

Customs Valuation and Related Party Pricing

Customs valuation is one of the primary elements of customs compliance, particularly as it has a direct link to the payment of duties and taxes. The determination of the appropriate method of appraisement becomes increasingly complex when the selling entity is related to the importer. With the everchanging geo-political landscape and rise of punitive tariffs, it has become of increasing importance for multinationals to review their customs valuation.

When the importer of record and seller are related, additional complexities in customs valuation arise. Most multinationals will establish an intercompany transfer price, which serves as the basis of appraisement for customs purposes (*i.e.*, the transaction value). While taxing authorities like the Internal Revenue Service and Customs have similar objectives in confirming the arm's-length nature of transactions, the methods by which companies evidence compliance are different. Subsequently, documentation prepared specifically to demonstrate the prices are arm's length for tax purposes are not suitable to evidence the arm's length nature of the transaction for customs purposes. As a result, importers must conduct a separate analysis under Customs' rules and develop appropriate supporting documentation.

Additional complexities arise when the transfer price is subject to post-importation adjustments (*i.e.*, retroactive transfer pricing adjustments), which will generally impact the declared Customs value. U.S. Customs has specific rules regarding the reporting of adjustments to price, which require careful planning and documentation prior to the adjustments occurring.¹

Related party transactions often receive increased scrutiny from customs authorities. Non-compliance with customs valuation regulations, such as lack of customs specific supporting documentation and not appropriately reporting adjustments to price can result in several significant risks for a company, including fines, penalties and the back payments of duties. In addition to non-compliance risks, not considering customs valuation in tax and supply chain can cost multinationals duty savings opportunities.

— HOW FTI CONSULTING CAN HELP

Our team has deep expertise in assisting multinational companies navigate the intricacies of the convergence of transfer pricing and customs valuation, tailoring our approach to fit your specific business needs, ensuring practical, effective and compliant solutions.

— Review of current customs valuation practices:

Our team will conduct a review of current customs valuation practices and assess acceptability of supporting documentation.

— **Assistance with developing supporting documentation for Customs purposes:** Where gaps in documentation may exist, our team will assist importers to conduct the appropriate arm's length analysis and develop documentation to support the use of a related party price, as well as establish processes for reporting adjustments to the price where necessary.

— **Assessment of historical transaction:** To the extent historical risks may be present (*e.g.*, retroactive transfer pricing adjustments which were not reported to customs), our team will conduct a risk assessment to determine if remediation is necessary and assist with remediation actions appropriate.

— **Customs valuation planning and strategy:** Our team works with clients to strategically align customs and tax objectives. When appropriate planning occurs, importers may obtain refunds on duties paid in instances where transfer prices are reduced.

— OUR EXPERTS



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Sally Peng is an expert in export controls, economic sanctions, international trade strategy, global supply chain optimization and trade compliance. Ms. Peng has extensive experience advising public-listed companies on their complex encryption programs under U.S. laws and other Asia Pacific jurisdictions, including representing her clients in front of relevant government agencies in the APAC region.

She also advises many Asia-based clients regarding U.S. and other sanctions regulations, primarily focusing on pre-IPO preparation and portfolio management. In addition, she works closely with her clients' legal, procurement and logistics teams to build best-in-class export controls and sanctions compliance programs. Her industry coverage includes private equity and funds, semiconductor companies, Cloud and emerging technologies, telecommunications, national defense contractors, heavy machinery, and research universities.

Ms. Peng has been a trusted advisor for many MNCs on their international trade supply chain and Customs issues. She advises clients on their supply chain operations related to U.S. Customs and Border Protection ("CBP"). She served as team leader for several global retailers in large-scale Customs duty-saving projects in more than 10 Asian countries. During the ongoing U.S.-China trade war, Ms. Peng is sought after by her clients to advise them on mitigating strategies against U.S. Section 301 and 232 retaliation tariffs, free trade agreements, trade preference programmes and country of origin issues. Her industry coverage includes apparel, footwear, handbag and leather goods, hardline goods and consumer electronics.

1 Myles B. Harmon, "Transaction Value; Formulas; Post-Importation Adjustments; Revocation of HRL 547654," U.S. Customs and Border Protection (5/16/12), <https://rulings.cbp.gov/ruling/W548314>

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