

- **Valuation and Assists**
- **Valuation Update**

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Drinker Biddle

Valuation Update

Transaction Value in Related Party Transactions

Transaction Value Defined

- Price actually paid or payable for the merchandise when sold for exportation to the United States, plus certain statutory additions to the price.
- “Price Actually Paid or Payable”
 - ➔ the total payment (whether direct or indirect) for the imported merchandise from the buyer to the seller.
 - ➔ often the invoice price, but certain upward and downward adjustments may be made.
- Must have sale (no consignment shipments).
- Related party sales must be at arm’s length,
 - ➔ Customs reviews related party transaction to ensure an arm’s length sale.
 - ➔ Related party sales may still be appraised using transaction value.
 - ➔ Agency may scrutinize sale to ensure relationship did not impact the price.

Transactions of Concern

Why is CBP concerned with related party transactions?



- “Transaction Value” relies on competing businesses to freely negotiate the fair market value of imported merchandise.
- CBP believes transactions between related parties are not subject to the same market forces as those between independent parties.

When are parties “related” in CBP’s eyes?

Family / Work Relations

- Officers and directors of each other’s businesses.
- Partners of same business.
- Employer / Employee.
- Members of same family.

Control Relations

- One person owns 5% of voting stock of both parties.
- One party controls the other.
- Both parties under the common control of a third party.
- Both parties control a third party.

Sec. 402(g)(1), Tariff Act of 1930, as amended
(19 U.S.C. 1401a(g)(1)).

