



BUYING AND SELLING COMMISSIONS

As part of the import entry process, the importer must declare the proper value of the imported. The preferred method of product appraisalment is Transaction Value; the price actually paid or payable for merchandise when sold for exportation to the U.S. Many import transactions involve parties other than the seller or buyer. These intermediary parties, or agencies, do not manufacture goods, but assist the buyer or seller in the purchase or sale of the imported merchandise.

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).

ARE BUYING AND SELLING COMMISSIONS INCLUDED IN THE TRANSACTION VALUE?

Selling commissions incurred by the buyer are one of the specified additions to the price actually paid or payable or transaction value. An addition is to be made for such selling commissions unless they are already included in the price. Selling commissions, as part of the TV are dutiable at the rate applicable to the imported good.

Buying commissions are not required additions to the transaction value of the imported good. Therefore, buying commissions are not part of the dutiable value of the good.



WHEN ARE BUYING COMMISSIONS INCLUDED IN TRANSACTION VALUE?

Buying commissions are included in the transaction value of the imported merchandise only when they are part of the total payment made by the buyer to the seller. This is because the TV does not authorize any deductions from the price actually paid or payable for buying commissions

EXAMPLES OF SERVICES OFTEN PROVIDED BY BUYING AND SELLING AGENTS

Buying Agent services include, but are not limited to, compiling market information, gathering samples, translating, locating suppliers, procuring the merchandise, assisting in factory negotiation, inspecting merchandise, and arranging for shipment and payment.

Selling Agent services may include, but are not limited to, finding buyers for the seller's goods, maintaining samples and showing them to prospective buyers, assisting in preparing export documents and arranging for insurance, transport and storage.

FACTORS CONSIDERED WHEN DESIGNATING A BUYING VS. SELLING AGENT

Because the agent designation will have an impact on the proper Transaction Value, or entered value, and the subsequent assessed duty, special care must be taken when determining whether an intermediary is a Buying Agent or a Selling Agent. Following are some considerations; however, the totality of the evidence must be examined.

- Which party bears the risk of loss for lost or damaged merchandise? (generally, a buying agent does not bear the risk of loss)
- Who absorbs the cost of shipping and handling? (buying agents generally do not absorb such costs)
- Which party controls the manner of payment for the goods? (generally, a buying agent would not control how and when the seller is paid)
- Can the buyer purchase from the manufacturers without using the services of the agent? (if the answer is no, the agent may be a selling agent)



- Is the intermediary operating an independent business primarily for its own benefit? (if the answer is yes, it is possible that the intermediary is not an agent but an independent seller)
- Is the intermediary financially detached from the manufacturer or seller? (if not, it is possible that the intermediary may not be acting on behalf of the buyer, but on behalf of the seller)
- What do the commercial documents show? (e.g., how are the parties referred to in the commercial documents; is there a buying agency agreement; is there a purchase agreement and if so, who are the parties thereto).
- Does a written selling agency agreement exist. Customs will readily infer the existence of a selling agency in the absence of a written agreement
- Does the agent have the right to set prices for the merchandise on its own, or must have the prices approved by a foreign principal
- Does the agent earn a variable profit (or loss) on the sale of the imported merchandise, or earns a regular commission
- Whether the agent maintains its own inventory of the merchandise in the United States
- Whether the agent orders merchandise from a foreign seller on its own initiative, or only after receiving an order or offer from a United States customer

ADDITIONAL RESOURCES

Determining whether an intermediary is a Buying or Selling Agent is a critical component of Customs Valuation regulations. Where necessary, importers should seek the assistance of a trade consultant.

The following CBP publications provide additional information regarding an importer's responsibility relating to importing and determining value:

Informed Compliance Publication / [Reasonable Care](#)

Informed Compliance Publication / [Bona Fide Sales](#)

Informed Compliance Publication / [Customs Valuation](#)

Informed Compliance Publication / [Buying and Selling Commissions](#)