Tax Insights
from Customs and International Trade

How post-importation transfer pricing adjustments could impact US customs value and reporting

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In brief

What happened?

The continued uncertainty surrounding US trade policy has increased the importance of customs considerations in transfer pricing adjustments. As companies evaluate strategies to address the impact of US tariffs, post-importation transfer pricing adjustments have become an area of heightened focus because they could affect the customs value of imported goods and related tariff obligations.

Why is it relevant?

The basis, timing, and method of post-importation transfer pricing adjustments can have significant US customs and tariff implications. Understanding how these adjustments interact with US customs valuation rules is increasingly important as businesses seek to manage tariff costs while maintaining compliance with both tax and customs requirements.

Actions to consider

Importers should consider customs implications when planning, booking, implementing, or reviewing transfer pricing adjustments that could affect imported goods. Close coordination among tax, transfer pricing, customs, and supply chain teams can help identify potential risks and support a more integrated approach to tariff planning.

In detail

Where customs value and transfer pricing meet

Many US importers value imported merchandise using the transaction value method, which generally is based on the price actually paid or payable for the goods. In related-party transactions, that declared customs value often is based on the intercompany transfer price, creating a direct connection between transfer pricing and customs valuation. As a result, post-importation transfer pricing adjustments could have customs implications depending on whether they affect the price actually paid or payable under US customs law.

For US customs purposes, however, the question is not whether an adjustment is valid under transfer pricing principles. Rather, the key issue is whether the adjustment changes the price actually paid or payable for imported merchandise and therefore affects the value declared to US Customs and Border Protection (CBP) at the time of importation. Whether that occurs depends on the facts and circumstances surrounding the adjustment and the applicable US customs valuation rules.

Key questions companies should consider

There is no bright-line rule for determining whether a post-importation transfer pricing adjustment affects customs value, or whether a downward adjustment can support a duty refund. Instead, companies should evaluate several factors, including:

- Whether the adjustment impacts a tangible product being imported or indirectly impacts (e.g., via royalty or service) a tangible product import price,
- The valuation method used,
- The relationship between the adjustment and the imported goods,
- Whether a written transfer pricing policy was established before importation and was prepared taking the principles from the Section 482 regulations into account,
- Whether the transfer pricing policy was used for US income tax return purposes and supported by company records, and
- Whether an appropriate customs reporting mechanism remains available to report any corresponding customs value adjustment to CBP and, where applicable, tender additional duties or claim a duty refund.

Timing is also important, as customs reporting deadlines and entry status could limit available reporting options or refund opportunities.

CBP framework

<u>Related-party payments</u>

CBP generally presumes that payments made by a buyer to a seller, or to a party related to the seller, are part of the price actually paid or payable unless the importer can demonstrate otherwise. As a result, the characterization of a payment for transfer pricing, tax, or accounting purposes does not, by itself, determine its customs treatment. Instead, CBP evaluates whether the payment is connected to the imported goods.

CBP's five-factor framework

For related-party transactions, CBP also has established a five-factor framework for evaluating whether post-importation transfer pricing adjustments made pursuant to the transfer pricing policy may be recognized as part of an objective pricing formula for determining transaction value. At a high level, CBP considers whether the written transfer pricing policy is in place before importation, is used for US income tax return purposes, specifies how prices and adjustments are determined for covered products, and is supported by accounting and financial records in the United States.

A transfer pricing policy alone is not sufficient to meet the five-factor framework. CBP may also look for evidence that the policy was applied in practice, that required intercompany payments or book entries were made, and that the customs values can be tied to the company's books, financial statements, and tax filings. If the pricing method is not fixed before importation or accepted as an objective formula, CBP could determine that transaction value is not applicable. This determination would require the importer to use another customs valuation method, which could result in significant adjustments and penalties in a customs audit.

Further, CBP may consider whether other conditions exist that could affect the acceptance of the transfer price by CBP. For example, whether the relationship of the parties influences prices and whether there was a bona fide sale for export to the United States.

Potential customs reporting consequences

The following illustration shows how a transfer pricing adjustment could affect customs value and reporting obligations.

If an importer declares a $10 million customs value based on the intercompany transfer price for goods subject to a 5% duty rate, the importer would pay $500,000 of duties at importation. If a year-end transfer pricing adjustment increases the price actually paid or payable for the imported goods by $1 million, the customs value may need to increase to $11 million, resulting in an additional $50,000 in duties, plus any other applicable tariffs, fees, and interest.

Reporting circumstance	Potential customs consequence
Adjustment is not reported to CBP	Importer may face underpaid duties, interest, and potential penalty exposure
Adjustment is identified timely	Importer may be able to report the adjustment through reconciliation* if the entries were flagged, or through another available mechanism depending on timing and entry status
Adjustment decreases the price actually paid or payable	A refund is not automatic; the importer must evaluate whether the adjustment is permissible for customs purposes and whether a refund mechanism remains available

Note: CBP reconciliation is a post-entry process that allows importers to report certain information that is not determinable when the entry summary is filed, including certain value adjustments, at a later date.

To use reconciliation for a particular issue, the underlying entry summary generally must be flagged for that issue when the entry summary is filed.

Planning for post-importation adjustments

Transfer pricing adjustments can be implemented through various approaches, including book adjustments through intercompany debit/credit notes and journal entries, or tax return-only adjustments. Those approaches could affect the outcome of the customs analysis. Documentation also is critical, particularly for downward adjustments, where CBP generally requires evidence that the adjustment was contemplated before importation and determined pursuant to an objective pricing methodology.

Companies also should consider customs reporting implications early in the process. CBP reconciliation is CBP's preferred mechanism for reporting post-importation value adjustments (including transfer pricing adjustments).

Observation: Alignment across transfer pricing, accounting, tax, and customs records is important. Inconsistent and insufficient documentation can make it more difficult to support a post-importation adjustment or defend the original declared value.

Let’s talk

For a deeper discussion of how this customs valuation issue might affect your business, please contact:

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