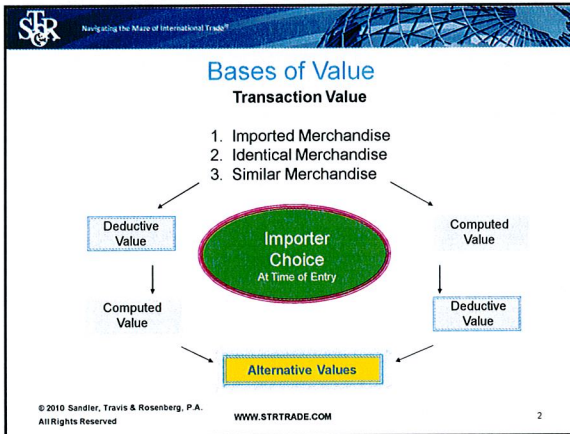
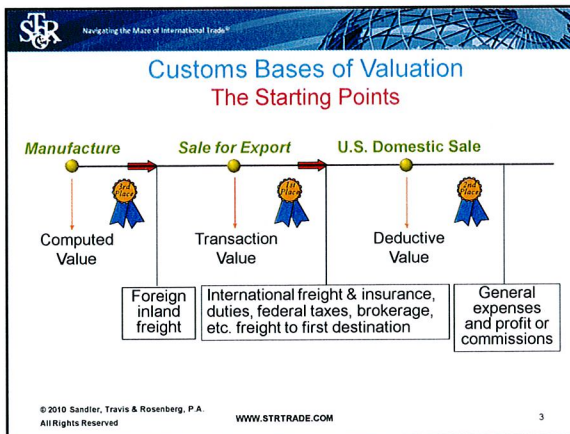


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Navigating the Maze of International Trade®
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Transaction Value

Price Paid or Payable

- Total Payment - direct or indirect
- When Sold for Exportation

Additions	Less	Does Not Include if Identified
<ol style="list-style-type: none"> Packing Costs Commissions Assists Royalties & License Fees Proceeds/Resale 	<ol style="list-style-type: none"> International Transportation International Insurance Related Expenses incident to international shipment 	<ol style="list-style-type: none"> Construction Technical Assistance Post Importation Transportation Customs Duties & Federal Taxes

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"THE PRICE" - Total Payment

- Offsets for Existing Debt
- Credits for Defective Merchandise
- Interest
- Warehousing
- Testing
- Tooling Expenses

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Offsets for Existing Debt

The amount paid is reduced for a debt owed by the seller to the buyer

Company A pays \$1,850 to Company B for a shipment of toys. Company B would have charged Company A \$2,200 for the toys. However, because Company B owed Company A \$350, Company B only invoiced \$1,850 for the toys.

The amount paid is reduced for a debt owed by the seller to a third party

Company A pays \$3,500 to Company B for a shipment of toys. On a previous shipment of toys from Company B to Company C, \$500 in damage occurred during the shipment. Company B asked Company A to settle the damage claim on Company B's behalf, and agreed to reduce the price to Company A to \$3,000.

What are the duty consequences?

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Production Cancellation Payments

An Automobile Importer enters into a contract to buy engines from a French producer. The charge per engine covers both the cost of production and the French producer's capital investment. In the event the contract is canceled before the producer's investment is recovered, the importer must make a separate payment to cover those expenses.

Are the cancellation payments dutiable?

(Chrysler Corporation v. United States)

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Interest Expense

An importer pays interest to a foreign seller in addition to payment for the imported goods.

A. An importer's operations are financed by the foreign seller with the importer remitting interest payments in addition to payment for the goods. **Dutiable?**

B. Alternatively, the importer makes interest payments to the foreign seller as a result of delayed payment for purchased goods. **Dutiable?**

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Interest Expense

May Be Non-Dutiable If:

1. The interest charges are identified separately on the invoice;
2. Financing arrangement is in writing;
3. If required, Buyer can demonstrate:
 - a) goods are actually sold at the declared price;
 - b) level of interest does not exceed level for such transactions in the country where, and at the time, the financing was provided.
4. Interest means only bona fide interest; and
5. **Interest must be carried on importer's books as interest expense.**


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Don't Walk the Plank! Question 1

Which of the following generally is included within the PAPP?

- A. Warehousing or storage charges paid to the seller.
- B. Advertising expenses incurred by the buyer.
- C. Charges for testing incurred during production of the goods.
- D. Costs for equipment not directly used in the production of the goods.
- E. Expenses for managers, supervisors or administrative personnel.
- F. A&C



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Assists

SOMETHING . . .

INCORPORATED IN	USED IN	CONSUMED IN	DEVELOPED FOR
--------------------	------------	----------------	------------------

Supplied
By
Importer
To The

Producer

For Free or Less Than Fair Value
Necessary for the Production of the Imported Merchandise


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Assists - Categories

1. Materials, components, parts and similar items incorporated in the imported goods
2. Tools, dies, molds and similar articles used in the production of the imported goods
3. Merchandise consumed in the production of the imported goods
4. Engineering, development, artwork, design work, and plans and sketches *undertaken elsewhere than in the country of importation* and necessary for the production of the imported goods.

