



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

PORT OF CHICAGO PIPELINE

NO. 97-20

July 17, 1997

TO : Customhouse Brokers, Importers and Others Concerned

**SUBJECT : Documentary Evidence Required for Non-dutiable
Freight and Insurance Charges**

This pipeline is concerned with factual situations that involve such invoiced conditions of delivery as C & F, CFI or CIF, or INCO terms of CIP or DDU. For bulk merchandise, such as steel mill shipments, CFR, C & F FO, and C & F Full Liner Terms may appear as conditions of delivery. These additional terms introduce considerations of other costs that the entry filer should be sure to verify with the importer. While the examples cited in this pipeline refer to importations of steel mill products, they can be applied to all commodities.

Where invoices do not show conditions of delivery there is no basis for any deduction for freight or insurance.

A review of entry summaries filed shows that entry invoice deductions for non-dutiable charges for marine insurance and ocean freight often are made without documentation from the provider of the services, or without documentation from the person paying the provider of the services. In addition, entries are made frequently with estimated costs using some allegedly accepted trade practice consisting of a percentage of invoiced value. Customs has no record that any inquiry has every verified any basis for these alleged trade practices of estimating percentage costs.

Estimated costs are not acceptable. Please see the General Notice by the Customs Service published on February 19, 1997, in the Customs Bulletin and Decisions, Vol.31, No. 8. (attachment). This notice states, in part, "Commercial documents to and from the service provider such as an invoice or written contract separately listing freight/insurance costs, a freight/insurance bill, a through bill of lading or proof of payment of the freight/insurance charges (i.e., letters of credit,

checks, bank statements) are examples of some documents which may serve as proof of such actual costs."

Section 152.103, Customs Regulations, Transaction value, subsection (a), paragraphs (5) (ii) and (iii) are as follows¹:

"(ii) Sales other than ex-factory. As a general rule, in those situations where the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, whether or not itemized separately on the invoices or other commercial documents, that charge will be part of the transaction value to the extent included in the price. However, charges for foreign inland freight and other services incident to the shipment of the merchandise to the United States may be considered incident to the international shipment of that merchandise within the meaning of (section) 152.102(f) if they are identified separately and they occur after the merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States."

"(iii) Evidence of sale for export and placement for through shipment. A sale for export and placement for through shipment to the United States under paragraph (a)(5)(ii) of this section shall be established by means of a through bill of lading to be presented to the port director. Only in those situations where it clearly would be impossible to ship merchandise on a through bill of lading (e.g., shipment via the seller's own conveyance) will other documentation satisfactory to the port director showing a sale for export to the United States and placement for through shipment to the United States be accepted in lieu of a through bill of lading."

In the case of steel mill products entries, for example, the Port of Chicago accepts entries where the claimed non-dutiable ocean freight from a foreign port of lading to an American coastal port of unloading is shown on the foreign sellers' invoices on a per metric ton basis. Commodity Teams generally accept as well invoiced marine insurance costs in the same situations.

All of the following are illustrations of actual situations where importers and broker/filers are cautioned to anticipate the necessity of planning for documentation to obtain non-dutiable treatment of freight and insurance costs that are included in the invoice price.

Documentation problems increase as either or both the transportation route becomes more complicated or there is a chain of sales by a sequence of purchasers and sellers. Where ocean vessels are unladen at Chicago invoice information may or may not be sufficient; seaway and lock tolls are additional factors. Ocean vessels that are unladen in Canada and reloaded on other vessels that import the merchandise into the Port of Chicago have presented other questions. Ocean vessels unladen at New Orleans where the merchandise is entered at Chicago after barge transport on the inland waterway system may present documentation questions. Rail transportation from the Pacific coast with

¹Paragraph (5) (i) concerning ex-factory sales is not discussed here. Ex-factory sales as such are virtually unknown for some kinds of merchandise, for example steel mill products, and seem to be becoming unusual for merchandise which was delivered to the buyer under those conditions in the past. Acceptability of ex-factory conditions of delivery relates to verification of invoice integrity by documents that are not of the type with which this pipeline is concerned.

entry at Chicago may also present questions.

