

*What Every Member of the
Trade Community Should Know About:*

***Proper Deductions
Of Freight And
Other Costs
From Customs
Value***



An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

March, 2000

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “*informed compliance*” and “*shared responsibility*,” which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs has issued a series of informed compliance publications, and videos, on new or revised Customs requirements, regulations or procedures, and a variety of classification and valuation issues.

The Value Branch, International Trade Compliance Division of the Office of Regulations and Rulings has prepared this publication on ***Proper Deductions for Freight and Other Costs from Customs Value*** as part of a series of informed compliance publications regarding the classification and valuation of imported merchandise. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Stuart P. Seidel,
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TABLE OF CONTENTS

Introduction.....	1
Appraisalment Statutory And Regulatory Requirements	3
Freight, Insurance And Other Costs Incident To International Shipment	3
Foreign Inland Freight.....	3
Post Importation Transportation.....	5
Entry Statutory And Regulatory Requirements.....	5
The Proper Deductions For Freight Costs From The Price Actually Paid Or Payable In Determining Transaction Value	7
Freight, Insurance And Other Costs Incident To International Shipment	8
Foreign Inland Freight And Post Importation Transportation	10
Evidence Of Actual Cost Of Freight	11
Summary	12
Additional Information.....	14
The Internet.....	14
Customs Regulations.....	14
Customs Bulletin	14
Importing Into the United States.....	15
Video Tapes.....	15
Informed Compliance Publications.....	16
Value Publications	18
“Your Comments are Important”	19

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Introduction

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs Service. In almost all cases, the goods are required to be “entered,” that is, declared to the Customs Service, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs Service. As part of the entry process, goods must be “classified” (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use “reasonable care” to “enter,” “classify,” and “value” the goods and provide any other information necessary to enable the Customs Service to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Under the authority of 19 U.S. Code §1500(a), it is Customs responsibility to fix the final appraisement of merchandise in accordance with 19 U.S. Code §1401a. This occurs after the importer of record, using reasonable care, has filed the declared value with the U. S. Customs Service. Customs informed compliance publication “*What Every Member of the Trade Community Should Know About: Customs Value*” (Revised December, 1999) discusses the methods of appraisement used in the United States. This publication concentrates on the treatment to be accorded to the following charges: freight, insurance and other costs incident to international shipment; foreign inland freight; and post importation transportation costs.

It has long been Customs position that the amount to be deducted from the price actually paid or payable for freight, insurance and other costs incident to the international shipment of merchandise, including foreign inland freight, are the **actual, as opposed to estimated costs**. The costs or charges for foreign inland freight may be deducted from the price actually paid or payable if they are included in the price actually paid or payable and they meet the relevant legal requirements. The costs or charges for post importation transportation may be excluded from transaction value if they are identified separately from the price actually paid or payable.

In order to remind the trade of this position, and to address recent trade inquiries regarding the Ocean Shipping and Reform Act (“OSRA,” see discussion below), Customs published a General Notice on the subject in the *Customs Bulletin and Decisions* (34 *Customs Bulletin* No.13, at 85, March 29, 2000, TD 00-20).

This is not the first time that Customs has issued a General Notice on the subject of freight, insurance and other costs incident to international shipment. On February 19, 1997, Customs issued a General Notice entitled “Actual Freight and Insurance Deduction” in Vol. 31, No. 8 of the *Customs Bulletin and Decisions*. The 1997 General Notice informed the public that charges for freight, insurance and other costs incident to international shipment of merchandise, including foreign inland freight costs, which may

be incurred from the country of exportation to the United States may be excluded from the price actually paid or payable and therefore not comprise part of the transaction value of the merchandise pursuant to § 402(b)(4)(A) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (“TAA”; 19 U.S.C. §1401a(b)(4)(A)). It also informed the public that in order to be deducted, such costs must first comprise part of the price actually paid or payable and that the amount to be deducted from the price actually paid or payable for freight, insurance and other costs incident to the international shipment of merchandise, including foreign inland freight costs, are the actual, as opposed to the estimated, costs. Additionally, the 1997 General Notice stated that, pursuant to 19 U.S.C. §1484(a)(1), the importer of record is required, using reasonable care, to make and complete entry by filing with Customs, among other things, the declared value of the merchandise. The importer of record’s declaration of a transaction value excluding an amount for freight/shipment charges based on estimated costs may constitute a failure to exercise reasonable care.