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Materials, Components & Parts

- How do **you** know if a material, component or part used by your company is provided free of charge?
 - Do you have a complete BOM?
 - Does it show origin, both country and provider?
 - How old is the BOM?
 - What is its origin and reliability?
 - Have you requested and received any back-up docs?
- How else would the BOM be used?


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Materials, Components & Parts .. 2

- Do any affiliates, domestic or foreign, provide parts to your company?
 - How do you know?
 - Are they assists?
 - What if the parent or other affiliate, US or foreign pays for them?
 - Does it matter if the affiliate is US or foreign?
- Does your customer supply any materials?

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Don't Walk the Plank! Question 2

Which of the following could not be considered an assist?

- Electronic components sent by the importer to a foreign manufacturer for assembly into wire harnesses.
- Tools and dies the importer provides from unrelated third parties to the foreign seller who uses it to produce automobile door panels.
- Payments from the importer to the foreign seller for artwork the seller obtained from producers outside of the U.S. to produce jewelry.
- Freight charges incurred by the importer to transport to the foreign seller an old sewing machine, with no commercial value, to sew blouses.


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Value of Assists

1. Raw Materials/Components Valuation
 - a. Acquired from unrelated seller – Cost of acquisition
 - b. Acquired from related seller or produced by importer or someone related – Cost of production
 - c. In both instances, the cost to transport the assist to the foreign producer must be added
2. Tools, Dies & Molds Valuation
 - a. Same methods of valuation as for raw materials/components
 - b. If previously used – Value adjusted to book value
 - c. If rented or leased – Value based on that cost
 - d. If repaired or modified – Value should reflect costs
 - e. If reflects "R&D" – Include regardless of country undertaken
3. Intellectual Property Valuation
 - a. Same method of valuation, but adjust for work outside U.S.

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Apportionment of Assists

- Generally: Allocate as requested by the importer, provided:
 - it is in accordance with generally accepted accounting principles and
 - the required method can be established by documentary evidence
- The value of an assist may be declared by the following:
 - apportion to the merchandise imported on the first shipment
 - apportion over the number of units produced up to the time of first shipment
 - apportion over the entire anticipated production of all merchandise (consistent with contracts or firm commitments)
 - apportion over the number of years or units of the assist's useful life

Note: If the merchandise produced with the assist is destined for more than one country, the value of the assist may be apportioned against all units, regardless of where they are shipped.

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Research & Development

- Is it being provided?
- Is the product something which by necessity would need R&D
- What is it being provided for?
- By what entity is it being provided?
- Is someone other than the importer paying for it?

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Research & Development ..2

- Who is it being provided to?
 - Directly to you
 - First to another company
- If you're not paying for it – who is?
- Is it dutiable R&D?
 - What is the difference between dutiable R&D and non-dutiable R&D?
- How are you getting this information?
- What if you can't get the information?

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Indicia of a Buying Agency

⇒ Control!	⇒ Compensation through commission
⇒ Selection and knowledge of the factory	⇒ No financial interest
⇒ Manner of shipment	⇒ Buying agency agreement
⇒ Amount of payment	⇒ Risk of loss
⇒ Purchase directly	⇒ Transaction documents
⇒ Visits to the factory and negotiations	⇒ Commission invoice
⇒ Orders only on instructions	⇒ Control!
⇒ Agent services	
⇒ translation	
⇒ inspection	
⇒ inland shipping	
⇒ defective merchandise	

Commissions

Selling vs Buying

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ADDITIONS

Packing Costs

Packing costs include any containers (exclusive of IITs) 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.

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Royalties and License Fees

Paid On:

- Trademarks
- Copyrights
- Patents
- Items subsequently produced with imported product


Questions:

- When do they accrue?
- To whom are they paid?

For Customs Purposes:

- Need copy of agreement

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Royalties and License Fees

Examples

- Payments for right to manufacture - dutiable
- Payments for right to export to U.S. – dutiable
- Payment is part of price paid or payable - dutiable
- Payment for right to sell in the country of importation – may be dutiable
- Payment by importer to third person and which is not a condition of the sale for exportation - not dutiable

Hint: Was the fee part a condition of the sale of the merchandise for exportation to the country of importation?

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Proceeds of Subsequent Resale

An importer agrees to purchase imported merchandise for \$10.00 plus 3% of the resale price of the merchandise in the country of importation.

Dutiable?

- If the merchandise is sold in its condition as imported: **Dutiable**
- If the merchandise is subject to post-importation production and then sold: Not Dutiable
- If the proceeds are calculated solely on post-importation value-added: Not Dutiable

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Don't Walk the Plank! Question 3

Which of the following should be added to the PAPP and included in the transaction value?

- A. Costs to retail pack merchandise, after the goods are packed ready for shipment to the U.S.
- B. Commissions to a buying agent that controls the purchase and sale of the goods.
- C. Trademark royalties paid to an unrelated third party which are conditioned upon selling the goods in the U.S.
- D. Proceeds that accrue upon selling women's knit jackets that are produced in the U.S. from yarn imported from the foreign seller.

