


SPC&B Update

May 6, 2016 In this Issue: Global Customs Valuation Issues

EU, China and WCO Issue Value Regulations and Guidance



Do You Know How Your Shipments Will be Valued in Other Countries?

European Union (EU): Royalties

In our *Updates* dated January 13, 15, and 22, 2016, we informed you of certain changes in the European Union's Customs valuation rules, including the elimination of first sale valuation and a change to the treatment of royalties, potentially rendering most royalties dutiable. The European Commission has published a draft "information document" that provides guidance with respect to these changes, complete with examples of transactions, which is available upon request.

Although the guidance document takes great pains to point out that the revision to the treatment of royalties does not include an assumption that all royalties are automatically to be included in dutiable value, the wording in the regulation is likely to cause EU Customs agents to include the royalties in dutiable value. The regulation states that royalties are considered to be a condition of the sale (and therefore dutiable) when the buyer cannot purchase the goods without payment of the royalties. Since any time a licensed product is being sold (apart from gray market goods), the licensor likely would insist on the payment of royalties, they would become a condition of sale and, therefore, dutiable.

China: Related Parties and Royalties

Not to be outdone, the Chinese government, in recent amendments to its Import and Export Declaration Documents Standards, initiated increased scrutiny of related party transactions and royalty payments. In this regard, importers and exporters in China must make new declarations on the entry/exit documents, including a "Confirmation of Special Relationship," "Confirmation of Price Impact" and "Confirmation of Payment of Royalties," issues which in the past were only discovered by Chinese Customs during audits.

The new Chinese "Special Relationship" declaration requires a "yes" answer if the parties involved in the import/export transaction are related. The Chinese government has a broad definition of related parties, so companies shipping to and from China should carefully assess their relationships. Importers and exporters confirming a special relationship must then complete the "Confirmation of Price Impact," which requires the company to determine whether the relationship affects the price, using various test values. Thus, the burden of proof is on the importer/exporter to establish that there is no effect on the price.

Finally, the new regulations require importers to make a "Royalty Payment Confirmation" if royalties are paid to the seller or a related party. Under the Chinese government's interpretation, most royalties paid to the seller or a related party would be dutiable, as "relevant to the imported goods or "a condition for the resale of the imported goods inside China."

World Customs Organization (WCO): Transfer Pricing Studies

The WCO's Technical Committee on Customs Valuation published a case study on a situation where a Customs authority used transfer pricing information in a Customs value verification. The transfer pricing study, based on the transactional net margin method (TNMM), had previously been accepted by the taxing authority. In this case study, Customs used the pricing study in an examination of the circumstances of the sale between related parties and determined that the relationship did not affect the price. Although the case study has been circulated to the public, it remains subject to approval by the WCO Council. A copy of the case study is available upon request.

For more information on these value developments or any other Customs value issue, please contact Gail T. Cumins at gcumins@spcblaw.com, Alli Baron at abaron@spcblaw.com, Donna Shira at dshira@spcblaw.com, or Ken Paley at kpaley@spcblaw.com, or call us at 212-425-0055.

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