

U.S. Customs and Border Protection

CBP Decisions

RE-APPROVAL OF MARINE TECHNICAL SURVEYORS, INC., AS A COMMERCIAL GAUGER

[CBP Dec. 07-87]

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Marine Technical Surveyors, Inc., of Donaldsonville, Louisiana, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Marine Technical Surveyors, Inc., 2382 Highway 1 South, Donaldsonville, Louisiana 70346, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity for gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger services this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Marine Technical Surveyors, Inc., as a commercial gauger became effective on January 10, 2006. The next triennial inspection date will be scheduled for January 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S.

Customs and Border Protection, 1300 Pennsylvania Avenue, NW,
Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: November 19, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, November 27, 2007 (72 FR 66184)]

**RE-APPROVAL OF INTERTEK USA, INC.,
AS A COMMERCIAL GAUGER**

[CBP Dec. 07-88]

AGENCY: U.S. Customs and Border Protection, Department of
Homeland Security.

ACTION: Notice of re-approval of Intertek USA, Inc., of Valdez,
Alaska, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR
151.13, Intertek USA, Inc., 354 Fairbanks Street, Valdez, Alaska
99686, has been re-approved to gauge petroleum and petroleum
products, organic chemicals and vegetable oils for customs purposes,
in accordance with the provisions of 19 CFR 151.13. Anyone wishing
to employ this entity for gauger services should request and receive
written assurances from the entity that it is approved by the U.S.
Customs and Border Protection to conduct the specific gauger
service requested. Alternatively, inquiries regarding the specific
gauger services this entity is approved to perform may be directed to
the U.S. Customs and Border Protection by calling (202) 344-060.
The inquiry may also be sent to [http://www.cbp.gov/xp/cgov/import/
operations_support/labs_scientific_svcs/org_and_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

DATES: The re-approval of Intertek USA, Inc., as a commercial
gauger became effective on September 6, 2006. The next triennial in-
spection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc,
Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S.

Customs and Border Protection, 1300 Pennsylvania Avenue, NW,
Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: November 19, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, November 27, 2007 (72 FR 66184)]

**RE-APPROVAL OF INTERTEK USA, INC., AS A
COMMERCIAL GAUGER**

[CBP Dec. 07-89]

AGENCY: U.S. Customs and Border Protection, Department of
Homeland Security.

ACTION: Notice of re-approval of Intertek USA, Inc., of Kapolei,
Hawaii, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR
151.13, Intertek USA, Inc., 91-110 Hanua Street, #204, Kapolei, Ha-
waii 96707, has been re-approved to gauge petroleum and petroleum
products, organic chemicals and vegetable oils for customs purposes,
in accordance with the provisions of 19 CFR 151.13. Anyone wishing
to employ this entity for gauger services should request and receive
written assurances from the entity that it is approved by the U.S.
Customs and Border Protection to conduct the specific gauger
service requested. Alternatively, inquiries regarding the specific
gauger services this entity is approved to perform may be directed to
the U.S. Customs and Border Protection by calling (202) 344-1060.
The inquiry may also be sent to [http://www.cbp.gov/xp/cgov/import/
operations_support/labs_scientific_svcs/org_and_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

DATES: The re-approval of Intertek USA, Inc., as a commercial
gauger became effective on August 22, 2006. The next triennial in-
spection date will be scheduled for August 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc,
Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S.

Customs and Border Protection, 1300 Pennsylvania Avenue, NW,
Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: November 19, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, November 27, 2007 (72 FR 66184)]

**RE-ACCREDITATION AND RE-APPROVAL OF SGS
NORTH AMERICA INC., AS A COMMERCIAL
GAUGER AND LABORATORY**

[CBP Dec. 07-90]

AGENCY: U.S. Customs and Border Protection, Department of
Homeland Security.

