

## **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 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.**

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.**