

Reconciliation: The Why's and How To's



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Agenda

- Overview
- Customs Valuation Methodologies
- Common Misconceptions: Transfer Price & Maquila Value
- Example of Value Reconciliation
- Reconciliation Process – How to report reconciled values
- Other Considerations

Overview

- Why discuss valuation of imports when considering reconciliation?
- Valuation of import transactions may not be as simple as you think



Reporting Obligations

- Under U.S. Customs rules, an importer has a legal obligation under 19 U.S.C. 1484 to:
 - Declare the correct value
 - Provide Customs with all relevant information to allow Customs to validate correctness of declared value
 - Customs has obligation to verify correctness of declared value of imported merchandise under 19 U.S.C. 1500



Transaction Value - Basics

- ↩ The primary basis for customs value is transaction value (TV).
- ↩ TV is the “price actually paid or payable for the merchandise when sold for exportation for to the U.S.” – plus certain statutorily enumerated additions to the extent not included in the price actually paid or payable
- ↩ ***Use of TV requires a bona-fide sale for exportation.
- ↩ “Price actually paid or payable” (PAPP):
 - The total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Transaction Value

↩ Transaction value = P.A.P.P. + C.R.A.P.P.

↩ Price Actually Paid or Payable

↩ Additions:

- Commissions
- Royalty or License Fee
- Assists
- Packing costs
- Proceeds



- **But not:** costs incurred after importation (duties, transport, construction or assembly)*

Transaction Value – Identical/Similar Merchandise

- Is the transaction value (acceptable as the appraised value under § 152.103 but adjusted under paragraph (e) of this section) of imported merchandise that is
 - **(1)** With respect to the merchandise being appraised, either identical merchandise, or similar merchandise; and
 - **(2)** Exported to the United States at or about the time that the merchandise being appraised is exported to the United States.
 - Value determined at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised.

Deductive Value

- Based on the resale price of the goods after importation, as long as sold within 90 day period
- Generally, deductive value calculated by starting with a unit price and then making certain additions to and deductions from that price
- Deductions include:
 - ✓ Commissions or additions for profit or general expenses
 - ✓ Duties and taxes
 - ✓ Value of further processing
 - ✓ Packing costs

Computed Value

- Computed value may be substituted for deductive value in the valuation hierarchy, at the request of the importer
- Computed value is the sum of the following elements:
 - Materials, fabrication and other processing used in producing the imported merchandise
 - Profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the U.S.
 - Any assist, if not included above
 - Packing costs



Computed Value Elements

- ↩ Production cost = Value of materials and fabrication
- ↩ Profit and general expenses = Profit, general expenses and any other expenses
- ↩ Packing costs = Cost of all containers and coverings and of packing, whether for labor or materials, used in having merchandise packed ready for shipment
- ↩ Assists = certain items or products provided free of charge or at reduced cost by importer to producer of imported goods

Computed Value Elements *(cont'd)*

↩ Further definition of assists:

- Materials, components, parts and other items used in production
- Tools, dies, molds and similar items (Ex: machines and machine tools used by maquila)
- Merchandise consumed in production (Ex: glue, thread, lubricating oils)
- Engineering development, artwork, design work and plans undertaken elsewhere than in U.S.
- General purpose equipment (Ex: ovens, drill press)

Fallback Value

- If, after reviewing the valuation hierarchy, no methods apply to the subject transaction, then look to fallback value – also called modified value
 - Ex: fallback or modified transaction value
- Fallback: is one of the stated valuation methodologies, but reasonably adjusted to the extent necessary, in order to arrive at a value

Why Computed Value?

- In most instances, transaction value does not apply to an import transaction with a maquila
 - Usually no sale for export – the U.S. company owns the goods through the entirety of the transaction and importation back into the U.S.
 - The price of the transaction is not “fixed” at the time of exportation - there may be lump monthly payments for goods sent to the maquiladora, and the re-imported value of the processed goods are usually based on standard value and not actual value

Why Computed Value? *(cont'd)*

- ◀ It is not a simple matter of comparing apples to apples, because transaction value for identical or similar merchandise cannot typically be identified
- ◀ There is usually a pro forma invoice issued by maquila reflecting the standard cost – red flag to be aware not the price actually paid or payable
 - Standard cost, usually assessed at beginning of year, does not reflect true production costs and required additions to value under Customs

Proforma Example: Red Flag

Proforma Invoice	
Date :	CARRIER: TNT EXPRESS WORLDWIDE

<u>SENT BY</u>		<u>SENT TO</u>			
Name :		Name :			
Address :		Address :			
City/Postal Code :		City/Postal Code :			
Country :		Country :			
Telephone/Fax :		Telephone/Fax :			
FULL DESCRIPTION OF GOODS	QTY	ORIGIN COUNTRY	CUSTOMS COMMODITY CODE	UNIT VALUE AND CURRENCY	TOTAL VALUE AND CURRENCY
TOTAL VALUE AND CURRENCY :					

Value for customs purposes only.

No commercial value.

REASON FOR EXPORT:

TERMS OF DELIVERY (INCOTERMS 2000):

NUMBER AND KIND OF PACKAGES:

GROSS WEIGHT:

NET WEIGHT:

Place and date:

Name:

Signature:

Example 1

- **Computed Value Applicable (See HQ H234540):**
- ❖ Company A owns raw materials to create graduation gowns, and sends to maquila to assemble gowns
 - ❖ Maquila will produce finished gowns and store in inventory, until Company A requests shipments based on customer orders
 - ❖ Company A submits monthly payments to maquila for gown production, inspection and inventory control services, and an amount for profit
 - ❖ Company A is importer of record and owns gowns when imported to U.S. At that point, they are sold to end customer from distribution center.

Example 1 *(cont'd)*

- Why computed value?
- What are the basic requirements of transaction value?
 - ❖ No sale for export: Company A owns all raw materials, Company B (the maquila) simply assembles and produces completed gowns. Company B does not sell the finished gowns back to Company A so there is no sale for export to the U.S.
- Even if there is an official transfer price study in this situation, that calculated transfer price must still meet principles of one of Customs value methods to be the proper initial price to declare to Customs on entry.



Example 2

➤ Transaction Value – Limited Circumstances (See HQ 548380):

- ❖ U.S. company sent raw materials to maquila for production
- ❖ Maquila only produced finished good upon specific request from U.S. company, which based on receipt of customer order
- ❖ Maquila created shipping documents attention to U.S. end customer and sent product directly to end customer
- ❖ U.S. end customer paid invoice created by maquila
- ❖ Customs found a bona fide sale for exportation

Example 2 *(cont'd)*

- First question for TV: Is there a sale for export?
- Yes!
- Gowns only completed based on specific request (order) from the 3rd party end customer-not based on monthly, ongoing bulk orders from party that owns materials
 - ❖ Minute but key distinction here: Customs will look to transaction and shipping documents to ascertain if actual sale
- Gowns invoices sent directly to 3rd party customer which paid that maquila invoice

Common Misconceptions: Transfer Price & Customs Value

↩ Transfer price = Correct Customs value



- ↩ Not necessarily!! Customs declared value on entry must still adhere to CBP valuation requirements and methodologies
- ↩ Be aware: Tax law has its own valuation methods (even TV) but encompass different elements than Customs

Transfer Price: Customs and Tax

- The price between related parties is often informally termed a “transfer price” and used by persons in the import industry.
- A transfer price often used for imports from related maquiladoras, along with related foreign suppliers
- However, transfer pricing is an official value concept under the tax regime.
 - Idea under tax laws is that transfer pricing allows companies to allocate profits across related parties and thus income tax payments to the benefit of the company overall

Transfer Price: Customs and Tax *(cont'd)*

- Why can't I use the transfer price as the correct Customs value and be done with it?
 - Tax transfer price does not meet Customs value elements
 - Retroactive adjustments usually occur to transfer prices
- Even though usually adjusted pursuant to official transfer price study or APA (Advance Pricing Agreement) – this by itself does not make a difference

Related Parties – 19 CFR 12.103(j)

↪ *Limitations on use of transaction value—(1) In general.* The transaction value of imported merchandise will be the appraised value only if:

- (iv) The buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.

↪ The burden is on the importer to demonstrate that the relationship does not affect the price.

↪ There are related party tests which must be met to substantiate that the relationship has not affected the price.



Retroactive Adjustments & Customs Value: How to Declare

- Customs laws do not allow for post-importation changes to price.
- However, if using the Customs Reconciliation program, importers may report an estimated price (for example, the initial transfer price or a standard cost from maquilas) and then report the actual value of the import through a reconciliation entry once the transfer price is adjusted at year-end or actual values determined.
- Customs now allows for refunds (previously only payments were allowed) due to transfer price adjustments via the Reconciliation program, as long as other elements of transaction value and arms-length pricing met (this is in a TV or modified TV situation).

Reconciliation

- ↩ Customs implemented a prototype program, Reconciliation, to assist importers with reporting the correct values if not known at time of importation. Includes:
 - Values: Estimated values at time of entry (due to maquila imports, imports under transfer pricing that will require subsequent adjustments, assists, etc.)
 - Certain other issues including:
 - NAFTA claims
 - Classification and
 - 9802 value claims
- ↩ The Reconciliation entry is required to be filed within 21 months of first entry date of related import

Reconciliation: FTA

- Timing: 12 months from date of importation for first included entry for entries flagged for Free Trade Agreement (FTA) reconciliation
- Do not make FTA claim for entry at that time – only flag for FTA that will be finalized later in reconciliation entry once have needed information
- If determine that entry does not qualify – you do not close out the flag or file anything further
- Caution: Continued FTA flagging without resolution can raise red flag to Customs

Reconciliation *(cont'd)*

- If Reconciliation entry filed late or not at all, will receive liquidated damages claims
 - Once enter Reconciliation program and flag entries to be reconciled, must file a reconciliation entry to close out flag with CBP
 - ❑ Even if just a “no-change” reconciliation entry

Questions?



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Value Reconciliation

↩ Value reconciliation can become very complex as the basis for adjustment is frequently based on price or currency indexes which can change daily. Also, in many cases the parties agree to select the date of invoice payment as the date to apply the adjustments which can vary for individual invoices within a single 7501 entry, or even a 7501-line item.

- Examples:

- Material Surcharges; e.g., steel, copper, aluminum
- Currency Risk Sharing
- Energy Costs – e.g., electricity, natural gas
- Use of Transfer Price

Example – Part 1

- ↩ Value Reconciliation type - Currency Risk Sharing
 - Risk sharing formula established by contract between U.S. Buyer and Off-shore seller
- ↩ Example – part 1:
 - Merchandise is invoiced and paid in Euro (Buyer must purchase Euros to pay invoices)
 - Parties agree to establish benchmark pricing based on \$USD to EURO (€) conversion rate @ 1.175 \$USD/€.
 - Currency risk sharing to be based on Monthly OANDA rate. Parties agree to split the difference between market rates and benchmark.
 - Reconciling credits / debits requires involvement of both accounting and Trade Compliance departments.
 - Adjustments are made via a credit or debit via ACH at same time invoices are paid (60 days from delivery). Credit or debit added or subtracted depending on who benefited from the currency fluctuation.

Example Part 2

Example Part 2:

- Monthly OANDA Average for a given month is \$1.115 USD / Euro – lower rate benefits buyer, can buy Euros cheaper.

Invoice No.	Price (Euro)	Benchmark Price \$USD @ 1.175 / €	Price \$USD @ \$1.115 \$ / €	Difference	÷ 50%
ABC123	€1000.00	\$1,175.00	\$1,115	\$60.00	\$30.00

- Importer / Buyer to adjust invoice ABC123 by \$30 value resulting in credit to seller of \$30 for invoice ABC123.
- This process is repeated for all invoices payable during a lookback period (e.g., one month). Debits / Credits accumulated for month with a lump credit or debit calculated for month.

Example Part 3

- ➡ Example Part 3 - Next step is to reconcile adjusted invoice values with actual entered values.
 - Actual entered values will be based on the invoice price in € converted into \$USD using exchange rate calculated based on the **prevailing exchange rate on the date of export.**
 - Prevailing exchange rate on date of export \$1.1859 / €

Invoice No.	Price (Euro)	CF-7501 Price \$USD @ 1.1859 \$/€	Amount Subject to Recon	Total Adjusted Value
ABC123	€1000.00	\$1185.90.00	\$30.00	\$1215.90

- Therefore, an adjusted value of \$1215.90 must be declared to CBP in connection with this invoice on the reconciliation entry.
- All invoice adjustments must be tallied, and the total amount declared to CBP on the reconciliation entry.

Things to Consider

- Considerations in this example:
 - Need payment amount report from accounting department with actual total adjusted payments by invoice.
 - Must obtain activity report from the broker containing actual invoice numbers with CF-7501 declared values – need to partner with the broker.
 - Invoice payment dates within an entry may differ based on payment terms. Therefore, OANDA average monthly rate may differ for various invoices within an entry making invoice by invoice analysis necessary.
 - Consolidated reconciliation entries may contain large number of entries, with 100s of separate invoices, therefore activity report may have hundreds of lines.
 - May need to employ spreadsheet analysis tools such as “VLOOKUP” to match accounting department report containing adjusted actual payments amounts with broker provided 7501 declared payment amounts based on prevailing exchange rates on date of export.

Things to Consider *(Cont'd.)*

- ↩ Frequently:
 - Multiple invoiced quantities of merchandise included on a single entry
 - Various products of different prices included on each invoice.

- ↩ Information on Reconciliation from CBP Website:
 - <https://www.cbp.gov/trade/entry-summary/reconciliation/reconciliation>

- ↩ Filing the Reconciliation: The Reconciliation may be filed with data showing Entry-by-Entry adjustments to duties, taxes, and fees, or with Aggregate data showing only the adjustment without entry-level detail.

Reconciliation *(Cont'd.)*

- For fiscal control reasons, the Aggregate method will be allowed only when the Reconciliation does not claim a refund in duties, taxes and fees. Similarly, drawback claims against the reconciled amount will not be accepted. (The original underlying entry summaries remain eligible for drawback once the Reconciliation has been filed.) Also, refunds in duties may not be netted against duties owed on a Reconciliation.

Reconciliation *(Cont'd.)*

- When the information becomes available, the importer files a Reconciliation. A Reconciliation can cover up to 9,999 underlying entry summaries. The Reconciliation is due within 12 months of the earliest entry import date for certain trade agreements, or within **21 months** of the earliest entry summary date for all other issues.
- Interest is payable on underpayments and can be collected by importer on overpayments according to CBP formulas.
- See CBP Reconciliation Guide to Compliance, P. 32:

https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/Revised%20acs_recon_guide.pdf%20%2810-19-2016%29.pdf

Structure and Submission of Reconciliations

- A Reconciliation has the following three components:
 - Header
 - Association file
 - Summarized line item data spreadsheet

- Note: Preparation of the Reconciliation Entry is Typically a broker Function

Structure and Submission of Reconciliations *(Cont'd.)*

◀ Header

- The Reconciliation header record provides general information on the Reconciliation.

Contains:

- Reconciliation entry number
 - Type of Reconciliation
 - Issue(s) on that Reconciliation
 - Also includes the grand totals for duties, taxes, and fees, both original and reconciled.
-
- The total change in duties, taxes, and fees must be shown.
-
- See Example - CBP Guide to Compliance, page 43:

Structure and Submission of Reconciliations *(Cont'd.)*

Association File

- The association file contains a list of affected entry summaries previously flagged for Reconciliation and the code for the port where they were filed.
- For Entry-by-Entry Reconciliations, the association file will show monetary amounts with changes applied to each entry summary.
- The association file for both Entry-by-Entry and Aggregate Reconciliations contains a list of
 - underlying entry numbers (without reference to Harmonized Tariff Schedule classifications)
 - and ports of entry, which are grouped together on the Reconciliation.
- For Entry-By-Entry Reconciliations only, the following elements are also required:
 - The actual amount of fees (broken out by class code), duties, and taxes, deposited per underlying entry summary.
 - The reconciled amount of fees (broken out by class code), duties, and taxes that should have been paid for each of the underlying entries, had complete information been available to the importer at the time of the original summary filing.
- See Example - CBP Guide to Compliance, page 44:

Structure and Submission of Reconciliations *(Cont'd.)*

- **Summarized Line-Item Data Spreadsheet**
 - This third element of the Reconciliation will show, at a macro level, all substantive business changes reported in the Reconciliation.
 - The line-item data (including the data elements) must be presented in a standard format. See the sample spreadsheet in
 - The data elements in the spreadsheet are the same for both Entry-by-Entry and Aggregate Reconciliations.
 - Each line item will be consolidated for all of the underlying entries listed in the Reconciliation association file.
 - See Example - CBP Guide to Compliance, page 47

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