In this area, Customs has consistently found that a majority of the problems experienced by the importer of record concern the procedures in accounting for the cost of freight, insurance and other costs incident to international shipment. These problems are now compounded with the recent passage of the Ocean Shipping and Reform Act (“OSRA”), which became effective on May 1, 1999. The OSRA, in part, provides for the confidential treatment of freight rates that can now be freely negotiated between shippers and shipping lines. With the passage of the OSRA a shipping line may now refuse to divulge its actual freight charge to a third party, such as a Customs broker, who may have an interest in the matter as a customer or competitor to the shipping line. With the enactment of OSRA, there now exists the potential for conflict between the confidential treatment of freight rates, which can now be freely negotiated between shippers and shipping lines, and the reporting requirements of Customs and Census found in 13 U.S.C. §§ 301 and 303.

Under 13 U.S.C. §301, the Department of Commerce is required to compile and publish data on import charges. Under 13 U.S.C. §303, the Department of Treasury is charged with collecting the information required by the Department of Commerce in preparing our nation’s trade statistics. Section 30.70, Commerce and Foreign Trade Regulations (15 CFR §30.70), requires importers to report information for statistics on merchandise entering the U.S. on Customs entry documents such as Customs Form (“CF”) 7501, Entry Summary. The information required for statistical purposes includes value, “in accordance with the definitions set forth in the Tariff Schedules of the United States Annotated (TSUSA) and sections 402 and 402a of the Tariff Act of 1930, as amended.” *Id.* 15 CFR §30.70. Thus, trade statistics, such as value, must be collected by Customs in a timely manner at the time of entry. While there may be a potential conflict between this law and OSRA, Customs cannot ignore its responsibilities specifically provided in 13 U.S.C. §303.

Following the responsibilities imposed on Customs by the Customs Modernization Act or “Mod Act” (Title VI of the North American Free Trade Agreement Implementation Act [Pub. L. 103-182, 107 Stat. 2057], December 8, 1993), this General

Notice addresses all aspects of freight charges in order to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs laws.

Appraisal Statutory And Regulatory Requirements

The preferred method of appraisal is transaction value which is defined by §402(b)(1) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 ("TAA"; 19 U.S.C. §1401a(b)) as "the price actually paid or payable for the merchandise when sold for exportation to the United States..." plus certain additions specified in §402(b)(1)(A) through (E) of the TAA.

Freight, Insurance And Other Costs Incident To International Shipment

The term "price actually paid or payable" is defined in § 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 from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

See *also*, §152.102(f), Customs Regulations (19 CFR §152.102(f)). The costs associated with freight and insurance are not the estimated costs, but the actual costs paid to the freight forwarder, transport company, etc. See, Headquarters Ruling Letter ("HRL") 542206 dated March 23, 1981, HRL 544538 dated December 17, 1982, and HRL 542467 dated August 13, 1981. However, in HRL 546226 dated March 25, 1996, Customs determined that if the actual costs are not available or cannot be verified, costs for international transportation and insurance will not be excluded from transaction value.

Foreign Inland Freight

Customs' regulations for foreign inland freight and other inland charges incident to the international shipment of merchandise are found in §152.103(a)(5), Customs Regulations (19 CFR §152.103(a)(5)), as amended in T.D. 84-235 (November 29, 1984), which states:

- (i) Ex-factory sales. If the price actually paid or payable by the buyer to the seller for the imported merchandise does not include a charge for foreign inland freight and other charges for services incident to the international shipment of merchandise (an ex-factory price), those charges will not be added to the price.

- (ii) Sales other than ex-factory. As a general rule, in those situations where the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, whether or not itemized separately on the invoices or other commercial documents, that charge will be part of the transaction value to the extent included in the price. However, charges for foreign inland freight and other services incident to the shipment of the merchandise to the United States may be considered incident to the international shipment of that merchandise within the meaning of §152.102(f) if they are identified separately and they occur after the merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States.

