lot” manufacturing fees
 - Small lot or small quantity surcharges
 - Production modifications
 - Non-reoccurring engineering (NRE) or separate charges for startup or retooling costs
 - Testing costs
 - HQ H023814, June 2, 2008; HQ 544508, dated June 19, 1990; 543645 dated Feb. 17, 1987; 542187 dated Nov. 7, 1980 (TAA No. 11).

PRICE ACTUALLY PAID OR PAYABLE

- Additional payments
 - Payments to a seller for mold costs and cutting dies are considered to be part of the price actually paid or payable for the imported merchandise. **HQ 544615 dated Sep. 11, 1991**
 - Reimbursement for unused materials and components was not a part of the value. **544820 dated Oct. 18, 1991**

PRICE PAID OR PAYABLE

- **545456 dated Oct. 21, 1994, affd. by 545995 dated Oct. 12, 1995.**
 - In addition to the transfer price of merchandise, buyer sent regular weekly payments to the seller which were 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.

PRICE ACTUALLY PAID OR PAYABLE Management Fees

- **HQ 543512 dated Apr. 9, 1985.**
 - separate fee paid to a related party seller for management services, accounting, finance, planning, and clerical activities is not part of the price actually paid or payable since the fee is unrelated to the manufacture of the imported merchandise.

PRICE ACTUALLY PAID OR PAYABLE Management Services

- **542122, dated September 4, 1980**
 - Management services, accounting services, legal services and other services related to imported merchandise rendered abroad or in the U.S. are not assists under 19 U.S.C. 1401a(h).
 - Most recently cited with approval in HQ H010951, dated September 21, 2007
 - Must be separately itemized and billed.

Transaction Value Sufficiency of information

- 19 U.S.C. 1401a(b)(1); 19 CFR 152.103(c)
 - Lump-sum payments from the buyer to the seller that cannot be linked to individual invoices or importations will not suffice to establish transaction value. **HQ 543698 dated June 11, 1986.**
 - Inability to establish transaction value will result in application of alternative methods of valuation

Other Methods Of Appraisement

- If Transaction value can not be established
 - No sale
 - Related party status influences price
 - Lack of information
- CBP will resort to alternative methods
 - Transaction value of identical or similar merchandise
 - Deductive value
 - Computed value
 - a derived (fall-back) method reasonably adjusted to circumstances

Value of Identical or Similar Merchandise (1401a(c))

- Based on sales of:
 - identical or similar merchandise (with adjustments)
 - same commercial level
 - in substantially the same quantity as exported to the United States
 - at or about the same time as that being appraised.

Deductive Value Method (1401a(d))

- Based on the price:
 - Sold in the U.S. in its condition as imported
 - greatest aggregate quantity either at or about the time of importation, or
 - before the close of the 90th day after the date of importation.
- price is subject to deductions for import fees, G & A expenses, profit.
- Super-deductive value (refurbished selling cost less cost of importation, repairs and selling expenses, profit)

(Example) Deductive Value Worksheet		
U.S. Selling Price (Unit Cost)		\$ 1,000.00
U.S. Selling Expenses		
Expenses connected with U.S. Sales		\$ 50.00
Commissions paid to 3rd party agents		\$ 30.00
Profit and General expenses (combined 8%)		\$ 73.60
Value added by U,S, Processing (repackaging)		\$ 0.50
Usual transportation cost prorated (domestic)		\$ 3.00
	Total Selling expenses	\$ 157.10
International & Customs Clearence Costs		
International transportation costs		\$ 5.00
International Insureance (included in transport)		\$ -
Customs clearance and brokerage fees		\$ 2.50
Customs Duties and Fees paid at \$800 each (2.5% + 0.0021= .0271)		\$ 21.68
	Total Acutal International Costs	\$ 29.18
	Deductive Value (2E-10E-17E=)	\$ 813.72
	Estimated Declared value	\$ 800.00
	Under reported Value	\$ 13.72
	Additional Duty due	\$ 0.37

Computed Value Method 19 U.S.C. 1401a(e)

- Based on:
 - Cost of materials and processing incurred in the foreign production, plus
 - an amount for profit and general expenses of the producer company equal to
 - Amount usually reflected in sales of merchandise of the same class or kind, and
 - the value of any assists and packing.

Example Computed Value Worksheet		
1. Material Components Cost	Cost	
Material (Total)	\$ _____	Attachment A
Tools, dies, molds and similar items	\$ _____	Attachment B
Merchandise consumed in production	\$ _____	Attachment C
Engineering, development, artwork, design work and plans	\$ _____	Attachment D
Scrap	\$ _____	Attachment E
Freight	\$ _____	Attachment F
Customs Duties/ Fess	\$ _____	Attachment G
Total Material Components Cost \$	\$ _____	
Operating Expenses		
a. Direct Labor (+ fring benefits)	\$ _____	Attachment H
b. Depreciation of equipment	\$ _____	Attachment I
c. Utilities		Attachment J
d. Overhead:		
Production	\$ _____	Attachment K
General & Administrative expenses	\$ _____	Attachment L
Total Operating Expenses	\$ _____	
Transportation to point of export (FOB)	\$ _____	
U.S. Assist Costs* (other than materials included in item 1)		
a. Tools, dies, molds and similar items	\$ _____	Attachment M
b. Merchandise consumed in production	\$ _____	Attachment N
c. Engineering, development, artwork, design work and plans and sketches undertaken outside the United States	\$ _____	Attachment O
Total Assist Costs	\$ _____	
Computed Value (6b+15b+18b+ 21b) =	\$ _____	

The "Fallback" Method

19 U.S.C. 1401a(f); 19 CFR 152.108.

- When merchandise cannot be appraised under one of the methods set forth in 19 U.S.C. 1401a(b)-(e), value is determined in accordance with the "fallback" method set forth in section 1401a(f).
- Provides that merchandise should be appraised on the basis of a value derived from one of the (b)-(e) methods, reasonably adjusted to the extent necessary to arrive at a value.
- Value may not be on the basis of:
 - the price in the domestic market of the country of export
 - the selling price in the U.S. of merchandise produced in the U.S.,
 - minimum values, or arbitrary or capricious values.