ACTION: Notice of re-approval of SGS North America Inc., of
Wilmington, North Carolina, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR
151.12 and 151.13, SGS North America Inc., 111 Cowan Road,
Wilmington, North Carolina 28401, has been re-approved to gauge
petroleum and petroleum products, organic chemicals and vegetable
oils, and to test petroleum and petroleum products for customs pur-
poses, in accordance with the provisions of 19 CFR 151.12 and
151.13. Anyone wishing to employ this entity to conduct laboratory
analysis or gauger services should request and receive written assur-
ances from the entity that it is accredited or approved by the U.S.
Customs and Border Protection to conduct the specific test or gauger
service requested. Alternatively, inquiries regarding the specific
tests or gauger services this entity is accredited or approved to per-
form may be directed to the U.S. Customs and Border Protection by
calling (202) 344-1060. The inquiry may also be sent to [http://
www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/
org_and_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

DATES: The re-approval of SGS North America Inc., as a commer-
cial gauger and laboratory became effective on August 31, 2006. The
next triennial inspection date will be scheduled for August 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc,
Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S.

Customs and Border Protection, 1300 Pennsylvania Avenue, NW,
Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: November 19, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, November 27, 2007 (72 FR 66185)]

**RE-ACCREDITATION AND RE-APPROVAL OF COLUMBIA
INSPECTION, INC., AS A COMMERCIAL GAUGER
AND LABORATORY**

[CBP Dec. 07-91]

AGENCY: U.S. Customs and Border Protection, Department of
Homeland Security.

ACTION: Notice of re-approval of Columbia Inspection Inc., of Fife,
Washington, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR
151.12 and 151.13, Columbia Inspection, Inc., 5013 Pacific Highway
East, Suite #2, Fife, Washington 98424, has been re-approved to
gauge petroleum and petroleum products, organic chemicals and
vegetable oils, and to test petroleum and petroleum products for cus-
toms purposes, in accordance with the provisions of 19 CFR 151.12
and 151.13. Anyone wishing to employ this entity to conduct labora-
tory analysis or gauger services should request and receive written
assurances from the entity that it is accredited or approved by the
U.S. Customs and Border Protection to conduct the specific test or
gauger service requested. Alternatively, inquiries regarding the spe-
cific tests or gauger services this entity is accredited or approved to
perform may be directed to the U. S. Customs and Border Protection
by calling (202) 344-1060. The inquiry may also be sent to [http://
www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/
org_and_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

DATES: The re-approval of Columbia Inspection Inc., as a commer-
cial gauger and laboratory became effective on March 13, 2007. The
next triennial inspection date will be scheduled for March 2010.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc,
Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S.

Customs and Border Protection, 1300 Pennsylvania Avenue, NW,
Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: November 19, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, November 27, 2007 (72 FR 66185)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, December 5, 2007

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

Myles B. Harmon for SANDRA L. BELL,
Executive Director,
Regulations and Rulings Office of Trade.

19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTER RELATING TO VALUATION OF CHILDREN’S DRESS-UP PRODUCTS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed modification of ruling letter and treatment relating to the valuation of merchandise shipped from Canada after storage in a Toronto warehouse.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to modify one ruling letter and any treatment previously accorded by CBP to substantially identical transactions, concerning the appraisement of children’s dress-up products that are made in Sri Lanka and subsequently imported from Canada after storage in

a Toronto bonded warehouse. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before January 18, 2008.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20220, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Gina Grier, Commercial and Trade Facilitation Division (202) 572-8719.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling relating in pertinent part to the valuation products that are imported after being warehoused in Canada. Although in this notice CBP is specifically referring to one ruling, Headquarters Ruling Letter ("HQ") 563551, dated October 12, 2006 (Attachment A), this notice covers any rulings on this issue that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search ex-

isting databases for rulings in addition to the one identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the issues subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 563551, CBP addressed the issue of the method of appraisal of children's dress-up products that are made in Sri Lanka and placed in a Canadian warehouse before shipment to the United States. Some of the items are placed into inventory in Canada pending receipt of orders from U.S. customers. The ruling also stated that other items for which U.S. orders already exist when they leave Sri Lanka are simply packaged for shipment to the U.S. customer. CBP held that those goods exported from Sri Lanka to Canada that are not subject to a preexisting U.S. order are not sold for exportation to the United States, and thus may not be appraised under transaction value upon entry into the United States. CBP also held that those items sold from Canadian inventory to U.S. customers are also precluded from being appraised under transaction value.