- (iii) Evidence of sale for export and placement for through shipment. A sale for export and placement for through shipment to the United States under paragraph (a)(5)(ii) of this section shall be established by means of a through bill of lading to be presented to the district director. Only in those situations where it clearly would be impossible to ship merchandise on a through bill of lading (e.g., shipments via the seller's own conveyance) will other documentation satisfactory to the port director showing a sale for export to the United States and placement for through shipment to the United States be accepted in lieu of a through bill of lading....

The intent of 19 CFR §152.103(a)(5) is to permit foreign inland freight to be deducted from the price actually paid or payable where such charges are identified separately, and they occur after merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States. To ensure that the above criteria has been met Customs mandated that a "through bill of lading" be presented. Additionally, it is Customs' position that the amount of foreign inland freight which can be deducted is the "actual" freight paid to the freight forwarder, transport company, etc. See, HRL 545173 dated September 19, 1994, and HRL 544581 dated February 25, 1991, which provide that the actual amounts paid for foreign inland freight are deducted from the price actually paid or payable.

The issue of foreign inland freight was addressed in *All Channel Products vs. United States*, 16 CIT 169, 787 F.Supp. 1457 (1992), aff'd., *All Channel Products vs. United States*, 982 F.2d 513 (1992). In *All Channel*, the importer had not submitted a through bill of lading to Customs. The Court of International Trade ("CIT") held that the charges in question, foreign inland freight and related charges included in the CIF prices, did not "occur after the merchandise ha[d] been sold for export to the United States and placed with a carrier for through shipment to the United States", as required by 19 CFR §152.103(a)(5)(iii). Therefore, Customs was correct in not deducting foreign-inland freight and related charges from the CIF prices. The Court of Appeals for the Federal Circuit ("CAFC") affirmed the CIT decision indicating that the application

of 19 CFR §152.103(a)(5)(iii) to the transaction did not allow for a deduction for foreign inland freight.

Post Importation Transportation

As regards costs that are incurred after the merchandise has been imported, §402(b)(3) of the TAA states, in pertinent part:

The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

- (A) Any reasonable cost or charge that is incurred for-...
 - (ii) the transportation of the merchandise after such importation.

See also, §152.103(i), Customs Regulations (19 CFR §152.103(i)).

Entry Statutory And Regulatory Requirements

19 U.S.C. §1481 provides:

All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this section shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:...

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;...

(8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice prices when the amounts for such charges are unknown to the seller or shipper;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise;....

Additionally, 19 U.S.C. §1484(a)(1), requires the importer of record, using reasonable care, to:

(A) make entry...

(B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation...as is necessary to enable the Customs Service to-

- (i) properly assess duties on the merchandise,
- (ii) collect accurate statistics with respect to the merchandise, and
- (iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

19 U.S.C. §1485(a)(4) requires that:

Every importer of record making an entry under the provisions of section 1484 of this title shall make and file or transmit...a declaration under oath, stating-

- (2) That the prices set forth in the invoice are true...;
- (3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and
- (4) That he will produce at once to the appropriate customs officer any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct.

Moreover, §141.86(a)(8), Customs Regulations (19 CFR §141.86(a)(8)), provides that each invoice of imported merchandise, shall set forth...:

All charges upon the merchandise itemized by name and amount, including freight, insurance, commission, cases, containers, covering, and cost of packing; and if not included above, all charges, costs, and expenses incurred in bringing the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first United States port of entry. The cost of packing, cases, containers, and inland freight to the port of exportation need not be itemized by amount if included in the invoice price, and so

identified. Where the required information does not appear on the invoice as originally prepared, it shall be shown on an attachment to the invoice.

19 CFR §141.90(c) states that “[t]he importer shall show in clear detail on the invoice or on an attached statement the computation of all deductions from total invoice value, such as nondutiable charges, and all additions to invoice value which have been made to arrive at the aggregate entered value....”

Furthermore, General Statistical Note 1(a), *Harmonized Tariff Schedule of the United States* (HTSUS), provides that:

Persons making customs entry or withdrawal of goods imported into the customs territory of the United States shall complete the entry summary or withdrawal forms, as provided herein and in regulations issued pursuant to law, to provide for statistical purposes information as follows:...