Where foreign inland freight is claimed as a non-dutiable charge the requirements of CR 152.103(a)(5) may be difficult or impossible to meet. Situations where the requirements may or may not be met are, for example, where steel products made in Russia that are sold by a vendor in a second country to a vendor in a third country and then sold to an American importer and exported from Lithuania or Latvia. Sometimes broker/filers are unaware of this sequence. Another variation involves steel products made in Russia, exported to Germany, sold by a company in a third country to an American importer and exported from The Netherlands to the United States.

Customs is aware that importers and entry filers encounter difficulties in obtaining documentation that meets the requirements of either the General Notice or of CR 152.103(a)(5). There are no easy solutions to this situation. Absence of documentation may lead to requests for information or proposed notices of action. For steel mill products the most disturbing fact is that ocean bills of lading are often incomplete. Critical information is missing for Customs purposes such as those identified in CR 152.103(a)(5). Blank spaces are so numerous in some instances that the document's purpose becomes questionable. Claims for deduction of foreign inland freight may become subject to denial.

Planning for documentation to obtain non-dutiable treatment of freight and insurance costs that are included in the invoice price should start now. Planning means filer/brokers or importers should have the foreign sellers supply the appropriate documentation illustrated above and have the shipping lines supply completed bills of lading.

Kevin Weeks
Port Director

Attachment

US. CUSTOMS SERVICE

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DEPARTMENT OF THE TREASURY
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, February 4, 1997.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the **CUSTOMS BULLETIN**.

STUART P SEIDEL,
Assistant Commissioner,
Office of Regulations and

Rulings.

ACTUAL FREIGHT AND INSURANCE DEDUCTIONS

AGENCY- US. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice reminds the public that the amount to be deducted from the transaction value of imported merchandise for freight, insurance and other costs incident to the international shipment of merchandise, including foreign inland-freight costs, are the actual, as opposed to estimated, costs. Pursuant to 19 U.S.C. 148A-(a)(1), the importer of record is required, using reasonable care, to make and complete entry by filing with Customs, among other things, the declared value of the merchandise. The importer's declaration of a transaction value excluding an amount for freight/shipment charges based on estimated costs may constitute a failure to exercise reasonable care.

DATE: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Lenny Feldman at
(202)482-7010.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The preferred method of appraising merchandise imported into the United States is transaction value pursuant to section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), codified at 19 U.S.C. 1401a. Section 402(b)(1) of the TAA provides, in pertinent part, that the transaction value of imported merchandise is

the "price actually paid or payable for the merchandise when sold for exportation to the United States plus the enumerated statutory additions.

The "price actually paid or payable" is defined in section 402(b)(4)(A) of the TAA as the "total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise * * *) made, or to be made, for the imported merchandise by the buyer to, or for the benefit of, the seller."

Charges for freight, insurance and other costs incident to the international shipment of merchandise, including foreign inland freight costs, which may be incurred from the country of exportation to the United States may be excluded from the price actually paid or payable and therefore not comprise part of the transaction value of merchandise in accordance with section 402(b)(4)(A). In order to be excluded, such costs must first comprise part of the price actually paid or payable. The amount to be deducted for freight, insurance or other services incident to international shipment are the actual, as opposed to estimated, costs. Customs considers actual costs to constitute those amounts ultimately paid to the international carrier, freight forwarder, insurance company or other appropriate provider of such services. Commercial documents to and from the service provider such as an invoice or written contract separately listing freight/insurance costs, a freight/insurance bill, a through bill of lading or proof of payment of the freight/insurance charges (i.e., letters of credit, checks, bank statements) are examples of some documents which may serve as proof of such actual costs.

Pursuant to 19 U.S.C. 1484(a)(1), the importer of record is required, using reasonable care, to make and complete entry by filing with Customs, among other things, the declared value of the merchandise. Importers with concerns regarding the costs to be excluded and appropriate documentation to be made available are advised to exercise reasonable care by seeking the opinion of an expert, contacting the relevant field office, or obtaining a ruling from this office.

Dated: December 13, 1996.

STUART P SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*