U.S. Customs Service
Office of Strategic Trade
Regulatory Audit Division

Common Importer Errors Identified During Assessments and Audits

Introduction

The errors listed here are typical of those identified during assessments and audits of importers. Many are caused by a lack of communication between various departments of the importer or between the importer and its broker. For example, the Import Department knows that additional payments to foreign suppliers are dutiable, but another department, such as Contracts, Finance, or Purchasing, may not know they should be reported to Customs. The importer may have no mechanism built into its accounting system to ensure that the Import Department is informed when additional payments are made. Errors also result when importers assume the broker is correctly classifying or valuing imported merchandise, when in fact the broker may have incomplete or incorrect information about the product.

Manufacturing Assists

Manufacturing assists are items such as material components, molds, equipment, tools, and dies that the importer provided to the foreign manufacturer at a reduced cost or free of charge for use in producing the imported merchandise. Design and development costs undertaken in a country outside of the United States are also assists.

Importers may overlook assists because invoices are received after an entry summary is filed with Customs or the department responsible for purchase does not know that the cost of the assist is dutiable.

Additions to Price Actually Paid or Payable

Payments may include direct or indirect payments, after-the-fact adjustments, payments for purchased quota, payments for locally obtained tooling, currency rate fluctuation adjustments pegged to a contract, commissions, or royalties. Like manufacturing assists, these payments may be overlooked because they are not invoiced by the foreign exporter with the imported merchandise.

Nondutiable Costs

Under certain conditions, foreign inland freight and other inland charges incidental to the international shipment of goods are not dutiable. These charges may be nondutiable if they meet certain evidentiary requirements, such as having a through bill of lading or being identified separately, and if they occur after merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States. Importers may purchase products “CIF,” which includes the cost of the foreign inland freight and insurance but do not

separately identify it on the invoice, or they may not be able to support the accuracy of the nondutiable costs claimed.

Merchandise Classification

When Focused Assessment teams review classification, they often find that “basket provisions” have been incorrectly used for a classification, rather than the applicable specific tariff number.

Claims for duty preference such as the North American Free Trade Agreement (NAFTA), the Generalized System of Preferences (GSP), and the Caribbean Basin Initiative (CBI) are frequently incorrectly classified.

Classification errors also frequently occur because importers provide poor descriptions of merchandise to brokers or because product specifications are changed without notifying the import department or broker.

Special Trade Programs

Importers frequently do not properly monitor their use of special trade programs, including GSP, CBI, and others, and cannot provide evidence of origin, qualifying value content of materials, or proof the imports were wholly produced or a product of the beneficiary developing country.

Errors occur frequently because importers do not verify that the foreign manufacturer or producer of imports can support the claims for the special trade program. Also, the importer may not have contractual agreements with the foreign manufacturer or producer that require it to provide proof of eligibility to Customs on request. As a result, importers have been unable to support claims for special trade programs.

Harmonized Tariff Schedule of the United States (HTSUS) Chapters 9801 and 9802

Under HTSUS 9801 and 9802, requirements are very specific about what portion, if any, of the value of U.S. goods returned may be exempt from duty. Sometimes importers cannot support claims that packing materials or products assembled in foreign plants were in fact of U.S. origin.

In some instances, the importer has incomplete records that do not permit the tracing of the U.S. components. In other instances, importers switch suppliers from U.S. to foreign sources to take advantage of competing lower costs, but neglect to adjust the value of HTSUS 9802 merchandise on subsequent entries. There also may be dual sources for identical components, but a lack of appropriate inventory records precludes proper identification of the U.S.-source items. U.S. and foreign parts may not be commingled under this section. Importers may also fail to obtain proof-of-origin documentation from U.S. manufacturers on U.S. components that are reportedly used by foreign manufacturers in assembling HTSUS 9802.00.80 and 9802.00.90 products. Failure to maintain required declarations may result in the disallowance of claimed nondutiable status.

Related-Party Transactions

Transaction value is the most commonly used basis of appraisement. It is allowable even when the U.S. buyer and the foreign seller are related if the relationship does not influence the transfer price. It is the importer’s responsibility to provide evidence that transaction value is the appropriate basis of appraisement. Importers are sometimes unable to provide evidence such as faxes, minutes of meetings, and correspondence to document price negotiations with related

parties to show that the relationship did not affect the transfer price.

