

Sandler, Travis & Rosenberg, P.A.
An International Trade and Business Practice

RECONCILIATION AND RELATED PARTIES

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Navigating the Maze of International Trade®
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Navigating the Maze of International Trade® *Reconciliation: Key Features*

- ◆ Available for entries made at **ALL** ports, to **ALL** importers
- ◆ Reconciliation is an entry (Type 09)
- ◆ Underlying entries and Reconciliation filed electronically via ABI
- ◆ One bill/refund per Reconciliation


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Navigating the Maze of International Trade® *Eligible Entry Types*

- 01 - Consumption**
- 02 - Quota/Visa**
 - except classification issues
- 06 - FTZ**
 - except ADD/CVD merchandise

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Navigating the Maze of International Trade® *Reconcilable Issues*

- ✓ Value
- ✓ 9802 (Value)
- ✓ NAFTA (Qualification)
- ✓ US-Chile FTA (Qualification)
- ✓ DR-CAFTA (Qualification)
- ✓ Classification, if subject of:
 1. A pending administrative ruling (including pre-classification rulings)
 2. A protest
 3. A pending court action

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Navigating the Maze of International Trade® *Non-Reconcilable Issues*

- 9802 Claim via Reconciliation (however, you can shift value between the 9802 HTS and the dutiable HTS on an entry level basis).
- Quantity Discrepancies
- Classification (not part of ruling, protest or pending court action)
- Issues that *can be* determined at the time of entry

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Navigating the Maze of International Trade® *"Exclusive Means"*

Alternatives to Reconciliation

- Withhold Liquidation
- Post Entry Amendment
- Protests, Administrative Review, etc.
- Prior Disclosure

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Navigating the Maze of International Trade® **TYPES OF FLAGGING**

There are 2 Types of Flags:

- Entry By Entry Flags
- Blanket Flags
 - There are multiple entry flagging codes that indicate reconcilable issues.

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Navigating the Maze of International Trade® **Blanket Flag**

- ◆ CBP sets up automatic flagging in ABI.
- ◆ Submitted to CBP no later than 7 working days before 1st entry
- ◆ ACS generates flag on ALL entries within scope
- ◆ Have to "close out" all Flagged Entries.

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Navigating the Maze of International Trade® **ENTRY BY ENTRY FLAG**

- ◆ Revenue adjustment broken down entry by entry.
- ◆ May obtain refunds.
- ◆ Drawback may be claimed after filing of Reconciliation.

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- ◆ NAFTA/DR-CAFTA Reconciliation -- 12 months from the *date of importation* of the oldest entry summary flagged for and grouped on that Reconciliation. (Qualification Only)
- ◆ All other issues are due within 21 months from the *date of oldest entry summary* flagged for and grouped on that Reconciliation.
- ◆ All value, 9802, and classification flagged issues require a Recon, **even if no adjustments are being reported.**



- ◆ A No-file liquidated damages claim will be issued for each non-NAFTA related flag that is not reconciled within the allotted time frame.
- ◆ A Late-file liquidated damages claim will be issued for each non-NAFTA related flag that is submitted late.
- ◆ If a Recon is submitted without the associated payment, it will be considered a no-file until payment is received.
- ◆ If a recon is rejected and remains in reject status more than 30 days, the underlying entries may revert to no-file status. These entries will be subject to liquidated damages if the deadline for filing a recon has passed.



- ◆ CBP will accept no drawback claims on underlying entries until the open Recon flags have been resolved.
- ◆ Once a Recon is filed, drawback can be claimed on the underlying entries for Entry-by-Entry Recons.
- ◆ Because drawback is paid on a per-entry basis, reconciled entries filed with aggregate data are not eligible for drawback. Therefore, only the duties originally paid at time of entry are available for refund.
- ◆ The importer must maintain auditable and verifiable financial records that can provide a trail of information from the Reconciliation to the importer's books and records.



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Value Reconciliations

- The most common reconciliations involve value adjustments:
 - Companies that declare costs using standards (components and/or foreign conversion costs). (Normally related companies)
 - Instances of adding value for assists, royalties, commissions, additional payments, etc.