Upon review, certain factual inaccuracies concerning the disposition of goods arriving in Canada are noted in HQ 563551, which require correction. Furthermore, the modified ruling will amend the conclusion in HQ 563551 that items sold from inventory in the Canadian warehouse to U.S. customers may not be appraised under transaction value. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ 563551 and any other ruling not specifically identified as set forth in H009727, which is attached as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to modify any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: December 4, 2007

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ 563551
October 12, 2006
VAL RR:CTF:VS 563551 DCC
CATEGORY: VALUATION

MS. CAROL BEAUL
INTELLI TRADE INC.
5405 Eglinton Avenue West, Suite 100
Etobicoke, Ontario M9C 5K6 Canada

RE: Sale for Export

DEAR MS. BEAUL:

This letter is in response to your letter dated September 6, 2006, requesting an advance ruling letter on behalf of Creative Education of Canada, Inc. ("CEC"). Your request concerns the proper method of appraisement for imported merchandise. We also received a letter from CEC dated May 9, 2006.

FACTS:

CEC sells children's dress-up products to toy stores and toy distributors throughout the United States and Canada. In addition, CEC sells merchandise directly to U.S. and Canadian customers through on-line Internet sales. In addition to manufacturing products in Canada, CEC purchases merchandise from DSL Toys (PVT) Ltd. ("DSL"), located in Sri Lanka, for resale in Canada and the United States.

The market in which CEC sells its merchandise requires short turn-around to fulfill orders. CEC sells to small specialty stores that typically place orders just before their busiest times between the Halloween and Christmas seasons. In addition, because most of CEC's customers are small businesses, they place frequent orders in small quantities. Consequently, CEC's customers are unable to purchase merchandise directly from many manufacturers that only sell large quantity orders and require several months lead time.

Currently, DSL ships merchandise to CEC's warehouse located in Toronto, Canada. Merchandise bound for the U.S. market transits in-bond to CEC's warehouse in Toronto where it is destuffed, stored and subsequently forwarded to CEC's warehouse located in Kimball, Michigan. The merchandise is stored at CEC's Kimball warehouse until CEC receives an order from one of its U.S. customers.

CEC purchases merchandise from DSL on an FOB basis, and uses the price paid to determine the entered value under the transaction value method of appraisement.

CEC plans to reorganize its logistics operations to consolidate its warehousing operations at a single facility. Instead of transferring the DSL merchandise to its Kimball warehouse, CEC proposes to store all of its merchandise at its warehouse in Toronto. CEC plans to designate a portion of its Canadian warehouse as a bonded facility, which would then be used to store the DSL merchandise until shipment to customers in the United States. CEC states that the terms of sale for the DSL merchandise will continue to be FOB Columbo, Sri Lanka regardless of whether the merchandise is destined for the U.S. or Canadian market. You claim that the sale between DSL

and CEC will still provide an appropriate value for appraising the merchandise under the transaction value method of appraisement.

ISSUE:

Whether the transaction value method of appraisement may be used when merchandise is exported from Sri Lanka to Canada where it is stored in a bonded warehouse until resold and shipped to a U.S. customer.

LAW AND ANALYSIS:

Section 402(b)(1) of the Tariff Act of 1930, as amended by the Trade Agreement Act of 1979 (TAA; 19 U.S.C. 1401a) provides, in pertinent part, that the transaction value of imported merchandise is the “price actually paid or payable for the merchandise when sold for exportation to the United States,” plus enumerated additions. In order for imported merchandise to be appraised under the transaction value method it must be the subject of a *bona fide* sale between a buyer and seller, and it must be a sale for exportation to the United States. The “price actually paid or payable” is defined in section 402(b)(4)(A) of the TAA as:

The total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise . . .) made, or to be made, for the imported merchandise by the buyer to, or for the benefit of the seller.

