CLIENT ALERTS & INSIGHTS

Customs Duty Assists: Regulatory Compliance Overview and FAQ

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Featured Industries: Transportation & Logistics, International Trade & Supply Chain Management

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Customs compliance and enforcement defense are high-profile exercises within U.S.-based importers due to the higher-risk regulatory enforcement environment. One of the more complex hot topics facing compliance and legal professionals within importers of record (IORs) is the degree to which "assists" impact dutiable value, and therefore duty burden, in the eyes of U.S. Customs and Border Protection (CBP). This article delivers a high-level overview of the regulations that apply to assists in dutiable value calculations and then offers hypothetical scenarios to demonstrate how calculations and apportionment may occur.

Question: What is an assist and how does it impact dutiable value?

Answer: Assists are a legal concept that introduces value given to a foreign producer into dutiable value calculations. Dutiable value is typically the transaction value or the price paid or payable for the goods, although there are other methods available under regulation. An assist is any non-U.S. value that the IOR or buyer provides to suppliers or manufacturers in the production and development of the imported good. This value is part of the total price paid or payable for the goods, and so it must be included in a dutiable value calculation. Assists may include tangible items like materials incorporated into goods; tools and equipment used to make the goods; and merchandise that is consumed in the production of the goods. Assists may also include intangible support like engineering, development, artwork, design work, plans and sketches. The value of an assist also includes transportation costs of the assist to the place of production.

There are three ways for calculating and therefore paying for assists: (1) the IOR may apportion the value of the assist for entire production over the first shipment of the units imported; (2) the IOR may apportion the value of the assists over the number of units produced up to the time of the first shipment; or (3) the IOR may apportion the value of the assist over the entire anticipated production. If an IOR imports only a portion of the goods to the U.S. then the appropriate portion of the value of the assist may be apportioned across the goods shipped to the U.S.

Question: What is a practical example of the three mechanisms of assist apportionment?

Answer: Here's an example of how apportionment could work in practice, recognizing that all scenarios are fact specific. An IOR will import 50,000 units of merchandise, and provided a Taiwan manufacturer with molds valued at $5,000 to produce the units. The first shipment to the U.S. will include 10,000 units. At the time of this shipment, the supplier completed 20,000 units. The IOR plans to import the full 50,000 units in five shipments of 10,000 units.

First, the IOR could apportion the value of the assist over the first shipment. To do this, it would pay the full $5,000 value of the molds when importing the first shipment of 10,000 units.

Alternatively, the IOR could apportion the value of the assist over the number of units made at the time of the first shipment. Here, the supplier has completed 20,000 units currently. So, the IOR would pay $2,500 at the time the first 10,000 units are imported. Then, the IOR would pay the remaining $2,500 when importing the second batch of merchandise.

Finally, the IOR can apportion the value of the assist over the entire anticipated production. Here, the IOR plans on importing the goods in five separate shipments. So, the IOR would pay $1,000 each of the five times goods are imported.

Question: What should an IOR do to apportion the value of an assist across units when the value of the assist fluctuates?

Answer: IORs apportion the value of their assists over the first shipment, the number of units produced at the time of the first shipment, or over the entire anticipated production. However, if these general methods of apportionment do not work because the value of the assist fluctuates, then the IOR can submit a new apportionment mechanism to CBP for approval. The requested mechanism must be reasonable and follow generally accepted accounting principles. If CBP approves this new apportionment method, then the importer may allocate the assists accordingly.

Question: How should an IOR apportion the value of an assist across units when they import some portion of their merchandise to the U.S. and another portion to a non-U.S. country?

Answer: The IOR will split the value of the assist between the percentage of goods they send to the U.S. and the percentage of goods they send to the foreign country. For example, if an assist here is valued at $10,000 and the IOR wants to send half the merchandise to the U.S., then the IOR would be based on half the value of the assists, or $5,000, for the merchandise imported to the U.S.

Question: Does an IOR need to pay for both tangible and intangible items created in the United States as assists?

Answer: Tangible U.S.-origin items, like materials incorporated into goods, tools and equipment used to make the goods, and merchandise "consumed" in the production of the goods, qualify as an assist. However, intangible U.S.-origin items like engineering, development, artwork, design work, plans and sketches do not. So, the importer will only have to pay for the value of the tangible item when calculating the price paid for assists.

Question: If an IOR inaccurately calculates assists, or fails to include assists in dutiable value, how can it ensure appropriate duties are paid on the imported units?

Answer: The IOR can correct the error by filing a Post-Summary Correction (PSC) with Customs to modify the dutiable value reported on its Entry Summary. If the IOR realizes that it made a mistake in apportionment calculations within 300 days of filing the Entry Summary or 15 days before the scheduled liquidation date (whichever comes first) then a PSC automatically corrects the mistake. If the window to file a PSC has closed, then the IOR can submit a prior disclosure to Customs to report the error at its election. The statute of limitations for CBP enforcement of requirements to report and pay duties based on accurate dutiable value is five (5) years.

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