



AUSTRALIAN CUSTOMS NOTICE NO. 2010/13

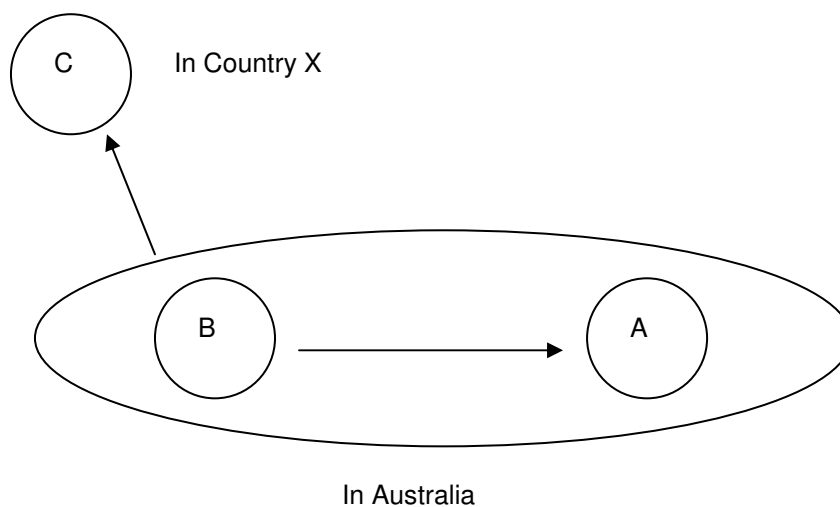
Definition of import sales transaction

This Australian Customs Notice (ACN) seeks to clarify the definition of “import sales transaction” within the valuation provisions in Division 2 of Part VIII of the Customs Act 1901 (Customs Act) and to ensure that the correct customs value is determined when an importation has multiple contracts of sale.

Since the commencement of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), the Australian Customs and Border Protection Service has received numerous questions from importers and brokers in regard to the Free on Board (FOB) price on the certificate of origin (CoO) being different from the FOB price on the invoice used to determine the customs value.

Our enquiries have established that the cause of the problem is not an incorrect FOB price on the CoO but the use of an incorrect sales contract as the import sales transaction. The use of an incorrect sales contract as the import sales transaction has resulted in the determination of an incorrect customs value which is higher than that which would have been determined if the correct import sales transaction was used.

The following example illustrates this problem.



Retailer A, in Australia, places an order for goods with distributor B, in Australia. B then places an order for the importation of the goods into Australia with manufacturer C, in country X. C confirms the order and raises an invoice for \$5,000, being for the sale of the goods to B.

B requests that the goods be delivered directly to the premises of A and arranges with A to be the importer of the goods. B raises an invoice for \$10,000 being for the sale of the goods to A.

In this example, country X is a participant in the AANZFTA and the goods ordered by B are eligible for duty free importation into Australia if a valid CoO for the goods is held by A.

The CoO obtained by C indicates the FOB price to be the FOB price on the contract of sale for the goods between B and C, this being \$5,000.

Upon receipt of the CoO from C, B forwards the CoO to A to assist in the customs clearance of the goods.

The broker employed by A then completes the customs import declaration using the invoice from B to A and the CoO supplied by C. Brokers have identified a problem because the FOB price on the CoO is \$5,000 and the FOB price on the invoice is \$10,000 and have asked if it is possible to delete the FOB price in the CoO.

The issue in the above scenario relates to which transaction should be regarded as the import sales transaction.

Import sales transaction is defined in subsection 154(1) of the Customs Act 1901.

import sales transaction, in relation to imported goods, means:

- (a) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to Customs control and it was also a contract for their exportation from a foreign country—that contract;
- (b) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to Customs control and it was not also a contract for their exportation from a foreign country—that contract; or
- (c) where there were 2 or more contracts of sale for the importation of the goods into Australia entered into before they became subject to Customs control—whichever of the contracts was made last;

The contract of sale between A and B is a domestic contract; it is not a contract for the importation of the goods. If B had the goods in stock, there would not be a requirement to import the goods. The order placed by B upon C is the import sales transaction because it was the contract of sale for the importation of the goods into Australia.

Even if it could be argued that the contract between A and B was for the importation of the goods, the contract between B and C would still be used because under paragraph (c) of the definition of *import sales transaction*, the contract that was entered into last is regarded as the import sales transaction.

Brokers are therefore reminded that the correct import sales contract must be used when determining the customs value of imported goods.

Any enquiries in relation to this ACN should be directed to Valuation & Origin Section, Trade Services Branch, by email to origin@customs.gov.au or by telephone on (02) 6275 6556.

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CANBERRA ACT

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