Buying Commissions

Under certain conditions, commissions paid to buying agents may not be included in the value of the imported merchandise. Selling commissions, however, are dutiable costs. Importers sometimes deduct payments for what is claimed to be a buying commission but is in fact a selling commission.

To support that a buying commission is nondutiable, the importer should have evidence of the duties provided by the agent. Evidence should include a signed buying agency agreement that clearly defines the role of the agent and shows the amount of commission to be paid and documentation that the agent is performing the role of a buying agent.

Recordkeeping

Importers are required to maintain and produce timely records required at time of entry (commonly called (a)(1)(A) records) and must also have accounting and financial records that support the value, quantities, classification, and other information shown on Customs entry documents. Failure to provide adequate documentation of entry information may result in payment of additional duties, as well as fines and penalties for failing to retain required records and/or filing false claims.

Questions and Answers

Determination of Focused Assessment Findings and Guidance

Q. What is the basis or status of Customs decisions made relative to individual transactions sampled and reviewed during a Focused Assessment?

A. The decisions (such as the correct merchandise classification or valuation) made relative to individual transactions reviewed during a Focused Assessment represent Customs determinations based on a comprehensive review of the specific facts and information applicable to the particular transactions. The determinations made through the Focused Assessment process, which includes ongoing dialog between Customs and the importer over the correctness of entered transaction information, are based on the information available to Customs at the time of verification.

Q. Do the Customs determinations made relative to individual transactions sampled and reviewed during a Focused Assessment have any legally binding effect?

A. The Customs determinations made relative to individual transactions reviewed during a Focused Assessment *do not* constitute binding rulings. Binding rulings represent Customs' position with respect to the specific facts presented relative to *prospective* transactions. Binding rulings in certain instances may be obtained on transactions if the entry is not finally liquidated. If the entry is liquidated but not final, a protest and application for further review may be filed and the protest decision issued under Part 177 of Customs Regulations. The individual transactions reviewed during a Focused Assessment involve merchandise that has previously been entered by the importer. In most cases, the corresponding entries have been liquidated.

Q. What is the applicability of the Customs determinations made relative to individual transactions (and merchandise) sampled and reviewed during a focused assessment toward future importations?

A. While the Customs determinations made during a focused assessment *do not* constitute binding rulings, they *may be* applicable to future transactions. The particular facts and circumstances surrounding each transaction are generally different from previous transactions. This may be especially true when comparing the facts and circumstances of current transactions with those related to the transactions reviewed as part of a Focused Assessment that occurred years earlier. A principal objective of the Focused Assessment process is to provide the importer guidance to correct and/or avoid future compliance problems. Accordingly, the importer (having responsibility for exercising reasonable care in reporting import transactions to Customs) is expected to apply the specific determinations and guidance received during a Focused Assessment to future importations *as appropriate*. Further, with respect to future transactions, the importer may seek guidance from Customs and/or from other knowledgeable experts.

Q. With respect to future importations, can the importer cite, and/or claim detrimental reliance on, the Customs determinations made pertinent to individual transactions sampled and reviewed during a focused assessment?

A. Customs strives to treat identical transactions as uniformly as possible. The internal Customs procedures and process involved in a Focused Assessment emphasize coordination and consultation among members of the Customs Focused Assessment team and various Customs personnel, including those in the ports used by the importer. Specifically, consultation will occur concerning individual determinations (before they are rendered). Additionally, the final Focused Assessment report will be shared with all ports in which the importer enters merchandise.

With respect to future importations, the importer *will not* be able to claim detrimental reliance based on Customs determinations resulting from a Focused Assessment. Customs considers each transaction as an individual case, subject to review or verification as deemed appropriate. However, in instances where Customs initiates a verification activity relative to a current transaction and the importer believes Customs previously reviewed issues related to the verification inquiry through the Focused Assessment process, the importer should advise the Customs office conducting the verification activity of Customs previous determination. The office conducting the verification will consider all information presented by the importer, will compare the facts and circumstances related to any previous transaction with those applicable to a current transaction, and may consult with the appropriate national import specialist.