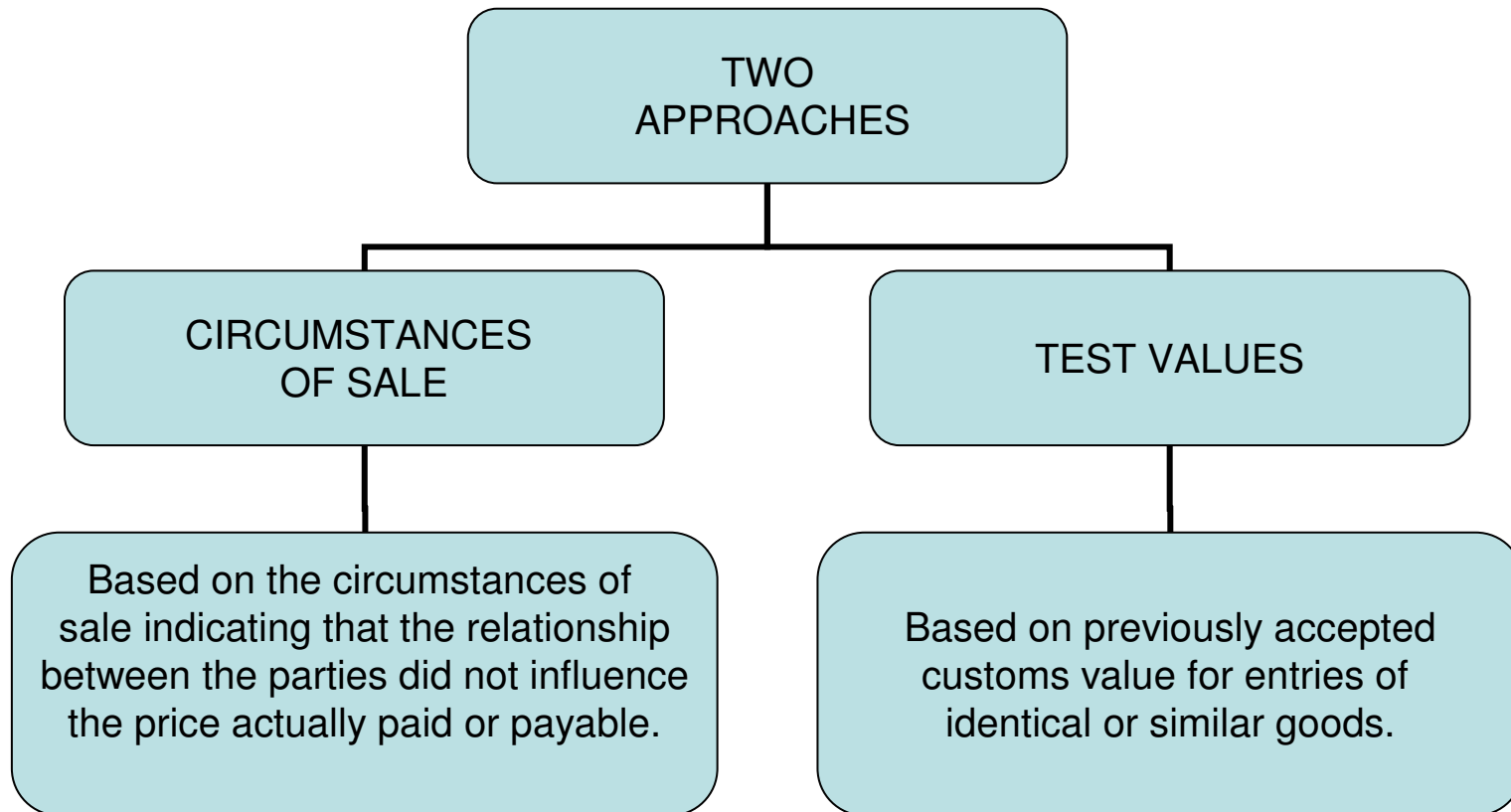
CBP Related Parties

What constitutes “control”?

“For the purposes of [the WTO Customs Valuation] Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.”

Note to Art. 15, GATT Valuation Agreement, Paragraph 4(e).

Evaluating Related Party Transactions for CBP Purposes



Circumstances of Sale Test

- Circumstances demonstrating the relationship did not influence the price paid or payable:
 - Price settled in a manner consistent with normal pricing practices of industry in question;
 - Price settled in a manner consistent with how the seller settles prices with unrelated buyers; or
 - 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.

Circumstances of Sale Test *(cont'd)*

➤ Historically, supporting evidence:

- ➔ Importer may demonstrate acceptability of transaction value through Advance Pricing Agreement ("APA") and transfer pricing studies.
- ➔ APA is a prospective agreement between the importer and the Internal Revenue Service concerning the acceptability of a firm's transfer pricing practices for tax purposes.
- ➔ Transfer pricing study is prepared by outside experts for the purpose of setting inter-company prices.

Winds of Change

- CBP updated its Informed Compliance Publication entitled “Determining the Acceptability of Transaction Value for Related Party Transactions” in April, 2007.
- Highlights:
 - ➔ What is the proper weight to be given to information an importer prepares for tax purposes?
 - ➔ Application of the arm’s length principle for CBP purposes v. IRS purposes.
 - ➔ Relevance of APA and Transfer Pricing Study to Customs Valuation.

Differences in Approach and Legal Requirements Between Customs and Tax Laws

➤ Different value requirements and time periods

- ➔ CBP looks at reporting on an entry-by-entry, product-by-product basis, whereas IRS looks at reporting on aggregate basis.



➤ Different statutory methods

- ➔ IRS uses, among others, Comparable Uncontrolled Price (“CUP”), Resale Price Method, and Cost Plus Method. Tax code does not specify a preferred method but requires application of the best transfer pricing method.
- ➔ Different comparability requirements
 - ◆ Product similarity vs. functional similarity of company.
- ➔ Different measures when related party price not arm’s length
 - ◆ Rejection of transaction value vs. adjustment of transfer price.



Good News, Bad News

- APA or similar pricing study by itself is not sufficient to show that a related party transaction is acceptable for customs purposes.
- Information in the APA or transfer pricing study may contain information relevant to determining the acceptability of the transfer prices for CBP, such as:
 - ➔ Pertinent information about the way the related parties transact business.
 - ➔ Information on sales of similar products to unrelated purchasers.
- If using APA or transfer pricing study to support circumstances of sale test, importer must identify the relevant information, explain its relevance, and submit supporting documentation to CBP.

Questions...