(xiii) the U.S. dollar value in accordance with the definition in §402, Tariff Act of 1930, as amended, for all merchandise including that free of duty or dutiable at specific rates;

(xiv) the aggregate cost (not including U.S. import duty, if any) in U.S. dollars of freight, insurance and all other charges, costs and expenses (each of which charges, costs and expenses shall be separately itemized on or attached to the related invoice) incurred (except as provided below) in bringing the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first U.S. port of entry....

General Statistical Note 1(b)(ii), HTSUS, states that:

in the event that the information for the purposes of subparagraph (xiv) of paragraph (a) cannot be readily obtained, the person making the entry or withdrawal shall provide reasonable estimates of such information. The acceptance of an estimate for a particular transaction does not necessarily relieve the person making the entry or withdrawal from obtaining the necessary information for similar future transactions.

The content of General Statistical Note 1(a)(xiii) and (xvi), HTSUS, is also reiterated in Customs Directive No. 099 3550-061 dated September 18, 1992, which sets forth the “Instructions for Preparation of CF 7501.”

The Proper Deductions For Freight Costs From The Price Actually Paid Or Payable In Determining Transaction Value

Due to the statutory and regulatory authority set forth above, the requirements for freight, insurance and other costs incident to international shipment are different from

the requirements for foreign inland freight and post importation transportation. With regard to freight, insurance and other costs incident to international shipment, the importer of record **must deduct** the actual costs for these charges from the price actually paid or payable in determining transaction value. However, the cost or charge for foreign inland freight and post importation transportation **may or may not be deducted** depending on how the transaction is structured and identified on the Customs entry documentation.

Freight, Insurance And Other Costs Incident To International Shipment

As established above, the importer of record **must deduct** the actual cost of freight, insurance and other costs incident to international shipment, if they are included in the price actually paid or payable or referred to in the terms of sale. If the importer of record does not know the actual costs for these charges, **it must declare the entire value without a deduction for freight, insurance and other costs incident to international shipment and advise Customs that the entered value includes an unknown amount** for freight, insurance and/or other costs incident to international shipment, at the time of importation. Thereafter, **if the actual amount becomes available, the importer of record must inform Customs** so that a deduction can be made from the price actually paid or payable at liquidation. However, **if the actual amount is not available and/or verifiable, Customs will liquidate the entry at the declared value** without taking into account a deduction for freight, insurance and other costs incident to international shipment.

The following guidelines with general examples are provided to clarify any questions that remain on how the importer of record is to account for freight, insurance and other costs incident to international shipment on Customs entry documentation:

1. When the actual amount of freight, insurance and other costs incident to international shipment is known by the importer of record at the time of importation, the importer of record **must** make the correct value adjustment on the Entry Summary, CF 7501.

Illustration: A Product is sold CIF (“Cost, Insurance and Freight”) Port of Importation or DDP (“Delivered Duty Paid”) U.S. Customer’s Place of Business. International freight, insurance and/or other costs incident to international shipment **must** be deducted from the price to determine transaction value.

When errors in the declared values for freight, insurance and other costs incident to international shipment are discovered after Entry Summary and prior to liquidation, the importer of record **must** inform Customs.

2. When the actual amounts of freight, insurance and other costs incident to international shipment are included in the price actually paid or payable and are not known at the time of importation by the importer of record, the importer of record **must declare the entire value without a deduction for freight, insurance and other costs incident to international shipment and advise Customs that the entered value includes an unknown amount** for freight, insurance and/or other costs incident to international shipment and, to demonstrate its exercise of reasonable care, **must submit** supplemental information about known actual costs when discovered or a statement that the actual costs can not be discovered post entry.

Illustration: A Product is sold CIF Port of Importation or DDP U.S. Customer's Place of Business with the seller/shipper owning the method of transportation and all requests by the importer of record for information on actual freight are ignored by the seller/shipper.

Additionally, if the importer of record advises Customs that it is not able to obtain the actual amounts of freight, insurance and other costs incident to international shipment, Customs will liquidate the entry at the declared value without a deduction for freight, insurance and/or other costs incident to international shipment.

3. When the actual amounts of freight, insurance and other costs incident to international shipment are included in the price actually paid or payable and are not known at the time of importation by the importer of record and this is a recurring situation where **the use of Reconciliation is available**, the importer of record **may flag** the entry for Reconciliation and **declare an estimated** amount for freight, insurance and other costs incident to international shipment.¹ Thereafter, the importer of record **must follow** the ACS Reconciliation Prototype procedures.