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Reconciling Related Party Transactions

- What are we really talking about
- How are you certain that you know *all* the questions – answers
- Need to know value
- Related party transactions tend to have more value issues than unrelated party transactions
- There is a finite universe of issues
- But the universe appears more fuzzy when related

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You're In the Hot Seat

- Management expects you to take care of everything:
 - Information
 - Entry data
 - Other data
 - Access
 - Assets

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Information

- Entry Data
- Other Data
- Company financial data
- Agreements
 - Royalties
 - Transfer pricing adjustments
 - Intercompany overhead allocations
 - Research and Development



Real Life Problem (well almost)

- I SPY Imports purchases unfinished CCTVs produced by its related parent M6 Exports, located in the UK. M6 first sells the unfinished CCTVs to its parent, Surete, located in France, who then resells the CCTVs to I SPY at a profit that has been approved by its accounting firm, I Con Count to Four, who worked out a deal with the French government.
- M6 has other facilities that are wholly owned, affiliated with it or joint ventured with unrelated parties located in Russia, Germany, and the USA. The German facility, Stasi, supplies R&D for the CCTVs and for the final systems that the CCTVs are made a part of by CIA Toys. CIA is the other USA facility owned by M6. The Surete in France, which owns M6, finances Stasi's R&D efforts and expenses the factory on its French income tax as a result of an EU tax ruling.
- CIA Toys purchases the unfinished CCTVs from I SPY and manufactures very sophisticated closed circuit security systems for large corporations in the USA and world-wide. CIA Toys also produces some components, directly and through third parties, that are supplied to M6 free of charge.
- Stasi and KGB, the Russian facility (come on - you saw that coming a kilometer away), supply components to M6 at cost plus 2%. I SPY's profit was the subject of a transfer pricing study undertaken because of its related party status with its supplier and customer. The study found that I SPY's profit in its sales in the US was consistent with other US sellers in the electronics industry. Finally, I SPY's transfer prices with Surete are adjusted annually to meet the transfer pricing goals set by the two parties.



Panic ???

- What do you do first when your boss gives you these facts?
- Call a headhunter
- Take 2 Advil
- Pull out your graduate school application




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Relieving Panic

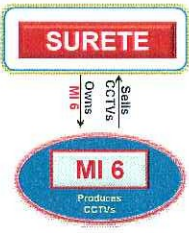
- How do you start
- Make a list of parties
- What then?
- Look at this

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Real Life Problem

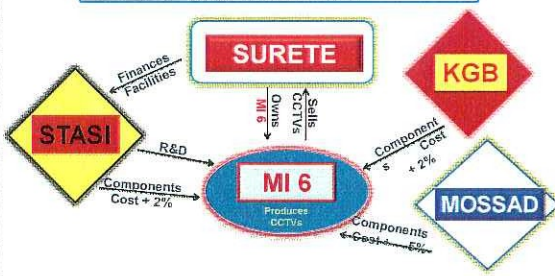


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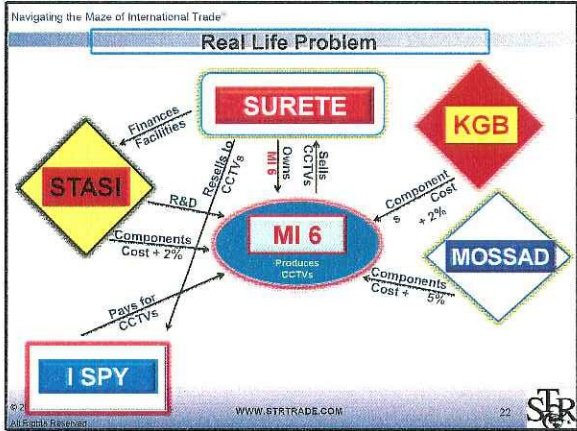
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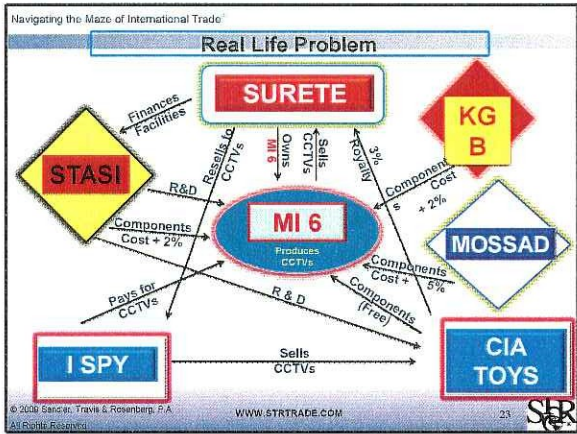
Real Life Problem



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Analysis

- What are the issues
- What basis of value are you going to reconcile

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Computed Value

Computed Value of Imported Merchandise is the Sum of the Following:

- The cost or value of the materials and the fabrication and other processing
- An amount for profit and general expenses equal to that *usually reflected* in the sales of merchandise of the same class or kind made by the producers in the country of exportation for export to the United States;
- Any assist:
- The packing costs.



