Import Valuation Deductions

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The imposition of 10% and 25% safeguard duties on certain steel and aluminum products as well as about half of the goods imported from China has importers scrambling to reduce the impact upon their bottom lines. Because these duties are based upon the entered value, companies are seeking creative ways to reduce that number and thereby reduce the amount of duties they owe.

In other articles I have shared with you the concept of additions to price paid or payable including dutiable assists. There are also costs that an importer may deduct from their entered value, insofar as the importer can substantiate the deduction.

1. International freight and Insurance

Even if a company is buying goods on a landed basis, it may deduct the actual costs of international freight and insurance premiums from the entered value. The onus is on the importer, however, to provide proof of the actual freight costs and insurance premiums and may not make deductions based on estimates. A freight cost notation on the seller's invoice is not sufficient. CBP recognizes that such notations are inaccurate and may even be inflated estimates of the actual freight. CBP will accept rated bills of lading or other freight bills issued by the underlying carrier or logistics service provider as proof of actual costs.

Obtaining this proof may be a challenge for some importers. As the seller has made the freight payment to the carrier the importer will not usually have a copy of the freight bill. This is not an insurmountable issue. With a little negotiation and improved communication, an importer should be able to gain access to the documents they need to substantiate the deduction.

2. Change the terms of sale.

The scenario above leads some importers to discover that their sellers may have been marking up the freight or, at least hedging their bets and padding their itemized freight charges. In such cases, an importer might consider taking control of cargo earlier in the supply chain and purchasing under INCOTERM® rules such as FCA, FOB or even EXW.

CBP usually considers the location where the importer takes control of the shipment at origin as the point of export. Transportation and insurance charges beyond that location are not subject to duty. The seller might also be more amenable to reducing their selling price as they are assuming less risk and do not have to outlay the transportation costs. In some industries, sellers may even provide steep discounts, accepting a lower margin based on the reduced risk and responsibility.

3. Service Work After Importation

Some importers make large purchases under all-inclusive contracts that, in addition to transportation costs, include installation and maintenance costs after importation into the U.S. Any work performed on these goods after importation is a domestic economic activity that is not

subject to duty. If not properly detailed, the importer will pay duty on the value of the entire contract. Importers would benefit from segmenting the contract to avoid overpaying duties.

4. License Fees and Royalties

Some importers pay a royalty or license fee upon their imported goods. As long as that fee is conditioned on an activity that occurs after importation, the license fee or royalty is not subject to duty. If the fee is a condition of export or is a requirement to gain access to intellectual property required to go into production, it will be subject to duty.

Importers are encouraged to review their intellectual property rights agreements to determine if they are properly structured to take advantage of this deduction.

5. Buying Agents.

It is not uncommon that the seller is not the actual producer. Instead, it is an intermediary between the producer and the buyer. Under certain conditions this intermediary's fee might be excluded from duty. Importers frequently purchase from entities known as trading companies. One subset of trading companies is a type of intermediary known as a buying agent.

A buying agent is a third party that represents the importer and receives payment from the buyer only and not from the vendor. A buying agent acts as the face of the buyer at origin providing local market knowledge and expertise. They perform services such as helping communicate a buyer's product specifications, negotiating and managing contracts, monitoring on-time shipping and, perhaps, providing some light quality control. Buying agents, however, are not directly involved in the manufacturing of the product nor do they perform design or engineering work. If properly documented, the fee a buyer pays to a bona fide buying agent is not subject to duty.

Of course not all trading companies are buying agents. It is common for a trading company to perform additional service that exclude it from being considered a buying agent. Importers should be cautious before designating every trading company from which they purchase as a buying agent. CBP has also taken the position that buying agency relationships are supported by a bona fide buying agency agreement.

6. First Sale for Export

It is also not uncommon for there to be a series of sales involved in an export. A U.S. buyer may purchase goods from an intermediary. That intermediary may have acted as a broker and purchased the goods from a foreign vendor. Under a typical scenario, the U.S. importer would declare the price paid or payable at the time of export. This would, of course, be the higher price paid to the intermediary.

If, however, the U.S. importer can demonstrate that the underlying exporting producer shipped the goods to the U.S. without contingency of diversion, and the importer can gain access to the price paid to that exporter, the importer may make a first-sale declaration of value. In other words the importer may declare the lower contract price paid between the intermediary and the producer.

Of course there are conditions.

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1. The importer must be able to document that the first sale resulted in an export to the U.S. without contingency of diversion.
2. The importer must be able to demonstrate that a bona fide sale existed between the producer and the intermediary and
3. The importer must be able to demonstrate that the three parties must behave as if operating at arm's length from one another.

U.S. CBP has ruled on several occasions that a "flash sale" between the producer and the intermediary does not constitute a bona fide sale. A flash sale is one in which the title transfers immediately from producer to intermediary and from intermediary to the importer. In such instances CBP considers that the intermediary has not taken on physical possession or assumed any risk, two critical metrics of a bona fide sale. CBP claims the bona fide sale takes place based on the higher second sale price between the intermediary and the importer.

CBP has long taken a dim view of the first sale concept and has, on multiple occasions, made efforts to eliminate it. Nevertheless, the first sale for export opportunity is still a valid method of valuation. Importers that pursue such a valuation methodology, however, should seek professional assistance before implementation.

The same advice goes for each of the suggestions for reducing value above. U.S. CBP is also aware of these techniques. Implementing them is not illegal. CBP is under no obligation to allow a deduction. The onus of compliance, therefore, falls on the shoulders of the importer.

The topic of additions to and deductions from entered value is voluminous. The preceding article highlights the more obvious opportunities available to importers. There are others described in the CBP valuation encyclopedia.

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