Illustration: A Product is sold CIF Port of Importation or DDP U.S. Customer's Place of Business by a Foreign Parent Company to its related U.S. subsidiary and the Foreign Parent receives a rebate from the shipping company on an annual basis depending on the total volume shipped during the year.

Additionally, if the importer of record advises Customs that it is not able to obtain the actual amounts of freight, insurance and other costs incident to international

¹Reconciliation is currently not available in the situation where pursuant to the OSRA a shipping line may refuse to divulge its actual freight charge to a third party, such as a Customs broker, who may have an interest in the matter as a customer or competitor to the shipping line. Customs notified the trade, importers, brokers and other interested parties, of this position via a Memorandum dated August 12, 1999, circulated by the Director, Trade Programs, Trade Compliance Division, Office of Field Operations, regarding "Proper Freight Charges Required at Entry Summary; Ocean Shipping Reform Act."

shipment, Customs will liquidate the entry without a deduction for the estimated freight, insurance and/or other costs incident to international shipment.

4. When errors in declared values for freight, insurance and other costs incident to international shipment are discovered after liquidation, the importer of record still **must** provide the information to Customs under either a Protest pursuant to 19 U.S.C. §1514, a 19 U.S.C. §1520(c) claim for a clerical error, mistake of fact, or other inadvertence, or a Prior Disclosure, as appropriate under the factual circumstances.

Foreign Inland Freight And Post Importation Transportation

The costs or charges for foreign inland freight **may** be deducted from the price actually paid or payable in determining the transaction value of the imported merchandise and post importation transportation costs **may** be excluded from transaction value if they are included in the price actually paid or payable and they meet the requirements set forth above. It is important to remember that for **foreign inland freight** it is the **actual charges** which may be excluded in determining transaction value. Whereas, an exclusion for **post importation transportation** will be based on **any reasonable cost or charge**. As previously discussed herein pursuant to 19 CFR §152.103(a)(5), whether or not foreign inland freight costs are included in transaction value is dependent on how the costs are structured and identified on the Customs entry documentation.

Customs has not encountered extensive problems with the exclusion of the reasonable cost or charge for post importation transportation. The majority of problems in this area arise with regard to the exclusion of foreign inland freight from the price actually paid or payable. Therefore, the following guidelines with general examples are provided to clarify any questions that remain on how the importer of record is to account for foreign inland freight and post importation transportation with specific reference to foreign inland freight:

1. When the actual amount of foreign inland freight is known at the time of importation by the importer of record and the importer of record intends to take a deduction for foreign inland freight, the importer of record **must** make the correct value adjustment on the Entry Summary.

Illustration: Product is sold CIF (“Cost, Insurance and Freight”) Port of Importation. **If** a through bill of lading is available and the cost for foreign inland freight is separately identified, the cost for foreign inland freight **is deducted**.

Illustration: Product is sold DDP (“Delivered Duty Paid”) to U.S. Customer. **If** a through bill of lading is available and the cost for foreign inland freight is separately identified, the cost for foreign inland freight **is deducted**. **If** a deduction is to be

made for post importation transportation, this cost **must be identified separately** on the Customs entry documentation.

When errors in the declared values for foreign inland freight and/or post importation transportation are discovered after Entry Summary and prior to liquidation, the importer of record **must** inform Customs.

2. When the actual amounts of foreign inland freight are included in the price actually paid or payable and are not known at the time of importation by the importer of record and the importer of record intends to take a deduction for foreign inland freight, the importer of record **must declare the entire value without a deduction for foreign inland freight** and **advise Customs that the entered value includes an unknown amount** for foreign inland freight and, to demonstrate reasonable care, **must submit** supplemental information about known actual costs when discovered or a statement that the actual costs can not be discovered post entry.

Additionally, if the importer of record advises Customs that it is not able to obtain the actual amounts of foreign inland freight, Customs will liquidate the entry at the declared value without a deduction for foreign inland freight.

3. When the actual amounts of foreign inland freight are included in the price actually paid or payable and are not known at the time of importation by the importer of record and the importer of record intends to take a deduction for foreign inland freight and this is a recurring situation where **the use of Reconciliation is available**, the importer of record **may flag** the entry for Reconciliation and **declare an estimated amount** for foreign inland freight. Thereafter, the importer of record **must follow** the ACS Reconciliation Prototype procedures.

