

SALE IN TRANSIT

Law and analysis as excerpted from Ruling HQ 546588, October 25, 1999

The preferred method of appraising merchandise imported into the United States is transaction value pursuant to 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). Transaction value is defined as "the price actually paid or payable for the merchandise **when sold for exportation to the United States**", plus amounts for certain enumerated additions. Transaction value is an acceptable basis of appraisement if the buyer and seller are not related, or if related the relationship between the parties did not influence the price or if the transaction value approximates certain "test" values.

In determining whether a bona fide sale exists between a potential buyer and seller of imported merchandise, no single factor is determinative. Rather, the relationship is to be ascertained by an overall view of the entire situation, with the result in each case governed by the facts and circumstances of the case itself. See *Dorf International, Inc. vs. U.S.*, 61 Cust. Ct. 604, A.R.D. 245 (1968). Customs recognized the term "sale," as articulated in the case of *J.L. Wood vs. U.S.*, 62 CCPA 25, 33; C.A.D. 1139, 505 F.2d 1400, 1406(1974) as the transfer of property from one party to another for consideration. While *J.L. Wood* was decided under the prior valuation statute, Customs adheres to this definition under the TAA. However, several factors may indicate whether a bona fide sale exists between a buyer and seller. In determining whether property or ownership has been transferred, Customs considers whether the potential buyer has assumed the risk of loss and acquired title to the imported merchandise. See HRL 545105 dated November 9, 1993.

In addition, Customs examines whether the potential 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. Did the buyer pay or agree to pay for the goods prior to exportation? Whom is the consignee on the Bill of lading?, What were the Incoterms?, Whom is the buyer on the commercial invoice?. See HRL 545709 dated May 12, 1995, HRL 545474 dated August 25, 1995.

In the context of filing an entry, Customs Form (CF) 7501, an importer is required to make a value declaration. As indicated by the language of CF 7501 and the valuation statute, there is a presumption that the transaction value is based upon the price paid by the importer. Therefore, it is presumed that the price paid by the importer of record is the transaction value.