CEC intends to change the way it imports goods from Sri Lanka to the United States. According to your submission, CEC plans to begin shipping Sri Lankan merchandise intended for the U.S. market to its warehouse located in Toronto, where it will be packaged for shipment to the United States to fill an existing order, or stored in a warehouse until resold to a customer in the United States. You claim that CEC will use special procedures to ensure that the merchandise from Sri Lanka is segregated from goods destined for the Canadian market. Specifically, you state that CEC will issue separate purchase orders and use distinct product codes for merchandise destined for the United States and Canada. You further state that the U.S. destined products will be stored in a bonded warehouse until they are ready for shipment to the U.S. customer.

CBP has previously addressed the question of whether merchandise is clearly destined for export to the United States. These rulings indicate that CBP will generally presume that there is no sale for export when merchandise is not shipped directly to the United States. *See* Headquarters Ruling Letter (“HRL”) 542310, dated May 22, 1981 (no sale for exportation to the United States when drill bits manufactured in Italy were stored in France for an indefinite period); HRL 542962, dated December 29, 1982 (no sale for exportation when motorcycle purchased in Japan for the purpose of being used for an extended period overseas before being imported); and HRL 547197, dated August 22, 2000 (no sale for exportation when vehicles were used in Europe for up to twelve months after the sale from the manufacturer).

The presumption that merchandise shipped to an intermediate country is not sold for export to the United States may be rebutted by sufficient evidence to show that the merchandise is clearly destined for the United States at the time of the sale from the producer. For example, in HRL 545254, dated November 22, 1994, CBP determined that there was a sale for export to the United States when goods were shipped from China to Canada and

then from Canada to the United States. In that case, the importer was able to demonstrate that the quantity and description of goods shipped from China to Canada matched exactly the quantity and description of goods shipped from Canada to the United States.

In the instant case, we find that the proposed transaction fails to overcome the presumption that the merchandise shipped from Sri Lanka to an intermediate country is not a sale for exportation to the United States. You state that some of the merchandise will be stored in CEC's inventory in Canada until ordered by a U.S. customer. Under this arrangement, some of the Sri Lankan merchandise allegedly destined for the United States will be stored in CEC's Canadian warehouse indefinitely until CEC receives an order from a U.S. customer. Clearly, under these circumstances, there will be no sale for exportation to the United States at the time the merchandise is shipped from Sri Lanka. Furthermore, we note that the Sri Lankan merchandise that is intended to be sold in the United States is identical to the merchandise sold in Canada. Although CEC plans to use different product codes to indicate which goods are for the U.S. market, the fact that CEC sells the same merchandise in the United States and Canada creates a contingency of diversion for the goods to be resold in Canada. Given these facts, we find that the subject merchandise is not destined for the United States when it is exported from Sri Lanka to Canada.

HOLDING:

Based on the information submitted, we find that goods exported from Sri Lanka to Canada, which are not the subject of a sale to a U.S. customer at the time of exportation, are not sold for export to the United States and, hence, may not be appraised under the transaction value method. Should CEC decide to store merchandise from Sri Lanka until it is resold to a customer in the United States, that merchandise must be appraised according to one of the alternative methods of appraisal in the valuation hierarchy described in 19 U.S.C. 1401a. A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

MONIKA R. BRENNER,
Chief,
Valuation and Special Programs Branch.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H009727
OT:RR:CTF:VS H009727 GG
CATEGORY: VALUATION

MS. CAROL BEAUL
INTELLI TRADE INC.
*5405 Eglinton Avenue West, Suite 100
Etobicoke, Ontario M9C 5K6 Canada*

RE: Transaction value; sale for exportation to the United States; warehoused in Canada

DEAR MS. BEAUL:

This letter is in reference to Headquarters Ruling Letter (“HQ”) 563551, dated October 12, 2006, that was issued to you on behalf of Creative Education of Canada, Inc. (“CEC”), on the subject of the valuation of children’s dress-up products imported from Canada. We have reconsidered HQ 563551 and have determined that it requires modification. Accordingly, this ruling sets forth the corrected appraisal determination. We regret any inconvenience this may have caused.

