



MASTER CUSTOMS SPECIALIST (MCS) COURSE

Part 4: Valuation | Module 12: Transaction Value – Related Party Transactions

List of Lessons:

- INTRODUCTION
- Lesson 1: Special Rules for Related Parties
- Lesson 2: Circumstances of Sale Test
- Lesson 3: Substantiating a Circumstances of Sale Claim
- Lesson 4: Test Values Test
- Lesson 5: Applicability of the Test Values Test
- Lesson 6: Transfer Pricing Studies
- Lesson 7: Transaction Value
- Lesson 8: Additions to Price Paid or Payable
- Lesson 9: Exclusions from Transaction Value

INTRODUCTION

Under Section 484 of the Tariff Act, 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 U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. ([Determining the Acceptability of Transaction Value for Related Party Transactions](#))

The primary method of appraisement is transaction value, which is defined as “the price actually paid or payable for the merchandise when sold for exportation to the United States,” plus amounts for certain statutorily enumerated additions to the extent they are not otherwise included in the price actually paid or payable.

- When there is no transaction value, the other valuation methods (transaction value of identical or similar goods, deductive value, computed value, and the fallback method), are to be applied in sequence.

Lesson 1: Special Rules for Related Parties

There are special rules that apply when the buyer and seller are related parties. Transaction value can only be applied if “the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.”



Transaction value between a related buyer and seller is acceptable if the importation meets either of two tests:

- 1. Circumstances of Sale**
- 2. Test Values**

Lesson 2: Circumstances of Sale Test

Under the “circumstances of sale” test, the transaction value between a related buyer and seller is acceptable if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between the buyer and the seller did not influence the price actually paid or payable. Under this test, the relevant aspects of the transaction are analyzed, including:

- The way in which the buyer and the seller organize their commercial relations
- The way in which the price in question was arrived at, in order to determine whether the relationship influenced the price.

The circumstances of sale test by its very nature must be applied case-by-case. As provided in 19 CFR 152.103(l), the following circumstances demonstrate that the relationship has not influenced the price:

- The price was settled in a manner consistent with the normal pricing practices of the industry in question
- The price was settled in a manner consistent with the way the seller determines prices for sales to buyers who are not related to it
- The 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.

Lesson 3: Substantiating a Circumstances of Sale Claim

In CBP’s rulings applying the circumstances of sale test, the determination of whether the relationship between the parties influenced the price depends on a review of all the relevant circumstances of sale and the supporting documentation.

The application of the circumstances of sale test generally presents two issues:

1. Whether there is sufficient evidence to establish the alleged circumstances of sale
2. Whether such circumstances demonstrate that the relationship between the buyer and the seller did not influence the price.



The importer should be prepared to provide a thorough explanation of the circumstances surrounding the sale, supporting evidence, and an explanation of why the importer believes that such circumstances establish that the relationship did not influence the price.

CBP often rejects circumstances of sale claims because the allegations are conclusory and not supported by evidence. For example, the claim will be rejected when the importer alleges that the transfer price is negotiated at arm's length, but does not submit any evidence, such as correspondence between the parties, that reflects such negotiation. Similarly, the claim will be rejected where the importer alleges that the price was settled in a manner consistent with sales to unrelated buyers, but does not provide documentation, such as contracts and invoices, regarding both the related and unrelated party sales. An all costs plus profit claim should be supported by information and documentation regarding both the seller's costs and the firm's profit.

Lesson 4: Test Values Test

An alternative method to establish the acceptability of transaction value is to demonstrate that it closely approximates certain test values pertaining to identical or similar goods exported at or about the same time as the imported merchandise under review.

Specifically, under the test value method, the transaction value between a related buyer and seller is acceptable if the transaction value of the imported merchandise closely approximates one of the following "test values":

1. The transaction value of identical merchandise, or similar merchandise, in sales to unrelated buyers in the United States
2. The deductive value or computed value for identical merchandise of similar merchandise

Importers often mistakenly believe that transaction value is acceptable for the imported goods when it is the same as the value calculated by the importer under the deductive value or the computed value method for those same imported goods. This is not the case. If there are no previous importations of identical or similar merchandise that were appraised under the transaction, deductive, or computed value methods, there are no test values that can be applied.

Lesson 5: Applicability of the Test Values Test

With regard to the proper use of test values, the value law indicates that they are to be used for comparison purposes. In other words, test values are used solely to determine whether the related party transaction value is acceptable. If the related party transaction value closely approximates a test value, the merchandise is appraised based on the related party transaction



value. If the related party transaction value does not closely approximate a test value, then transaction value is acceptable only if the circumstances of sale test is met. Otherwise, the merchandise must be appraised using the next applicable valuation method in the hierarchy.

Lesson 6: Transfer Pricing Studies

Importers sometimes claim that a related party transaction value is acceptable because it satisfies the arm's length principle as related to transfer pricing. Sometimes, a transfer pricing study is submitted along with the claim. In various rulings addressing this issue, CBP has determined that a transfer pricing study by itself is not sufficient to show that a related party transaction value is an acceptable transaction value. CBP has noted that although the broad goal of both the relevant provisions of the customs and the tax law is the same, i.e., to ensure that related party transactions are at arm's length, there are substantial differences in the legal requirements.

CBP has ruled that the fact that the importer's transfer pricing methodology satisfies one of the IRS methods is not determinative of whether it is an acceptable transaction value for customs purposes. Rather, a related party transaction value will be considered acceptable only if it satisfies either the circumstances of sale test or closely approximates one of the test values as provided in customs value law.

Lesson 7: Transaction Value

As previously noted, transaction value between a related buyer and seller is acceptable if the importation meets either of two tests:

- 1. Circumstances of Sale**
- 2. Test Values**

In determining transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word "payable" refers to a situation in which the price has been agreed upon, but actual payment has not been made at the time of importation. Payment may be made by letters of credit or negotiable instruments and may be made directly or indirectly. (19 CFR 152.103)



Lesson 8: Additions to Price Paid or Payable

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 amounts equal to:

1. The **packing costs** incurred by the buyer with respect to the imported merchandise
2. Any selling **commission** incurred by the buyer with respect to the imported merchandise
3. The value, apportioned as appropriate, of any **assist**
4. Any **royalty or license fee** related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States
5. The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

Lesson 9: Exclusions from Transaction Value

The transaction value of imported merchandise does not include any of the following reasonable costs or charges, if identified separately from the price actually paid or payable:

1. The construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States
2. The transportation of the merchandise after its importation.
3. The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable.