



Evaluating Risks and Exposures In Customs Transactions

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Presented by

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Evaluating Risks and Exposures In Customs Transactions

- Compliance extends beyond voluntary programs like ISA
- Basic obligation of all importers
- Cost of non-compliance
 - Disruption of business
 - Disruption of supply chain
 - Distraction to employees and management
 - Penalties and Liquidated damages
 - Detention and seizure of goods



Evaluating Risks and Exposures In Customs Transactions



- Like in life . . .
 - It's not what you see that can hurt you . . .
 - It's what you don't see . . .

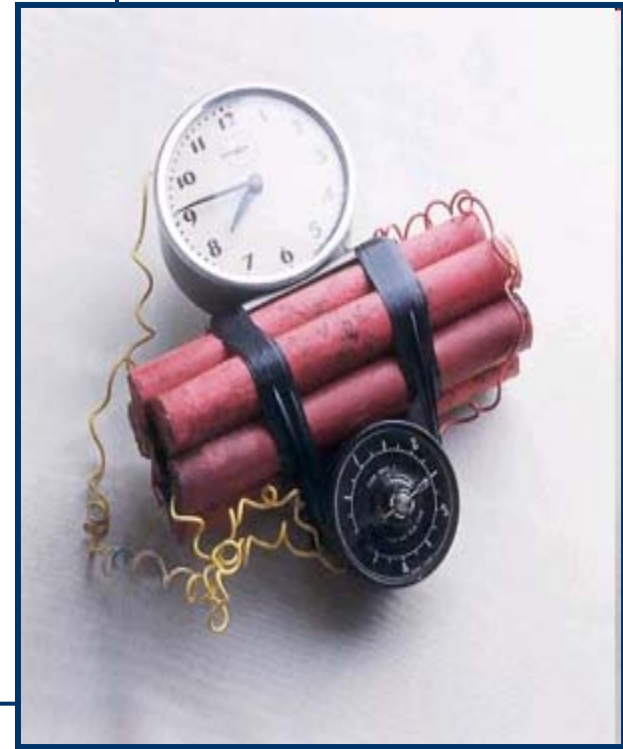
Common Importer Errors

- Not reporting
 - Assists, royalty payments, packing costs
 - supplemental payments
- Lack of documentation to justify deduction of non-dutiable costs (CIF costs)
- Errors in merchandise classification
- Lack of documentation to support U.S. Goods Returned 9801/9802 claims
- Lack of support for transaction value in related party transactions
- Failure to report or support claim for non-dutiable buying commissions
- Recordkeeping errors



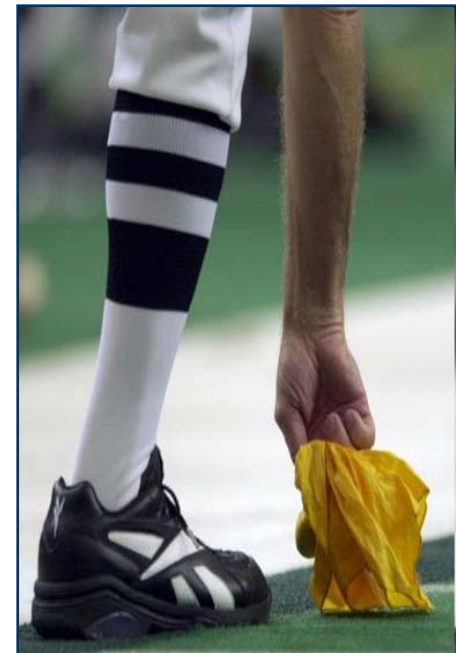
Evaluating Risks and Exposures

- Passage of NAFTA implementation Act in 1993
 - Changed how Customs does its job
 - Less emphasis on “entry by entry review”
 - More emphasis on “Account based reviews”
- Customs Audits and 19 USC 1509
 - Compliance Assessments (CAs)
 - Focused Assessments (FAs)
 - Large volume importers
 - Importers of Trade Priority goods
 - Single issue or Quick Review Audits (QRAs)
 - Referrals-- Account Managers / Import Specialists
 - National Targeting and Analysis Groups (NTAGs)



Evaluating Risks and Exposures In Customs Transactions

- Over 1,000 FA Audits Performed
 - \$90 Million in Loss of Revenue (excludes PDs & Penalties)
 - 57% of FA Audits Concluded Unacceptable Compliance
 - Do the Math:
 - Average Revenue collected per audit \$158,000
- Top 3 Areas with Unacceptable Compliance
 - Value
 - Duty Free Provisions
 - Classification



CBP Trade Priorities

- 2009 Trade Priorities
 - **Import Safety**
 - **Penalties**
 - **Revenue**
 - **Textiles**
 - IPR Enforcement
 - Antidumping/Countervailing (AD/CV) Duties
 - Agriculture

CBP Trade Priorities

- URLs for the PTIs

http://www.cbp.gov/xp/cgov/trade/priority_trade/

- Each link contains detailed information on a particular PTI

Securing America's Borders | SEARCH | GO

About CBP | Newsroom | Border Security | Trade | Travel | Careers

Trade

- Automated Systems and Operational Support
- Basic Importing and Exporting
- Cargo Security
- CBP Legal Decisions and Publications
- Priority Trade Issues
- Quicklinks
- Trade Outreach
- Trade Programs

Home / Trade / Trade Programs /

CBP Import Safety and Other Government Agencies Initiatives

The goal of CBP Import Safety initiatives is to facilitate communications and to strengthen partnership between CBP, other government agencies and the trade to ensure unsafe products do not enter the commerce of the United States.

- **Secretary Napolitano Announces the Creation of New Center to Ensure the Safety of Imported Goods** *featured see also*
12/09/2009
- ▶ **Importer Self-Assessment Product Safety Pilot**
- **Import Safety PTI** *featured see also*
- 12/09/2009
- **Federal Agencies Issue Draft Guidance for Industry Good Importer Practices** *featured see also*
07/09/2009
- **TSCA Import and Export Requirements** *featured see also*
- **Consumer Product Safety Improvement Act** *featured see also*
See the Consumer Product Safety Commission's (CPSC) new initiatives and the Consumer Product Safety Improvement Act (CPSIA). Read about the new CPSIA legislation, CPSC's amended statutes, view summaries and public comments by section, and learn answers to frequently asked questions.
- **Import Safety Website** *featured see also*
- ▶ **Bioterrorism**
The Bioterrorism Act (BTA) is intended to protect the health and safety of the people of the United States from an intended or actual terrorist attack on the

Search *CBP Import Safety and Other Government Agencies Initiatives* for:
 GO

section sitemap for
CBP Import Safety and Other Government Agencies Initiatives

see also:

- ▶ in Trade Programs:
 - Agriculture Programs
 - Audits (Regulatory Audit)
 - Broker Compliance
 - Broker Self-Assessment Pilot Program
 - Entry Summary
 - Duty, Tariff Rates
 - ...more
- ▶ on cbp.gov:
 - Import Safety PTI
- ▶ on dhs.gov site:

Report Suspicious Activity to **1-800-BE-ALERT**

What's New
in Trade

The screenshot shows a web page from the Department of Homeland Security (DHS) website. At the top, there is a navigation bar with the DHS seal and the text "Securing America's Borders". Below this is a search bar with the word "SEARCH" and a "GO" button. The main navigation menu includes "About CBP", "Newsroom", "Border Security", "Trade", "Travel", and "Careers". The "Trade" menu item is highlighted, and a mouse cursor is pointing at it. On the left side, there is a vertical sidebar with a "Trade" header and several sub-menu items: "Automated Systems and Operational Support", "Basic Importing and Exporting", "Cargo Security", "CBP Legal Decisions and Publications", "Priority Trade Issues", "Quicklinks", "Trade Outreach", and "Trade Programs". Below the sidebar is a "What's New" section with a graphic that says "Report Suspicious Activity to 1-800-BE-ALERT". The main content area features a breadcrumb trail: "Home / Trade / Trade Programs / CBP Import Safety And Other Government Agencies Initiatives /". The primary heading is "Importer Self-Assessment Product Safety Pilot". Below this heading is a list of five items, each with a date and accessibility information. The first item is "Importer Self-Assessment Product Safety Pilot General Notice" dated 06/02/2009, with a green "featured" icon and the text "featured see also". The second item is "Importer Self-Assessment Product Safety Pilot Handbook, Addendum and Questionnaire" dated 06/02/2009, with a PDF icon and the text "pdf - 152 KB.". The third item is "Importer Self-Assessment Product Safety Pilot Handbook" dated 06/02/2009, with a PDF icon and the text "pdf - 165 KB.". The fourth item is "Importer Self-Assessment Product Safety Pilot Addendum to the ISA Memorandum of Understanding" dated 06/02/2009, with a PDF icon and the text "pdf - 31 KB.". The fifth item is "Importer Self-Assessment Product Safety Questionnaire" dated 06/02/2009, with a PDF icon and the text "pdf - 39 KB.". On the right side of the page, there is a search box for "Importer Self-Assessment Product Safety Pilot" with a "GO" button. Below the search box is a "section sitemap for Importer Self-Assessment Product Safety Pilot". Further down, there is a "see also:" section with two entries: "in CBP Import Safety and Other Government Agencies Initiatives: Bioterrorism" and "on cbp.gov: Import Safety PTI, Importer Self-Assessment Program (ISA), Importer Self-Assessment Points of Contact".

Securing America's Borders

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Trade

Automated Systems and Operational Support

Basic Importing and Exporting

Cargo Security

CBP Legal Decisions and Publications

Priority Trade Issues

Quicklinks

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What's New

Home / Trade / Trade Programs / CBP Import Safety And Other Government Agencies Initiatives /

Importer Self-Assessment Product Safety Pilot

- **Importer Self-Assessment Product Safety Pilot General Notice**
- 06/02/2009
- featured see also
- **Importer Self-Assessment Product Safety Pilot Handbook, Addendum and Questionnaire**
- 06/02/2009
- For Accessibility Information: OT508CONTACT@dhs.gov
- pdf - 152 KB.
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Search Importer Self-Assessment Product Safety Pilot for:
GO

section sitemap for
Importer Self-Assessment Product Safety Pilot

see also:

- in CBP Import Safety and Other Government Agencies Initiatives:
Bioterrorism
- on cbp.gov:
Import Safety PTI
Importer Self-Assessment Program (ISA)
Importer Self-Assessment Points of Contact

PTI: Revenue

- High Risk areas include:
 - Related-party transfer pricing
 - GSP and FTA claims
 - Industries that are “known” to have assists and other “additions” to value (Packing, royalties, etc.)
 - 9801 / 9802 programs (U.S. Good Returned)
 - Antidumping / countervailing duty
 - High duty rate items and “known” industry misclassifications
 - Audits of high dollar value prior disclosures
 - Importers that file reconciliations

PTI: Revenue

- PTI revenue collection initiatives include:
 - CF 28 requests for information
 - CF 29 proposed action change in class or value
 - Focused Assessments
 - Quick Response Audits (QRA)
 - single-issue audits with a narrow focus
 - QRA originate from referrals by other CBP offices for specific companies involved in certain types of transactions
 - ISA approved companies are not immune from QRAs

Focused Assessment vs. ISA

- ISA and Focused Assessment have the same goal . . .
 - Establishing sound internal controls
 - Minimize errors in Customs transactions
 - Identify and self-report errors that do occur
 - Ongoing monitoring of business activities to ensure that internal controls are effective

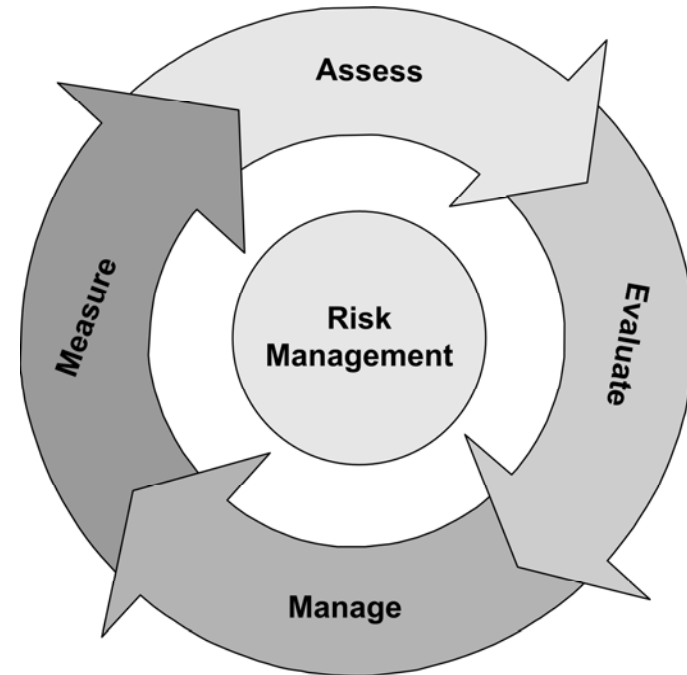


FA's & ISA: Finding Common Ground

- Successful results for FA, QRA, or ISA require:
 - Import transaction risk analysis
 - Appropriate written internal controls for:
 - Classification & Trade preference programs
 - Valuation (declared & undeclared value)
 - Quantity
 - Records
 - Antidumping
 - Post-entry review & correction process

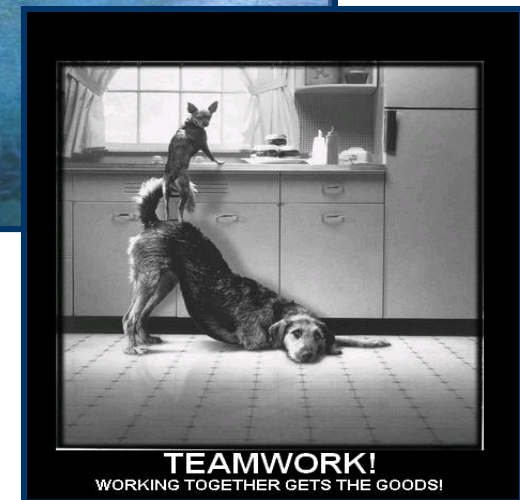
Evaluating Your Risks and Exposures

- What is a “risk assessment?”
 - Company identifies transactions that are risks to CBP compliance
 - analyzes risks for possible effects, and designs control activities to manage those risks.



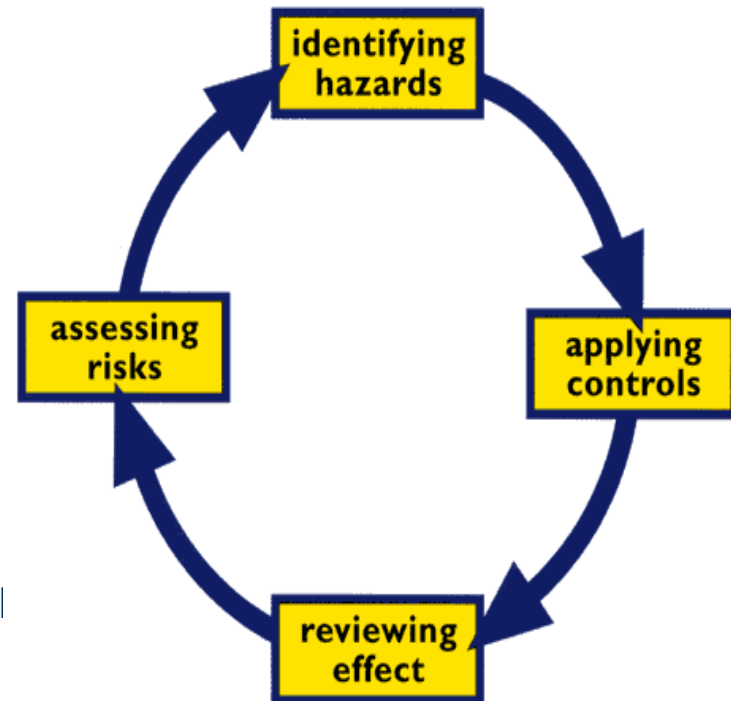
Where to Begin?

- Identify Customs programs use by your company
- Identify persons knowledgeable about products and programs; assemble compliance team
- Review regulations and legal requirements for programs
- Determine what records must be maintained and/or procedures that must be followed



Evaluating Your Risks and Exposures

- Typical risk areas associated with customs transactions--
 - Classification
 - Special trade areas/ Transshipment
 - Valuation
 - Quantity
 - Recordkeeping
 - Antidumping/ Transshipment
- New “risk” areas include:
 - Product safety—CPSC/ Food/ Medical
 - Trademark / trade names
 - Textiles



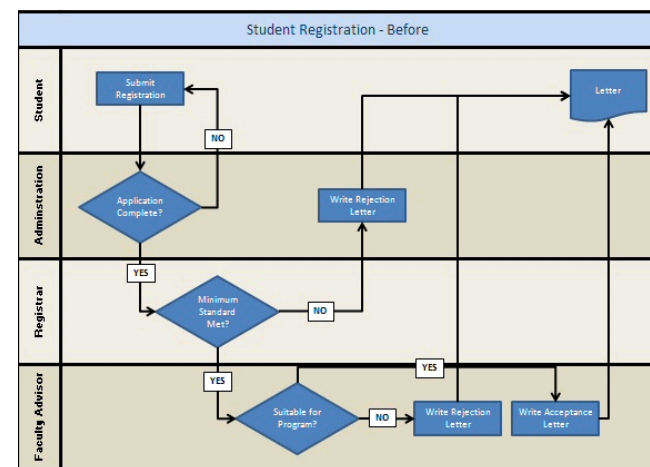
Where to begin: Data Collection and Analysis



- Obtain copy of importer activity report or ACE reports from Customs
 - Review data for information on
 - Exporters/manufacturers
 - values
 - tariff classifications
 - Special duty /preferences
- Link CBP web page
 - http://www.customs.gov/xp/cgov/admin/fl/foia/making_a_request/itrac/itrac.xml

Where to Begin Your Valuation Risk Assessment?

- Flow chart product acquisition and payment process:
 - Purchase/ ordering of merchandise
 - receipt of merchandise
 - recording of inventory
 - payments made to foreign vendors
 - payment made to U.S. vendors
 - Development of new product



Valuation Where to begin: Data Collection and Analysis

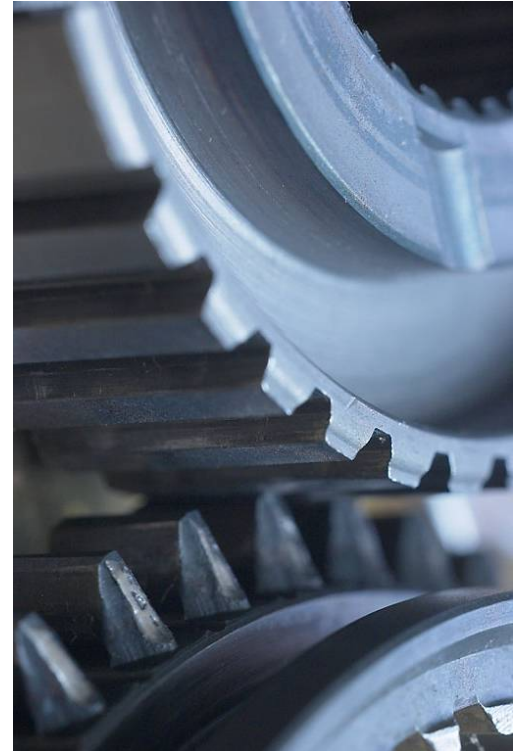
- Obtain financial information related to:
 - Accounts Payable and Vendor reports
 - P & L account descriptions and information for cost of goods and other similar accounts
 - Supply Contracts and Royalty or License agreement
- Vendor Payment Analysis
 - Select a time frame for Analysis
 - Sort ITRAC or ACE entry line by MID code and determine total value for period
 - Sort vendor payments for same period
 - Compare totals and determine reason for discrepancies

Conducting Your Risk Assessment

- **Identify risks and compliance goals**
 - Identify legal and regulatory compliance objectives
 - Sample entry and financial transactions
 - Identify errors and causes, and
 - Share results with others
 - As a group determine how errors can be eliminated
 - develop written procedures that “**reasonably ensure**” compliance objectives are met.

Are You Ready?

- What does Customs want to see?
 - Demonstrated Management commitment to compliance with customs requirements and expectations
 - Evidence of a “**risk review**” related to import transactions
 - Documented programs & processes with designated responsibilities
 - Interaction between affected company employees and Customs brokers of important Customs related information
 - Periodic checks to verify accuracy of information
 - Evaluation of errors and documentation of “process fixes”
 - Disclose errors and tender any loss of revenue



More Information

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Tariff Classification Risk Reviews

- Review FA Technical Guide 5D related to Classification
- Informed compliance publications: Classification of Sets; Classification of Textile Costumes Under the HTSUS; Footwear
- Does company record tariff classification at the part or SKU level (product/classification matrix)?
- Use PO reports to identify high value or high volume SKUs
- Does company document classifications with technical information and reference to preexisting rulings or HTS classifications and Explanatory Notes
- Identify HTS classifications with unique classification requirements or duty free/ low duty rates

Methods Of Customs Valuation

19 USC 1401a

- The Customs Value law provides for the following methods of value, in order of preference:
 - Transaction value
 - Transaction value of identical or similar merchandise
 - Deductive value
 - Computed value
 - a derived (fall-back) method reasonably adjusted to circumstances
- Merchandise may not be appraised on the basis of -
 - Minimum, arbitrary, or fictitious values

Transaction Value

- What is Transaction Value?
- The term "price actually paid or payable"
 - “the total payment (whether direct or indirect) . . . for merchandise by the buyer to, or for the benefit of, the seller.”
 - Plus certain statutory additions if not otherwise included:
 - packing costs
 - selling commissions
 - assists
 - royalty or license fees paid as a condition of importation
 - Proceeds of a subsequent resale, disposition, or use

PRICE ACTUALLY PAID OR PAYABLE

- Companies are often invoiced separately by vendors / suppliers for:
 - tooling, molds, packaging items
 - Expedited or “hot lot” manufacturing fees
 - Small lot or small quantity surcharges
 - Product modifications
 - NRE or separate tooling charges for startup production costs
 - Testing costs -- 542187 dated Nov. 7, 1980 (TAA No. 11); 543645 dated Feb. 17, 1987.

Customs Valuation: 1401a(b)(2) The Related Party Rule

- (b)(2)(A) -- The transaction value of imported merchandise shall be the appraised value of that merchandise for the purposes of this chapter only if -
 - *** (iv) the buyer and seller are not related, or
 - the buyer and seller are related but the transaction value is acceptable
- Burden is on importer to establish that the relationship does not affect the price
- Customs has published ICP on valuation for related party transactions

Acceptability of Inter-company Prices Based On “IRS” Transfer Pricing Methodology

- HQ 546979, August 30, 2000
 - “While the goal of both the TAA and section 482 of the Tax Code is to ensure that the transactions between related parties are at arms length, the method of making that determination is different under each law.”
 - “Customs approach to related party transactions differs from the IRS approach . . . the [IRS] methods review profitability on an aggregate basis, not a product by product basis.”
 - “Customs generally analyzes related party transactions at a more detailed product by product level . . .

Related Party Rule For Customs Valuation

- Use of “Test Values”
 - Comparison of transfer price to:
 - Transaction value of similar goods
 - computed or deductive value of goods
 - Limited to situations where there has been an “appraisement entry”
- “Circumstances of Sale”
 - Documentary Evidence of “arms length negotiations”
 - Evidence of Market value of goods
 - Selling price equals all costs plus profit and general expense for seller

“All Costs Plus Profit” Method

- An importer may demonstrate that the relationship between the buyer and the seller did not influence the price by establishing that:
 - "the price is adequate to ensure recovery of all costs plus
 - a profit that is equivalent to the firm's overall profit realized over a representative period of time in sales of merchandise of the same class or kind . . ."
- Statement of Administration Action, Id.; see also 19 C.F.R. 152.103 (l)(1)(iii).

The Generra Rule

- The Generra Presumption
 - All payments made by a buyer to a seller, or a party related to the seller, are part of the price actually paid or payable for the imported merchandise. (Generra Sportswear Co. v. U.S., 8 CAFC 132 (1990))
 - Congress did not intend for CBP to engage in extensive fact-finding to determine whether separate charges, all resulting in payments to the seller in connection with the purchase of imported merchandise, are for the merchandise or for something else.
 - The burden of establishing that payments are unrelated to the imported merchandise rests on the importer. Moss Mfg. Co. v. United States, 896 F. 2d 535, 539 (Fed. Cir. 1990)
 - Recent Case of Peerless Clothing International CIT Case Slip Op 09-86 (August 2009): Generra rule is not a “legal presumption.”

Valuation Checklist

- ❑ Price Actually Paid or Payable
- ❑ Packing
- ❑ Selling Commissions
- ❑ Assists (e.g., Materials/Component Parts, Tools, Dies, Molds, Merchandise Consumed, Engineering, Development, Art Work, Design Work, Plans)
- ❑ Royalties and License Fees
- ❑ Proceeds of Subsequent Resale
- ❑ Transportation Costs (e.g., International Freight, Foreign inland Freight,
- ❑ Transportation Rebates, Insurance)
- ❑ Retroactive Price Adjustments (Periodic and year end transfer price adjustments)

Valuation Checklist

- Price Increases
- Rebates and Allowances
- Indirect Payments to 3rd Parties that benefit seller
- Payment of Seller's Debt by Buyer (e.g., quota or materials)
- Price Reductions to Buyer to Settle debts (e.g., Reductions for Defective Merchandise)
- Purchases on Consignment
- Quota/Visa
- Currency Exchange Adjustments

Where to Begin Your Valuation Risk Assessment?

- Important Resources: Customs Publications
 - Customs Valuation Encyclopedia of Rulings and Decisions
 - Informed Compliance Publications
 - Bona Fide Sales & Sales for Exportation to the United States
 - Buying & Selling Commissions
 - Customs Value
 - Determining the Acceptability of Transaction Value for Related Party Transactions
 - Importation of Commercial Samples
 - Proper Deductions for Freight & Other Costs

Where to Begin Your Valuation Risk Assessment?

- Exhibit 5B - Transaction Value - Technical Information for Pre-Assessment Survey (TIPS)
- Exhibit 5T - Reconciliation - Technical Information for Pre-Assessment Survey (TIPS)

Where to Begin: Valuation

- Focus on

- Purchase pricing adjustments, discounts, rebates, etc.,
- Accounting: payments, payable, inventory
- Cost of Goods: assists, foreign R & D, royalties.
- Finance Dept -- what are key general ledger accounts used to record payments for goods and R & D ?

