

DUTIABILITY OF FOREIGN INLAND FREIGHT: REGULATION AND ANALYSIS

As to foreign inland freight charges incidental to the international shipment of merchandise, Customs' regulations 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 district 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 the T.D. 84-235 was to permit foreign inland freight to be non-dutiable when all three of the following criteria have been met:

1. Such charges are identified separately
2. They occur after merchandise has been sold for export to the United States
3. Freight has been placed with a carrier for through shipment to the United States.

To ensure that the above criteria have been met, Customs mandated that a "through bill of lading" be presented. "Through bill of lading" was defined in Customs field instructions dated February 6, 1985, as "a contract, waybill, invoice, issued by one carrier or forwarder which controls the manner of shipment from the point or place of manufacture or origin to the U.S. port of importation or beyond (although the shipment may extend over two or more lines of connecting carriers), shows the origin and destination of the shipment, consignor and consignee, route of movement and applicable rate or rates." **Without the evidence of a through bill of lading no deduction may be made for foreign inland freight charges.**¹

¹ Binding Ruling HQ546273