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Freight Deductions

Ex-Works	→	Foreign inland freight not included in PPP
+ Foreign Inland Freight		
F.O.B. Port of Export	→	Foreign inland freight included in PPP
+ Int'l Freight + Insurance	→	Air or Sea
=		
CIF (or DDU)	→	Actual vs. Estimate
+ Duty	→	Actual vs. Estimate
=		
DDP		

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Foreign Inland Freight

T.D. 00-20: Deductions for Freight Costs

- If purchased on CIF/DDP terms and know actual freight costs, then must deduct;
- If purchased on CIF/DDP terms but don't know actual freight costs but learn before liquidation, then must enter at full value and notify of inclusion of freight costs. To exercise reasonable care, must thereafter notify CBP of actual costs;
- If purchase on CIF/DDP terms and can't discern actual freight costs, then must enter at full value and notify of inclusion of freight costs. To exercise reasonable care, must provide statement of inability to discern actual costs; and
- If recurring use of CIF/DDP terms, then may use reconciliation.

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Related Parties

Transactions between "related parties" may be appraised using transaction value. They are, however, subject to closer scrutiny than those involving unrelated parties. Specifically, transaction value is acceptable if:

- "Circumstances of Sale" Method – The relationship did not influence the price actually paid or payable i.e., the parties treat each other as if not related
 - Normal pricing practices;
 - Sales to unrelated parties; or
- "Test Value" Method – The price actually paid or payable closely approximates either the transaction value of identical or similar merchandise in unrelated party transactions, or the deductive or computed value of identical or similar merchandise in related or unrelated party transactions.

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Supporting Transaction Value – Related Parties

- 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 by the relationship.
- CBP must consider differences in:
 - Commercial levels;
 - Quantity levels;
 - Additions to PAPP;
 - Sales not incurred in related party transactions

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First Sale Pricing: Example

<p>FACTORY</p> <p>200,000 units @ \$20 each</p>	<p>1st Sale of \$4MIL 10% Duty Rate = \$400,000 Duties</p>
vs.	
<p>MIDDLEMAN</p> <p>200,000 units @ \$25 each</p>	<p>2nd Sale of \$5MIL 10% Duty Rate = \$500,000 Duties</p>
<p>IMPORTER</p>	

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Transaction Value of Identical or Similar Merchandise

- Must have been exported at or around same time.
- Adjustments required for differences in
 - commercial level
 - quantities
 - based on sufficient information
- Must be lower or lowest of alternatives available.

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Deductive Value

Starting point is U.S. domestic sales price of:

- Imported merchandise; identical merchandise or similar merchandise

What is U.S. domestic sales price price:

1. *Sold at time of importation*: the unit price at which the merchandise is sold in the greatest *aggregate* quantity at or about the time of importation

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Deductive Value

2. *If: not sold at the time of importation* same formula but before the 90th day after importation. *What happens after 90 days?*

If: not 1 or 2, and there is further processing, and importer *elects* this option at time of filing entry summary

- Same formula but, *after further processing*, and before the 180th day following importation.

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Deductive Value

Deductions from the Unit Price:

- Commission *or* addition made for profit and general expenses, in sales of the imported merchandise of same general class or kind.
- Actual costs of int'l transportation and insurance.
- Actual transportation and insurance costs from place of importation to place of delivery.
- Customs duties and other federal taxes payable by reason of the importation; and, federal excise taxes measured by the value of the merchandise for which vendors are ordinarily liable (e.g. cigars).
- Value of further processing (3rd option).

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Computed Value

Computed Value of Imported Merchandise is the Sum of the Following:

- The cost or value of the materials and the fabrication and other processing
- An amount for profit and general expenses equal to that **usually reflected** in the sales of merchandise of the same class or kind made by the producers in the country of exportation for export to the United States;
- Any assist;
- The packing costs.

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All Other Means

If none of the above methods of appraisement fit the circumstances of the import transaction, then any other method that is "reasonable" and "consistent with the terms of the Code" may be used. This may be as simple as flexibly applying the specific provisions as discussed above.


For example:

- the 90-day time period for determining a domestic value under deductive value could be extended to 120 days;
- a determination of the computed value of imported merchandise could be based not on actual production-related costs but on the application of allocation or factoring methods; or
- used equipment for which there is no sale or other ready means of appraisement may be valued using a certified appraiser.

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Don't Walk the Plank! Question 4



Which of the following is true?

- A. If there is insufficient information to determine the value of an assist you can request CBP to assign it a value to avoid using an alternate method of appraisal.
- B. Comparative test values used to verify related party transactions should account for differences due to the value of assists.
- C. Both the transportation costs to bring assists to the place of production and for the international shipment of the finished merchandise to the U.S. may be excluded from value of the goods.
- D. Assists need not be included in arriving at a computed value.

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Questions?




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ARGGHH . . .

Thank You!



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