

NDC'S, ANTIDUMPING DUTIES

Generally, if the terms of sale include 'duty-paid', then estimated duties on the imported articles are a non-dutiable charge. If the imported articles have Antidumping duties assessed, this term is meant to cover these special duties also. Extracts of Binding Ruling HQ 545304 follow:

January 4, 1994

ISSUE: The issue presented is whether antidumping duties in a C.I.F. duty-paid price should be included in the transaction value of imported merchandise.

LAW AND ANALYSIS: Merchandise imported into the United States is appraised in accordance with section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. 1401a). The preferred method of appraisement is transaction value, defined as the "price actually paid or payable for imported merchandise when sold for exportation to the United States," plus five statutorily enumerated additions. 19 U.S.C. 1401a(b)(1). For the purposes of this ruling we have assumed that transaction value is the appropriate basis of appraisement.

Section 402(b)(3) of the TAA provides that transaction value does not include, if identified separately from the price actually paid or payable:

(B) 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, such merchandise for which vendors in the United States are ordinarily liable.

19 U.S.C. 1401a(b)(3)(B). Customs duties and other Federal taxes currently payable are also excluded from the appraised value of merchandise calculated under the deductive value method. 19 U.S.C. 1401a(d)(3)(A)(iv).

In Headquarters Ruling Letter (HRL) 543963 dated September 11, 1987, we stated that countervailing duties would be excluded from transaction value pursuant to section 402(b)(3) provided they were identified separately from the price actually paid or payable. In that case although the amount of the countervailing duty was not separately identified on the commercial invoice, the fact that the consumption entry separately identified the countervailing duty was deemed to be sufficient. See also HRL 544722 dated June 4, 1991; HRL 544596 dated November 23, 1990; and HRL 544552 dated September 20, 1990. Similarly, it is our position that antidumping duties constitute "customs and other Federal taxes" such that they would not be included in transaction value pursuant to section 402(b)(3), provided the amount of such duties are identified separately from the price actually paid or payable for the imported merchandise.

HOLDING: Antidumping duties forming part of a c.i.f. duty-paid price, provided they are identified separately from the price actually paid or payable, constitute customs duties and other Federal taxes and should not be included in the transaction value of imported merchandise determined under section 402(b) of the TAA.