



Customs Valuation & Multi-tiered Transactions (The “First Sale” Rule)

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Transaction Value

- What is Transaction Value?

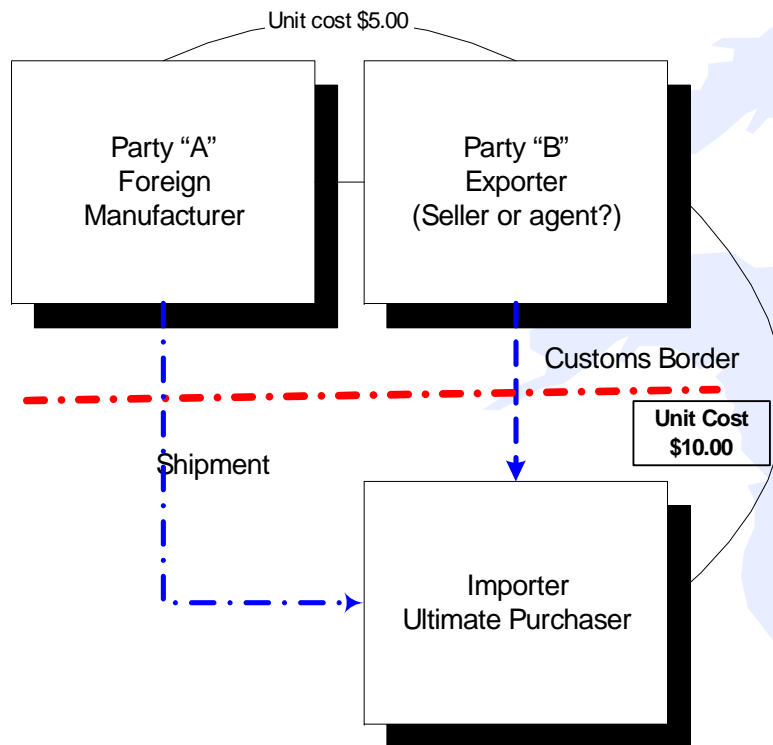
- Defined as:

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

- If I have two “sales” of the merchandise before it is imported, which one must be used for the “customs value”?

Transaction Value

Sales for Exportation & Multi-tiered Transactions



- Can the Importer use the price between the Mfg and the exporter?
 - Party "A" sells to Party "B" @ \$5 each
 - Party B sells to Importer @ \$10 each
 - Party "B" ships goods to Importer
 - What is the correct Customs Value?
 - Would it matter if "A" and "B" are related Parties?

Transaction Value Sales for Exportation & Multi-tiered Transactions

- [Nissho Iwai American Corporation vs. U.S., 982 F.2d 505 \(1992\)](#)
 - Court held that Mfg selling price to middleman is acceptable when:
 - There is a sale (i.e., transfer of ownership of the goods)
 - negotiated at arm's length, free from any non-market influences
 - goods are clearly destined for export to United States
 - Questions
 - Is there a sale?
 - Does middleman control the sales transaction to ultimate customer?
 - Are goods clearly destined for export to US?

Transaction Value: Sale for Exportation

- Is there a “sale”?
 - J.L. Wood v. United States 62 CCPA 25, 33, C.A.D. 1139 (1974)
 - the word “sale” is generally defined as a transfer of ownership from one party to another for a price or other consideration.
 - The primary factors to consider in determining whether there has been a transfer of property or ownership are whether the alleged buyer has
 - (a) assumed the risk of loss and
 - (b) acquired title to the imported merchandise.
 - See HRL 543708, dated April 21, 1988; HRL 544745, dated February 19, 1992; and HRL 544740, dated July 22, 1992, HQ 544835, dated June 15, 1994
 - When does title and ownership transfer?
 - Shipment vs. destination contracts (ex works, fob, cif, ddu or ddp)
 - Incoterms do not define the moment of transfer of title

Sales for Exportation & Multi-tiered Transactions

- Sales in a foreign country are not "sales for exportation to the United States" unless
 - sale negotiated at arm's length
 - the merchandise is irrevocably destined for exportation to the United States. 542416 dated July 31, 1981 (TAA No. 38).

Transaction Value Sales for Exportation & Multi-tiered Transactions

- United States vs. Hitachi, 172 F.3d 1319 (1999).
 - . . . 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. 1401a(b)(2)(b)(b).
- Customs Informed Compliance Publication:
 - Bona Fide Sales & Sales for Exportation
- 11/96, Revised 1/2000
Reprinted in 30/31 Customs Bulletin No.50/1, January 2, 1997
 - Determining Transaction Value in Multi-Tiered Transactions, T.D. 96- 87,
Vol. 30/31, No. 52/1 Cust. B. & Dec. (January 2, 1997)



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First Sale Import Declaration Requirement

- Section 15422(a) of the Food, Conservation, and Energy Act of 2008 establishes an importer declaration requirement
 - Effective for a one-year period beginning August 20, 2008
 - If the transaction value of the imported merchandise is based on the “first or earlier sale” of goods
 - importers are required to provide a declaration to CBP at the time of filing a consumption entry
 - CBP is to report the frequency of the use of the “first sale” rule to ITC on a monthly basis

First Sale Import Declaration Requirement

- Entry Filers will be required to insert a single code (F) on CBP Form 7501 at the line-item level, indicating when First Sale was used to determine the value of the imported merchandise.
 - CBP initially gave importers a 30 day grace period until September 19th (while CBP set up the electronic reporting structure)
- Retroactive Filing of Information
 - Filers were suppose to submit to the respective ports of entry spreadsheets listing entry lines that need the “F” indicator.
 - Corrections were to be filled with CBP no later than September 26, 2008
 - CBP is extended the date for submission of corrections to October 17, 2008. CSMS #08-000274, 10/15/2008

First Sale Import Declaration Requirement

- Impact of First Sale Declarations
 - CBP will now have visibility on which importers are using “first sale” as a basis of transaction value
 - Importers using First Sale will more likely be targeted for a QRA to verify that transactions meet First Sale Rule
 - Importers need to test current and past transactions for First Sale eligibility, including:
 - Related party valuation (if applicable)
 - Middleman is not acting as an agent (is it a sale?)
 - Was the original sale one for “exportation to the US”? (irrevocably destined to the US)