Additionally, if the importer of record advises Customs that it is not able to obtain the actual amounts of foreign inland freight, Customs will liquidate the entry without a deduction for the estimated foreign inland freight.

4. When errors in declared values for foreign inland freight and/or post importation transportation are discovered after liquidation, the importer of record still **must** provide the information to Customs under either a Protest pursuant to 19 U.S.C. §1514, a 19 U.S.C. §1520(c) claim for a clerical error, mistake of fact, or other inadvertence, or a Prior Disclosure, as appropriate under the factual circumstances.

Evidence Of Actual Cost Of Freight

Customs considers actual costs to constitute those amounts ultimately paid to the international carrier, freight forwarder, insurance company or other appropriate provider of such services. Commercial documents to and from the service provider

such as an invoice or written contract separately listing freight/insurance costs, a freight/insurance bill, a through bill of lading or proof of payment of the freight/insurance charges (i.e., letters of credit, checks, bank statements) are **examples** of some documents which typically serve as proof of such actual costs. Other types of evidence may be acceptable.

The acceptability of other documentary evidence is at the discretion of the appropriate Customs official. Section 500(a) of the TAA, as amended (19 U.S.C. §1500(a)), states that the Customs Service shall, under rules and regulations prescribed by the Secretary-

fix the final appraisement of merchandise by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding."

As evidenced by the reference to §500 in the Statement of Administrative Action ("SAA"), which forms part of the legislative history of the TAA, Congress recognized Customs authority to use reasonable ways and means to determine the appropriate value, using whatever evidence is available, within the constraints of §402 of the TAA. Additionally Congress noted in the SAA that:

Section 500 allows Customs to consider the best evidence available in appraising merchandise . . . Section 500 authorize[s] the appraising officer to weigh the nature of the evidence before him in appraising the imported merchandise.

Thus, a Customs official has discretion in accepting various types of evidence to verify the amounts deducted for freight.

Summary

If included in the price actually paid or payable, the actual cost or charge for freight, insurance and other costs incident to international shipment are deducted from the price actually paid or payable in determining transaction value. The costs or charges for foreign inland freight may be deducted from the price actually paid or payable if they are included in the price actually paid or payable and they meet the relevant legal requirements. The amount to be deducted from the price actually paid or payable for freight, insurance and other costs incident to the international shipment of merchandise, including foreign inland freight, are the actual, as opposed to estimated costs. The costs or charges for post importation transportation may be excluded from transaction value if they are identified separately from the price actually paid or payable. An exclusion for post importation transportation will be based on any reasonable cost or charge. When errors in declared values for freight, insurance and other costs incident to international shipment, foreign inland freight and/or post importation transportation

are discovered after Entry Summary and prior to liquidation, the importer of record **must** inform Customs.

If the importer of record does not know the actual costs for freight, insurance and other costs incident to international shipment, **it must declare the entire value without a deduction for freight, insurance and other costs incident to international shipment** and, to demonstrate its exercise of reasonable care, **advise Customs that the entered value includes an unknown amount** for freight, insurance and other costs incident to international shipment at the time of importation. Likewise, if the importer of record does not know the actual cost for foreign inland freight and it intends to take a deduction for foreign inland freight, **it must declare the entire value without a deduction for foreign inland freight** and, to demonstrate reasonable care, **advise Customs that the entered value includes an unknown amount** for foreign inland freight. Thereafter, **if the actual amounts become available** before liquidation, **the importer of record must inform Customs** so that a deduction can be made from the price actually paid or payable at liquidation. If the actual costs can not be discovered post entry, the importer of record **must advise** Customs that it is not able to obtain the actual amounts. When **the actual amounts are not available and/or verifiable**, **Customs will liquidate the entry at the declared value** without taking into account a deduction for freight, insurance and other costs incident to international shipment, and foreign inland freight.