Deductive Value

If: not sold at the time of importation
same formula but before the 90th day after importation. *What happens after 90 days?*

If: not 1 or 2,
and there is further processing, and importer *elects* this option at time of filing entry summary

- Same formula but, *after further processing,* and before the 180th day following importation.



Deductive Value

Starting point is U.S. domestic sales price of:

- Imported merchandise; identical merchandise or similar merchandise

What is U.S. domestic sales price price:

Sold at time of importation: the unit price at which the merchandise is sold in the greatest *aggregate* quantity at or about the time of importation



Deductive Value

Deductions from the Unit Price:

- commission *or* addition made for profit and general expenses, in sales of the imported merchandise of same general class or kind.
- Actual costs of int'l transportation and insurance.
- Actual transportation and insurance costs from place of importation to place of delivery.
- Customs duties and other federal taxes payable by reason of the importation; and, federal excise taxes measured by the value of the merchandise for which vendors are ordinarily liable (e.g. cigars).
- Value of further processing (3rd option).



Analysis

- Are you bound by the value basis you think was being used
- Can you use a different basis of value
 - Why or why not
- What happens if you use a different basis



Issues

- We have the basis of value Transaction value
- Which value do we use – the first value or the second value, i.e., first sale or second sale



First Sale

- What is it
- Why would you want it
- How do you get it
- Why is reconciliation relevant to first sale



Acceptability of TV - Related Parties

The transaction value is acceptable if the relationship did not influence the price actually paid or payable, or if the TV closely approximates:

- (a) The TV of identical or similar merchandise in sales to unrelated buyers in the U.S.; or,
- (b) The deductive value or computed value of identical merchandise, or of similar merchandise.



Supporting Transaction Value

Goal: establish that the relationship did not influence the price actually paid or payable.

- show that the buyer and seller, although related, buy from and sell to each other as if they were not related, this will demonstrate that the price has not been influenced by the relationship

... continued



Supporting Transaction Value .. 2

- If it is shown that the price is adequate to ensure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time (e.g., on an annual basis), in sales of merchandise of the same class or kind, this would demonstrate that the price has not been influenced.



Problems in Shangri-la

- What if your profit analysis reflects different numbers once seller's data are reconciled. ?
- How does this affect next year's use of TV?
- How do you get these numbers?

	Before	After
Company overall profit	12%	15%
Profit on sales to Importer	11%	8%



Reconciling Transaction Value

- If you're using TV in a related party transaction, what presumption are you making.



Reconciling Transaction Value

- What is the relevance of the annual adjustment between I Spy and Surete?



Issues ...

- Once value bases is determined what do we do next.
- Follow the statute
- Commissions



Some Indicia of a Buying Agency

- **Buying agency agreement**
- Inspection
- Compensation through commission
- **No financial interest in the goods**
- Visits the factory and negotiates
- Orders only on instructions from buyer
- Risk of loss not with the agent
- Transaction documents – what is reflected
- Commission invoice: where and how
- Control




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Issues

- Following the statute, next we look at assists

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Materials, Components & Parts

- How do **you** know if a material, component or part used by your company is provided free of charge?
 - Do you have a complete BOM?
 - Does it show origin, both country and provider
 - How old is it
 - What is its origin and reliability
 - Have you requested and received any back-up docs

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Materials, Components & Parts .. 2

- Do any affiliates, domestic or foreign, provide parts to your company?
 - How do you know?
 - Are parts assists – do they meet definition of assists?
 - What if the parent or other affiliate, US or foreign pays for them?
 - Does it matter if the affiliate is US or foreign
- Does your customer supply any materials?

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Assists

SOMETHING . . .

INCORPORATED
IN

USED
IN

CONSUMED
IN

DEVELOPED
FOR

Supplied
By
Importer
To The

Producer

For Free or Less Than Fair Value
Necessary for the Production of the Imported Merchandise

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Issues

- Back to the statute .. What issue is next – Royalties and License Fees
- Are the royalties paid by CIA Toys to Surete dutiable?

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Research & Development

- Is it being provided?
- Is the product something which by necessity would need R&D
- What is it being provided for?
- By what entity is it being provided?
- Is someone other than the importer paying for it?

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Research & Development ..2

- Who is it being provided to?
 - Directly to you
 - First to another company
- If you're not paying for it – who is?
- Is it dutiable R&D?
 - What is the difference between dutiable R&D and non-dutiable R&D?
- How are you getting this information?
- What if you can't get the information?



1059A

Purpose:

- To prevent the federal government from being whipsawed by an importer
- Basically, the inventory cost cannot be higher than the import value.
- **Not Applicable To:**
 1. property not imported by related party
 2. property not subject to duty
 3. property not subject to *ad valorem* duty



HELP

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