

BUYING AND SELLING COMMISSIONS

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In legal terms, in an agency relationship, one party is called the agent and the other party, the principal. An agent is a person who performs actions on behalf of the principal. The fees the agent receives for its services are called commissions. Typically, the commission is equal to an agreed upon percentage of the price of the goods

Buying commissions are fees paid to a bona fide buying agent for the services it performs on behalf of the buyer in connection with the purchase of the imported goods.

Selling commissions are fees paid to a selling agent for the services it performs on behalf of the seller in the sale of the imported goods and must be included in the value of the imported goods (Transaction value).

When are buying commissions included in transaction value (TAA)?

Buying commissions are included in the transaction value of the imported merchandise when they are part of the total payment made by the buyer to the seller. This is because the TAA does not authorize any deductions from the price actually paid or payable for buying commissions. (Example, the manufacturer bills the importer \$100 for the imported merchandise and the importer pays this amount to the manufacturer. This price includes a \$5 buying commission which the manufacturer will pay to the buying agent upon receipt of the \$100 payment from the importer. Even if Customs is satisfied that the intermediary is a *bona fide* buying agent, the total payment made by the buyer to the seller is \$100 and no subtraction would be made for commissions the buying agent receives).

Examples of services which are often provided by buying agents?

Examples of services which are characteristic of those rendered by a buying agent include compiling market information, gathering samples, translating, informing the seller of the desires of the buyer, locating suppliers, placing orders based on the buyer's instructions, procuring the merchandise, assisting in factory negotiation, inspecting and packing merchandise, and arranging for shipment and payment. .

When is the intermediary a *bona fide* buying agent?

In order to be considered a *bona fide* buying agent, the purported agent must be acting on behalf of and primarily for the benefit of the buyer, rather than for the seller or himself/herself. The main factor which determines whether a party is a *bona fide* buying agent is the right of the buyer to control the agent's conduct with respect to those matters entrusted to the agent. The buyer should control the purchasing process and the buying agent should take directions from the buyer and act upon the buyer's instructions. For example, a buying agent usually does not control who the manufacturer is or what is to be purchased. Normally, the buyer makes such decisions and the buying agent carries them out. Also, a buying agent usually does not control the manner of payment and other significant aspects of the purchase. While a buying agent may exercise some discretion, the ultimate purchasing decisions should be made by the buyer and not by the buyer's agent. The more discretion the purported agent has, the less likely it is that such person is a *bona fide* buying agent.