When the actual amounts of freight, insurance and other costs incident to international shipment are included in the price actually paid or payable and are not known at the time of importation by the importer of record and this is a recurring situation **where the use of Reconciliation is available**, the importer of record **may flag** the entry for Reconciliation and **declare an estimated** amount for freight, insurance and other costs incident to international shipment. Likewise, when the actual amounts of foreign inland freight are included in the price actually paid or payable and are not known at the time of importation by the importer of record and the importer of record intends to take a deduction for foreign inland freight and this is a recurring situation where **the use of Reconciliation is available**, the importer of record **may flag** the entry for Reconciliation and **declare an estimated amount** for foreign inland freight. Thereafter, the importer of record **must follow** the ACS Reconciliation Prototype procedures. If the importer of record advises Customs that it is not able to obtain the actual amounts of freight, insurance and other costs incident to international shipment and foreign inland freight, Customs will liquidate the entry without a deduction for the estimated freight, insurance and other costs incident to international shipment and foreign inland freight.

Finally, when errors in declared values due to previously unknown amounts for freight insurance, and other costs incident to international shipment, foreign inland freight and/or post importation transportation are discovered after liquidation, the importer of record **must** provide the information to Customs under either a Protest pursuant to 19 U.S.C. § 1514, a 19 U.S.C. § 1520(c) claim for a clerical error, mistake of

fact, or other inadvertence, or a Prior Disclosure, as appropriate under the factual circumstances.

Additional Information

The Internet

The U. S. Customs Service's home page on the Internet's World Wide Web, provides the trade community with current, relevant information regarding Customs operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, Customs publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your person computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site links to the Customs Electronic Bulletin Board (CEBB), an older electronic system on which Customs notices and drafts were posted. Since December, 1999 the CEBB has been only accessible through the web site. The web site also links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. Customs web site also contains a wealth of information of interest to a broader public than the trade community -- to international travelers, for example.

The Customs Service's web address is <http://www.customs.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone 202-512-1800. A bound, 1999 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Customs Regulations from April 1998 through March 1999, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin*, described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("*Customs Bulletin*") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as Customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The 1998 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and the Customs Service by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The 1998 edition contains a new section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between Customs and the import community, wherein Customs communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that Customs is provided accurate and timely data pertaining to his or her importations.

Single copies may be obtained from local Customs offices or from the Office of Public Affairs, U.S. Customs Service, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the Customs web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Video Tapes

The Customs Service has prepared a series of video tapes in VHS format for the trade community and other members of the public. As of the date of this publication, four tapes are available and are described below.

If you would like more information on any of the tapes described below, or if you would like to order them, please send a written request to: U.S. Customs Service, Office of Regulations and Rulings, Suite 3.4A, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a *check or money order drawn on a U.S. financial institution* and made payable to U.S. Customs Service. Prices include postage.

- *Rules of Origin for Textiles and Apparel Products* is a two-hour tape aimed at increasing understanding of the new rules, which became effective July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms, or it can be ordered from the U.S. Customs Service for \$20.00.
- *Customs Compliance: Why You Should Care* is a 30-minute tape divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior

executives and others in the importing or exporting business with an overview of the significant features of the Customs Modernization Act and the reasons to adopt new strategies in order to minimize legal exposure under the Act.

Part II is intended primarily for import/export compliance officers, legal departments and company officers. About 12 minutes long, Part II explains why Customs and the trade can benefit from sharing responsibilities under Customs laws. It also provides viewers with legal detail on record keeping, potential penalties for noncompliance, and on the Customs prior-disclosure program. The cost is \$15.00.

- *Account Management: Team Building for World Trade*, a 13-½-minute tape on account management, discusses what account management is and why there is a need for it. Account Management is a new approach to working with the trade in which a company is treated as an account, rather than being dealt with on a transaction by transaction basis. The tape includes discussions with Customs account managers and representatives of importers (“accounts”) relating to the benefits of account management from the perspectives of the both the Customs Service and the trade community. The cost is \$15.00.
- *General-Order Warehousing: Rules for Handling Unclaimed Merchandise*, 90 minutes long, was prepared jointly by the Customs Service and the trade community on the subject of general-order merchandise (unclaimed goods). The tape includes question and answer discussions that define procedures required to implement the new general-order laws and regulations and why there is a need to have effective procedures for handling unclaimed goods. The cost is \$15.00.

Informed Compliance Publications

The U. S. Customs Service has prepared a number of Informed Compliance publications in the “*What Every Member of the Trade Community Should Know About...*” series. As of the date of this publication, the subjects listed below were available.

