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ASSISTS

Customs valuation is an exceedingly complex area. The purpose of this memorandum is to provide importers with a basic understanding of “assists,” which is one of the key areas of Customs valuation law. Assists give rise to a significant percentage of Customs problems and penalties, and are among the very first areas Customs examines when auditing an importer. Therefore, it is essential that importers understand assists and implement procedures for capturing and declaring them on their Customs declarations.

The great bulk of the merchandise imported into the United States is appraised under the Transaction Value method of Customs valuation. Transaction Value is “the total payment . . . whether direct or indirect . . . made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.” Because assists are considered to be payments made by the buyer to the seller for imported merchandise, they are a statutorily mandated addition to dutiable Customs value under Transaction Value and all other methods of Customs valuation.

Definition. An “assist” means any of the following supplied directly or indirectly, and free of charge or at reduced cost, by an importer to the foreign seller for use in the production or sale of imported merchandise:

- (a) Materials, components, parts, and similar items incorporated in the imported merchandise.
- (b) Tools, dies, molds, and similar items used in the production of imported merchandise.
- (c) Merchandise consumed in the production of the imported merchandise.
- (d) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and necessary for the production of the imported merchandise.

Tangible and Intangible Assists. Please note that assists can consist of "tangible" items such as materials, components, dies, etc. Assists also can consist of "intangible" items such as engineering, development, research and development, etc. A good rule of thumb is that "tangible" items provided free of charge or at reduced cost are almost always dutiable assists. To determine if "intangible" items provided free of charge or at reduced cost are dutiable assists, the first question that must be asked is: "Was the intangible assist undertaken in the United States?" If it was undertaken in the United States, then it is not part of dutiable value. The same work performed in Italy or China, however, would be a dutiable assist.

You should also note that individuals who are domiciled within the United States may travel overseas and provide technical assistance (engineering, development, etc.) to the foreign producer, and such assistance will not be considered a dutiable assist if such technical assistance is incidental to other engineering or development work that is undertaken in the United States.

Valuation of Assists. Assists are valued as follows:

- (a) If the assist is purchased by the importer, the value of the assist is its purchase price.
- (b) If the assist is produced by the importer, the value of the assist is the cost of production.
- (c) If the assist is leased, the value of the assist is the cost of the lease.

Depreciation and Apportionment of Assists. It is important to know that assists may be depreciated. For example, let us assume that a mold originally valued at \$40,000 has a useful life of 10,000 castings. After 5,000 castings have been produced in the U.S., the importer gives the mold free of charge to a Taiwan company who now will produce the castings for the importer. The value of the mold must be added to the value of the castings when they are imported into the United States. However, the value of the mold given to the Taiwan company is only \$20,000 because only half its useful life remains ($\$40,000 \times 50\% = \$20,000$).

The value of an assist also may be apportioned, depending upon how many units produced from the assist are exported to the United States and other countries.

Examples of Things that Are Assists and Things that Are Not Assists. A few examples may be helpful in understanding the concepts and workings of assists.

(a) Let us assume that Company A imports 1,000 electric office staplers from Company B in Taiwan for a price of \$20 per unit and 1,000 units are shipped to the United States. The dutiable value of each stapler would be \$20 and the total dutiable value of the shipment would be \$20,000.

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However, let us assume that in the above example, Company A provides Company B with a mold to make the stapler housing. The mold, which is valued at \$10,000, is given to Company B free of charge. The dutiable value of the staplers would no longer be \$20,000 because the value of the mold, \$10,000, would have to be added to the purchase price because it is an assist. The dutiable value of the shipment, therefore, would be \$30,000 ($\$20,000 + 10,000 = \$30,000$).

(b) Let us assume that Company A, a U.S. importer, purchases 10,000 cell phones from Company B, a Chinese manufacturer, for \$50 per unit. Half of the cell phones (5,000 units) are to be sold in Europe and half of the units are to be sold in the U.S. Company A supplies tooling valued at \$100,000 to Company B free of charge. When the 5,000 cordless phones arrive in the United States, a dutiable value of \$300,000 must be declared to Customs.

The tooling valued at \$100,000 is prorated equally to sales in Europe (50%) and sales to the United States (50%). Therefore, the value of the assist is \$50,000 and the total dutiable value is \$300,000 ($5,000 \times \$50 = \$250,000 + \$50,000 = \$300,000$).

(c) Let us assume that Company A, a U.S. importer, purchases 10,000 automobile radiators from Company B in Thailand, for a price of \$100 each. Company A provides engineering and design work valued at \$500,000 to Company B free of charge. All of the engineering and design work was done in the United States. In addition, Company A sends a U.S.-based engineer to the Thai factory to oversee the initial manufacturing and answer any questions the Thai factory personnel may have. Finally, the U.S. company provides \$10,000 worth of solder to Company B free of charge, which is used in manufacturing the radiators.

When the 10,000 radiators arrive in the U.S., a dutiable value of \$510,000 must be declared to Customs. The solder is a dutiable assist because it was furnished to the manufacturer free of charge and was necessary for the production of the radiators. The value of the engineering and design work is **not** an assist because it was undertaken in the United States. Moreover, the cost of sending the U.S.-based engineer to Thailand is not an assist because this was incidental to the engineering and design work undertaken in the U.S.

Note: If the engineering and design work in the above example was undertaken in Germany or Japan (or anywhere other than in the United States), it would be a dutiable assist and would have to be added to the value of the radiators to arrive at the proper Customs dutiable value.

Indirect Payments v. Assists.

As indicated above, an assist is anything of value furnished by the importer to the foreign seller free of charge or at reduced value and used in the production of the goods. This includes “tangible” assists (dies, molds, components, etc.) and “intangible” assists (R&D, engineering, design work, etc. that is undertaken outside the United States). In many instances, however, instead of the importer providing the foreign seller with tooling or components or design and engineering work free of charge, foreign sellers acquire these items. For example, foreign sellers may produce the tooling themselves or conduct the R&D or design work themselves and charge

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the importer separately for it (i.e., outside the regular invoicing stream). Similarly, a manufacturer may obtain tooling and components or R&D and design work from third parties. The manufacturer may pay these third parties for the R&D or design work and separately invoice the importer or it.

In situations of the kind set forth above, where the importer pays the foreign seller or the third party provider, technically there is no assist because the tooling or components or R&D and design work were not provided to the seller free of charge. However, when the importer pays for any of these separately invoiced charges, it is making an “indirect payment” to the foreign seller, which must be added to the invoice value of the goods to arrive at their full dutiable value. Indirect payments of this kind must be included in dutiable value because, as discussed in the introduction to this article, the statutory definition of Customs dutiable value includes items of value provided to the foreign seller directly or *indirectly*.

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