Assists & Supplemental Payments

- Discuss definition of assists with Manufacturing/ Procurement/Purchasing / R & D Groups
- Intercompany Transfers can be assists
- Identify vendors and suppliers– review export data/records from shipping for shipment of tooling and equipment
- Obtain asset report and check location of equipment
- Research new vendors or other shifts in production

Risk Analysis: Special Trade Programs

- Select a time frame for analysis
- Sort ITRAC or ACE entry line data by SPI codes or tariff classifications (9801 or chapter 99)
- Select sample line transactions
- Determine whether appropriate supporting documentation is available

Risk Analysis: Special Trade Programs

- 9801/9802 claims require (19 CFR 10.1):
 - Foreign Shipper Declarations
 - Evidence of US export
 - U.S. Manufacturer declarations
 - Has company applied for and received waiver from Port?
 - Review HQ H007668, dated June 20, 2007

Risk Analysis: Special Trade Programs

- Most Special Trade Programs have special documentation requirements
 - Vendor declarations (i.e., gsp) are subject to additional verification
 - The supporting documents may include:
trip reports, site visits, quality assurance reports
 - health and safety certificates prepared by government officials, and origin certificates prepared by government officials.

Risk Analysis: Special Trade Programs

- GSP, Free Trade Agreements, U.S. Goods Returned
- Frequent area for errors and unsupported claims
- Customs Publications and FA Guidance
 - [Exhibit 4F - A Guide for Supporting Generalized System of Preferences \(GSP\) Claims](#)
 - [Exhibit 5E - HTSUS 9801.00.10 - U.S. Goods Returned - Technical Information for Pre-Assessment Survey \(TIPS\)](#)
 - [Exhibit 5H - HTSUS 9802.00.80 - U.S. Articles Assembled Abroad - Technical Information for Pre-Assessment Survey \(TIPS\)](#)
 - [Exhibit 5M - Generalized System of Preferences - Technical Information for Pre-Assessment Survey \(TIPS\)](#)
 - [Exhibit 5Q - Israel Free Trade Act \(IFTA\) - Technical Information for Pre-Assessment Survey \(TIPS\)](#)
 - [Exhibit 5R - African Growth and Opportunity Act - Technical Information for Pre-Assessment Survey \(TIPS\)](#)

Risk Analysis: Quantity

- Exhibit 5S - Quantity - Technical Information for Pre-Assessment Survey (TIPS)
 - Unacceptable practices: declaring numbers of containers rather than number of units
 - Document receiving and inventory reconciliation practices
 - Does Receiving report unresolved quantity discrepancies to Trade Compliance?
 - Audit receiving discrepancy reports for accuracy
 - Does Trade Compliance report quantity discrepancies to CBP?

Prior Disclosure During an FA

- Prior Disclosure can minimize exposure to 1592 penalties-- Even during an FA.
- A PD occurs when party “disclose” evidence of a violation without knowledge of a formal investigation, and tenders, or agrees to tender amount owing.
- During FA or other audit, PD may be “accepted” if matter is fully disclosed prior to receiving a **sufficiently documented result sheet**. (unless party is otherwise informed of violation).
- Prior disclosure is "violation specific" and disclosure benefits ordinarily are available only for those violations fully disclosed by the prior disclosure.
- Violations may still count towards projection of LOR.

Treatment of “Gray Areas”

- FA Exhibit 3H - Resolving "Gray Areas" of Harmonized Tariff Schedule (HTS) Classification
 - Correct classification of some imports can be difficult.
 - Customs, as well as the importer, is negatively affected when costs to achieve compliance are out of proportion to the risks associated with noncompliance.
 - In some cases the classification used by importer is a plausible alternative to the Customs classification
 - If the classification is a “gray area,” importer’s internal controls will be considered sufficient to provide reasonable assurance that the appropriate classification is used, and the classification will not be counted as an error for the risk opinion.