- ⁴ 1. Customs Value (15/96, ⁴Revised 12/99)
- ¹ 2. Raw Cotton: Tariff Classification and Import Quotas (5/13/96)
- ¹ 3. NAFTA for Textiles & Textile Articles (5/14/96)
- 4. Buying & Selling Commissions (16/96, Revised 1/2000)
- ¹ 5. Fibers & Yarn (8/96)
- ³ 6. Textile & Apparel Rules of Origin (11/96, Revised 11/98)
- ¹ 7. Mushrooms (10/96)
- ¹ 8. Marble (11/96)
- ¹ 9. Peanuts (11/96)
- 10. Bona Fide Sales & Sales for Exportation (11/96, Revised 1/2000)
- ² 11. Caviar (2/97)

- ² 12. Granite (2/97)
- ² 13. Distinguishing Bolts from Screws (5/97)
- ² 14. Internal Combustion Piston Engines (5/97)
- ² 15. Vehicles, Parts and Accessories (5/97)
- ² 16. Articles of Wax, Artificial Stone and Jewelry (8/97)
- ² 17. Tariff Classification (11/97)
- ² 18. Classification of Festive Articles (11/97)
- ³ 19. Ribbons & Trimmings (1/98)
- ³ 20. Agriculture Actual Use (1/98)
- ³ 21. Reasonable Care (1/98)
- ³ 22. Footwear (1/98)
- ³ 23. Drawback (3/98)
- ³ 24. Lamps, Lighting and Candle Holders (3/98)
- ³ 25. NAFTA Eligibility and Building Stone (3/98, Revised 12/98)
- ³ 26. Rules of Origin (5/98)
- ³ 27. Records and Recordkeeping Requirements (6/98)
- ³ 28. ABC's of Prior Disclosure (6/98)
- ³ 29. Gloves, Mittens and Mitts (6/98)
- ³ 30. Waste & Scrap under Chapter 81 (6/98)
- ³ 31. Tableware, Kitchenware, Other Household Articles and Toilet Articles of Plastics (11/98)
- ³ 32. Textile & Apparel Rules of Origin Index of Rulings (11/98)
- ⁴ 33. Knit to Shape Apparel Products (1/99)
- ⁴ 34. Hats and Other Headgear (under HTSUS 6505) (3/99)
- ⁴ 35. Customs Enforcement of Intellectual Property Rights (6/99)
- ⁴ 36. Classification of Children's Apparel (6/99)
- ⁴ 37. Accreditation of Laboratories and Gaugers (9/99)
- ⁴ 38. Classification of Sets (9/99)
- ⁴ 39. Marking Requirements for Wearing Apparel (9/99)
- ⁴ 40. Fiber Trade Names & Generic Terms (11/99)
- ⁴ 41. NAFTA Country of Origin Rules for Monumental & Building Stone (12/99)
- 42. Diodes, Transistors & Similar Semiconductor Devices (1/2000)
- 43. Soldering and Welding Machines and Apparatus (1/2000)
- 44. Cane and Beet Sugar (Quota, Classification & Entry) (1/2000)
- 45. Turbojets, Turbopropellers and Other Gas Turbines, (HTSUS 8411) and Parts Thereof (1/2000)
- 46. Writing Instruments of Heading 9609 HTSUS (1/2000)
- 47. New Decisions on Candle Holders v. Decorative Glass Articles (2/2000)
- 48. Customs Brokers (3/2000)
- 49. Proper Deductions for Freight & Other Costs (3/2000)
- 50. Table and Kitchen Glassware (3/2000)

■ indicates publications which are, or will be, available for downloading from the Customs Electronic Bulletin Board or through Customs Home Page on the Internet: <http://www.customs.gov>;

¹ denotes reprinted in *30/31 Customs Bulletin No.50/1*, January 2, 1997;

² denotes reprinted in *32 Customs Bulletin No.2/3*, January 21, 1998;

³ denotes reprinted in *32 Customs Bulletin No. 51*, December 23, 1998.

⁴denotes reprinted in *33 Customs Bulletin No. 51*, December 22, 1999

Check the Customs Internet website for more recent publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 CFR §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054. This publication is also available on the Customs Service Internet website.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may be also be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT



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