



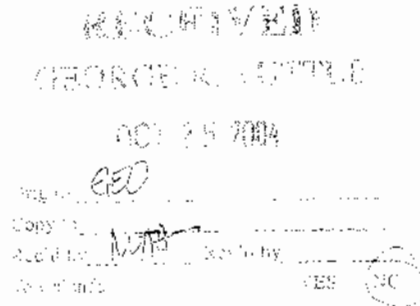
U.S. Customs and
Border Protection

OCT 19 2004

HQ 548568

RR:IT:VA 548568er
CATEGORY: Valuation

George R. Tuttle, III, Esq.
Law Offices of George R. Tuttle
Three Embarcadero Center
Suite 1160
San Francisco, CA 94111



RE: Request for a Ruling; Assists; License Fees; Cost of Production 19 CFR 152.103(d).

Dear Mr. Tuttle:

This is in response to your request for a ruling, dated July 19, 2004, submitted on behalf of your client, AMI Semiconductor ("AMIS" or "importer") Inc., in which you ask for a decision as to whether certain payments to third parties for royalties, license or patent fees related to the design, manufacture and process rights of the imported merchandise should be included in the value of certain assists.

FACTS:

According to your submission, AMIS designs, manufactures and markets integrated circuits ("IC") in the U.S. and around the world. The ICs are manufactured using technical know-how obtained from a foreign third-party, Hitachi Corporation of Japan ("Hitachi"). AMIS pays Hitachi for the design, manufacturing, processing rights and technical assistance pursuant to a three-way licensing agreement between itself, its related party entitled Japan Energy Corporation ("JE") and Hitachi. JE initially remits the license fees to Hitachi and in turn is later reimbursed by AMIS.

The ICs are sent, free of charge, in wafer or die form to AMIS' wholly owned subsidiary, AMIS-Philippines ("AMIS-P"), or to other various foreign subcontractors, for offshore assembly, sort and testing. Finished ICs are either returned to the U.S. or are exported to third countries.

Counsel's position is that the license fees are not part of the cost of fabrication or production of the wafer, and, accordingly, should not be included in its value.

ISSUE:

Whether AMIS should include the license fees paid to Hitachi in the value of the wafer provided to AMIS' related foreign assembler?

LAW AND ANALYSIS:

Merchandise imported into the United States is appraised in accordance with section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979(TAA). Transaction value, the preferred method of appraisement, is defined in section 402(b) of the TAA as the "price actually paid or payable for the merchandise when sold for exportation to the United States," plus certain enumerated additions. One of the additions includes the value, apportioned as appropriate, of any assists. 19 U.S.C. 1401a(b)(1)(C).

As described above, the imported merchandise is assembled abroad. Regarding assembled merchandise, the Customs and Border Protection ("CBP") regulations provide that "[t]he price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value. 19 CFR 152.103(a)(3).

The term "assist" refers to a statutorily enumerated good or service that is supplied directly or indirectly by the buyer free of charge or at a reduced cost, for use in connection with the production or sale for export of the imported merchandise. The type of assist at issue in this case is a wafer which belongs in the category of "[m]aterials, components, parts and similar items incorporated in the imported merchandise". 19 U.S.C. 1401a(h)(1)(A)(i). The CBP regulations provide the following regarding the value of an assist:

Assist. If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the port director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:

- (1) If the assist consist of materials, components, parts, or similar items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. In either case, the value of the assist would include transportation costs to the place of production.

19 CFR 152.103(d)(1)

Because the party producing the assist is the buyer, the value of the assist is the cost of its production, plus transportation costs to the place of production. 19 CFR 152.103(d)(1).

Counsel refers to HQ 542948, dated November 29, 1982 (TAA No. 55) in which Customs concluded that an integrated circuit supplied by a U.S. buyer at a reduced cost to the foreign seller is an assist. In that decision the parties were not related and accordingly the value of the assist was its cost of acquisition, including research and development costs incurred in producing the chip, whether fabricated in the U.S. or elsewhere. Counsel contends that HQ 542948 is not relevant to the instant matter because in that ruling the buyer paid a third party to design and manufacture the chip, whereas, in the instant matter, AMIS is producing the chip and making a license fee payment to a third party for the right to use a process or design and manufacture a product in the U.S.

We disagree with counsel that HQ 542948 is not relevant to the instant matter. When the type of assist at issue falls under the category of “[m]aterials, components, parts and similar items incorporated in the imported merchandise”, then it is irrelevant to the value of the imported merchandise whether the assist is manufactured in the U.S. or elsewhere. Regardless of the place of manufacture, the value of the assist is added to the price actually paid or payable for the imported merchandise. It is only when an assist is of the type described in the statute as “[e]ngineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production for the imported merchandise” that the place of the “undertaking” of the assist becomes relevant for valuation purposes. 19 U.S.C. 1401a(h)(1)(A)(iv). Accordingly, even though the wafer provided to the foreign assembler is manufactured in the U.S., its value would be included in the price actually paid or payable for the finished imported merchandise.

So, the remaining question is whether the activities performed pursuant to the licensing agreement in the creation of the assist constitute part of the cost of producing the assist. Counsel contends that because the importer does not treat the royalty and license payments as part of the cost of production in its books, but instead treats them as a period cost, the payments can not be construed as part of the production cost of the assist. We disagree.

In HQ 544192 dated June 16, 1989, we held that in instances where a mold is produced by the importer or person related to him, in the U.S. or in another country, the value of the mold (assist) will be the cost of producing the mold as mandated by the valuation statute. Included in the cost of production of the mold were the design and development costs incurred when the work to produce the design and development is either within the U.S. or outside the U.S. No consideration was given as to how the importer accounted for the design and development expenses in its own books.

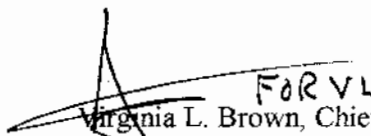
Similarly, in the instant matter, the license fees are paid by the importer to Hitachi in return for the right to use the technical know-how to produce the assist in the U.S. which is later provided free of charge to the foreign assembler. Under these circumstances, the cost to produce the assist includes the license fees paid by the importer. Accordingly, the value of the assist includes the amount of the license fees paid to Hitachi regardless of how the importer treats the license fees in its own books.

You have also asked whether in the event we rule that the license fees are part of the production of the assists, if the importer is entitled to include the value of such payments in the calculation of any 9801 or 9802 claim filed in connection with the importation of the products assembled abroad. As this ruling does not address the legitimacy of any 9801 and 9801 claims we decline to rule on the issue of whether the license fees should be included in the value of any exempted components.

HOLDING:

The cost to produce the assist provided by the importer to the foreign assembler includes the amounts of the license fees paid by the importer to Hitachi. Accordingly, the value of the assist includes the license fees.

Sincerely,


FOR VLB
Virginia L. Brown, Chief
Value Branch