

# ASSISTS:

## HOW HIDDEN DUTIABLE VALUE MAY RESULT IN CUSTOMS DUTIES AND PENALTIES

An Assist is an item of value provided to the foreign seller directly or indirectly, *by the U.S. buyer or importer\**, without cost or at a reduced value, which is used to produce IMPORTED articles. Assists are a dutiable addition to the value of the imported articles. Assists are defined as any of the following:

- Materials or components that are incorporated into the imported articles.
- Tools, molds, or machinery used to produce the imported articles.
- Materials and articles consumed during production of the imported article.
- Engineering, development, artwork, design work, plans and sketches that are undertaken outside of the United States, and are necessary for the production of the imported merchandise. U.S. Customs & Border Protection will not treat engineering, development, etc. as an assist if the work is ( 1 ) performed by a person domiciled within the United States; ( 2 ) performed while that person is acting as an employee or agent of the buyer; and ( 3 ) incidental to other engineering, development, artwork, design work, or plans or sketches, undertaken within the United States.

The concept of adding the value of assists applies whether the assistance is supplied from a foreign country or is supplied from the United States. All assistance adds value to the article being manufactured regardless of the origin of the assistance. When this value is not added to the value of the product and omitted from the seller's invoice, the article is undervalued for duty purposes. Importers should consult with our office where assistance of any kind is being supplied and is not being included in the manufacturer's costs and/or prices for the article subsequently produced and sold. Follow these guidelines to avoid problems:

- Declare all assist costs to U.S. Customs even though some of the costs may not be dutiable.
- To reduce bookkeeping, declare the full value of the assist on the customs entry filed for the first shipment of merchandise produced with the assist. If that method is cost prohibitive, declare the *pro-rated* cost of the assist on each article imported until the value of the assist has been completely reported.
- Maintain good cost accounting records at the time of assist.
- The assist must apply to the product imported. If the assist was issued for a variety of products the value must be pro-rated per product.
- Prototypes are assists only if the prototype met specifications.
- If the actual tangible assist is eventually imported into the U.S., it is not excused from duty liability even if the assists were properly declared on the importation of the manufactured articles.
- Undeclared assists can lead to additional duties and penalties assessed against the Importer. In addition, if you do not declare an assist, the Internal Revenue Service will deny the tax deduction as either an expense or cost of inventory.

\* Only the Importer of Record (IOR) is responsible to United States Customs for properly declaring Assists! The IOR does this through the adjustment of entered value on the relevant Consumption Entry(s).

## HOW IS THE VALUE OF AN ASSIST DETERMINED?

(Excerpt from CBP Informed Compliance Publication "What Every Member of the Trade Community Should Know About: Valuation")

In determining the value of an assist, the following rules apply:

1. The value is either a) the cost of acquiring the assist, if acquired by the importer from an unrelated seller, or b) the cost of producing the assist, if produced by the importer or a person related to the importer.
2. The value includes the cost of transporting the assist to the place of production.
3. The value of assists used in producing the imported merchandise is adjusted to reflect use, repairs, modifications, or other factors affecting the value of the assists. Assists of this type include such items as tools, dies, and molds.
4. In the case of engineering, development, artwork, design work, and plans or sketches undertaken elsewhere than in the United States, the value is; a) the cost of obtaining copies of the assist, if the assist is available in the public domain; b) the cost of the purchase or lease if the assist was bought or leased by the buyer from an unrelated person; c) the value added outside the United States, if the assist was produced in the United States and one or more foreign countries.

So far as possible, the buyer's commercial record system is used to determine the value of an assist, especially such assists as engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States.

#### EXAMPLES:

- If the importer previously used the assist, regardless of whether he acquired or produced it, the original cost of acquisition or of production must be decreased to reflect the use. Alternatively, repairs and modifications may result in the value of the assist having to be adjusted upwards.
- A U.S. buyer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the imported merchandise. The U.S. importer bought the U.S. produced designs from an engineering company in the U.S. for submission to his foreign supplier. Should the appraised value of the merchandise include the value of the assist? No. Design work undertaken in the U.S. may not be added to the price actually paid or payable.
- A U.S. buyer purchases merchandise from a foreign producer. The price actually paid or payable includes the cost of a U.S. design incorporated in the merchandise. Is there any authority to deduct the cost of the U.S. design from the price actually paid or payable? No authority exists to deduct such costs from the price actually paid or payable.
- A U.S. buyer supplied molds free of charge to the foreign seller. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country. Should the appraised value of the merchandise include the value of the molds? Yes. It is an addition required to be made to transaction value.

#### **How is the value of an assist apportioned?**

Having determined the value of an assist, the next step is to apportion that value to the imported merchandise. The apportionment is done reasonably and according to generally accepted accounting principles. The meaning of the latter being any generally recognized consensus or substantial authoritative support regarding the recording and measuring of assets and liabilities and changes therein, the disclosing of information, and the preparing of financial statements.

The method used to apportion the value of the assist depends on the details. For example, if the entire anticipated production using the assist is to be exported to the United States, then the value of the assist could be pro-rated by one of several ways:

- over the first shipment if the importer wants to pay duty on the entire value at one time

- over the number of units produced up to the time of the first shipment, or
- over the entire anticipated production. If the entire anticipated production is not destined for the United States, some other method of apportionment will be used that is consistent with generally accepted accounting principles.

**For more details on assists, refer to Customs Regulations 19 CFR 152.102, or see the Informed Compliance Publication “What Every Member of the Trade Community Should Know About: Customs Value” on the Customs website**

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