FACTS:

CEC sells children’s dress-up products to toy stores and toy distributors throughout the United States and Canada. In addition, CEC sells merchandise directly to U.S. and Canadian customers through on-line Internet sales. Approximately 86% of the sales are to the United States.

In addition to manufacturing products in Canada, CEC purchases merchandise from an unrelated manufacturer in Sri Lanka, DSL Toys (PVT) Ltd. (“DSL”), for resale in Canada and the United States. The market in which CEC sells its merchandise requires short turnaround to fulfill orders. CEC sells to small specialty stores that typically place orders just before their busiest times between the Halloween and Christmas seasons. In addition, because most of CEC’s customers are small businesses, they place frequent orders in small quantities. Consequently, CEC’s customers are unable to purchase merchandise directly from many manufacturers that only sell large quantity orders and require several months lead time.

At the time of the ruling request (September, 2006), CEC’s procedures with respect to merchandise ordered from DSL were as follows: Upon placing an order with DSL, CEC indicated the quantity of each item that was destined for Canada and the quantity (the majority) that was destined for the United States. All of the ordered product was shipped to Canada, where on arrival the Canadian destined goods were cleared through Canada Customs. The U.S. bound goods were not entered in Canada but proceeded in-bond to the United States where they cleared U.S. Customs. They were then stored in a warehouse in Michigan.

Upon receipt of orders from U.S. customers, CEC picked and packed the Canadian produced product in Canada, then shipped it to the United States where it was entered. The goods were then taken to the Michigan warehouse where the order was supplemented with items produced by DSL. The combined product would then be forwarded to the U.S. customers.

Under this old system, CEC was declaring the price it paid to DSL for those goods that were shipped in-bond to the United States upon arrival in Canada. The Canadian produced items were declared on the basis of the sale between CEC and the U.S. purchasers.

To reduce costs, CEC decided to reorganize its logistics operations by consolidating its warehousing operations at a single facility. Instead of transferring the U.S. bound DSL merchandise to the Michigan warehouse, CEC will now store all of its merchandise at its warehouse in Toronto. CEC planned to designate a portion of its Canadian warehouse as a bonded facility.

Under this new system, CEC will issue separate purchase orders to DSL for the U.S. destined products. These purchase orders are based on past and projected sales to U.S. customers, not on actual orders already placed. This is done to ensure that there will be sufficient stock to handle the orders when they come in, usually during the Halloween through Christmas seasons. This results in the importation into Canada of the products before any orders are received from U.S. customers.

All products destined for both the U.S. and Canada would now be shipped to the Toronto warehouse, where the Canadian bound product would be put into the Canadian inventory and the U.S. destined products placed in the bonded facility. There, defective U.S. bound products will be fixed within the bonded facility. Any defective product that cannot be fixed will be destroyed under CBSA (Canada Border Services Agency) supervision or shipped back to the vendor. Surplus or obsolete U.S. destined product will be sold at toy fairs or trade shows in the United States.

Under both the old and new systems, the terms of sale for the DSL merchandise purchased by CEC will be FOB Columbo, Sri Lanka regardless of whether the merchandise is destined for the U.S. or Canadian market. CEC would like to continue to declare the price it pays to DSL upon eventual entry into the United States.

ISSUE:

Whether, under CEC's new system, transaction value is properly based on the sales between CEC and DSL, or on the sales between CEC and the ultimate U.S. purchasers?

LAW AND ANALYSIS:

Section 402(b)(1) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. 1401a) provides, in pertinent part, that the transaction value of imported merchandise is the "price actually paid or payable for the merchandise when sold for exportation to the United States," plus enumerated additions. In order for imported merchandise to be appraised under the transaction value method it must be the subject of a *bona fide* sale between a buyer and seller, and it must be a sale for exportation to the United States.

CEC would like its merchandise to be appraised under transaction value based upon the sales between CEC and DSL. The first issue to be addressed is whether the transactions between CEC and the DSL are *bona fide* sales. CBP recognizes the term "sale," as described in *J.L. Wood v. United States*, 62 CCPA 25, 33, C.A.D. 1139, 505 F.2d 1400, 1406 (1974), to be a transfer of property from one party to another for consideration. In ascertaining whether a *bona fide* sale has taken place between a purported buyer and seller of the imported merchandise, no single factor is determinative. Rather, the relationship is to be determined by an overall view of the entire

situation, with the result in each case governed by the facts and circumstances of the case itself. Dorf International, Inc. v. United States, 61 Cust. Ct. 604, A.R.D. 245 (1968).

Several factors may indicate that a *bona fide* sale exists between the purported buyer and seller. In determining whether property or ownership has been transferred, CBP considers whether the potential buyer has assumed the risk of loss and acquired title to the imported merchandise. In addition, CBP may examine whether the purported buyer paid for the goods, and whether, in general, the roles of the parties and circumstances of the transaction indicate that the parties are functioning as buyer and seller. See HRL 545474, dated August 25, 1995, and HRL 545709, dated May 12, 1995. CEC has provided copies of purchase orders, invoices, and proof of payment, which indicate that it places orders with, is billed by, and pays DSL for the goods received. CEC explains that the “FOB Columbo” term of sale is used, which signifies that risk of loss, and in the absence of express instruction otherwise, also title, transfer from DSL to CEC when the goods are laden on board the departing vessel in Columbo. (We note that some of the submitted documents show a “C&F Toronto” term of sale, which is also indicative of risk of loss passing in Columbo, and the assumption by DSL of international shipping costs). To further demonstrate that its transactions with DSL are *bona fide* sales, CEC notes that it provides product and shipping instructions to DSL, sets the prices to its own customers without input from DSL, and issues a catalogue under its own name. We agree that the submitted documentation and the description of the roles of the parties support CEC’s contention that it enters into *bona fide* sales with DSL.

Although there are *bona fide* sales between CEC and DSL, to qualify as the basis for transaction value upon entry into the United States such sales must also be “for exportation to the United States.” CEC claims that the special procedures it has implemented under its new system ensure that the goods in question are destined solely for the United States when purchased from DSL. Specifically, CEC will issue separate purchase orders and use distinct product codes for merchandise destined, respectively, for the United States and Canada. Also, the U.S. destined products will be stored in a bonded warehouse until they are ready for shipment to the U.S. customer. CEC has also taken measures to ensure that defective goods will be either destroyed or returned to DSL, and that surplus or obsolete U.S. bound items will be sold at toy fairs or trade shows in the United States.

Notwithstanding these new procedures, when sold by DSL to CEC the goods will go to Canada, where they will stay in CEC’s inventory at the bonded warehouse until one of several contingencies occurs, including being sold to a U.S. customer, being returned to the vendor, being destroyed, or being sent to the United States for sale at a toy fair or trade show. At the time of the sale between DSL and CEC, there are no U.S. customers or arrangements to physically send the goods to the United States, and the ultimate disposition of the merchandise is unknown. Under these circumstances, the sale between DSL and CEC is not a sale for exportation to the United States.

HOLDING:

Under the new system, the sales between DSL and CEC are not sales for exportation to the United States. When the warehoused items are eventually sold by CEC to U.S. customers and shipped to the United States, such

sales are sales for exportation to the United States. Upon importation, the goods may be appraised under transaction value based upon the sales between CEC and its U.S. customers.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

EFFECT ON OTHER RULINGS:

Headquarters Ruling Letter (“HQ”) 563551, dated October 12, 2006, is hereby MODIFIED.

MYLES B. HARMON,
Director,
Commerical and Trade Facilitation Division.

