

Customs Duties- When Duties Paid At The Time Of Entry May Not Be The Final Reckoning

Over the last few decades, U.S. import companies have taken advantage of tremendous opportunities in sourcing components and finished products abroad. However, the importing business also poses some unique risks. Many U.S. import companies assume that the Customs duties they deposit at the time of entry of their merchandise into the United States are the final duty payment. Duties paid at the time of entry are called “estimated” duties for a reason. Customs and Border Protection (CPB) has up to one year from date of entry, and in certain cases even longer, to determine the final duties payable upon a particular entry of merchandise. Customs’ final duty assessment is known as a “liquidation” and it is only 90 days after liquidation that an importer can be reasonably sure of the duties owed.

Typically, Customs liquidates duties within several months of entry, and usually at the estimated amount paid at deposit. However, there are a number of situations in which the estimated and liquidated duties can differ, sometimes significantly.

Change in classification: It is up to the importer to assert the proper tariff classification for its merchandise on the Customs entry form filed by its Customhouse broker. Tariff classifications carry corresponding percentage (*ad valorem*) duty rates which are applied to the value of the merchandise to arrive at the assessed duties. Not surprisingly, importers will try to classify their products at lower rate classifications wherever possible. The government does not always agree and may change the entered classification to one carrying a higher duty rate. Customs then liquidates the entry and sends a bill to the importer for the duty differential. The importer may contest CPB’s decision by filing a Protest within 90 days of liquidation, commencing an administrative challenge to Customs’ decision.

Change in valuation: Customs value is based on the price paid for the goods by the buyer to the seller. However, this price may be rejected by CPB in a sale between related parties. Further, when goods are sold more than once it is not always clear which sale should be used for Customs valuation purposes. And finally, CPB is permitted by statute to add commissions, royalties, and license fees, additional proceeds to the seller and assists to the price paid under prescribed circumstances. Customs has the right to request all relevant information concerning the elements of value and may increase the entered value between entry and liquidation, again billing the importer for the difference.

Antidumping and Countervailing Duties: In addition to the payment of regular Customs duties, an importer may be faced with additional deposits that are the result of unfair trade complaints filed by U.S. industry or labor groups against foreign competition. While the U.S. importer may play no role in the unfair trade practice, enforcement of the law is focused on importers because they are purchasing the offending goods and they have a U.S. presence.

The antidumping law is aimed at foreign exporters who sell goods to the U.S. market at prices below those charged for the same goods in their home market, thereby injuring U.S. manufacturers (and their workers) who are forced to compete with unfairly low-priced or “dumped” merchandise. Additional duties are assessed at a percentage calculated to offset the price differential between the foreign home market price and the price for export to the United

States, the so-called dumping margin. Unfortunately for the importer, antidumping duty deposits are only an estimate of the actual duty, which may not be calculated for several years after importation. Liquidation of entries subject to dumping orders may be suspended for many years. Once the actual dumping margins are calculated by the U.S. Department of Commerce, International Trade Administration, importers may be billed for any difference between the estimated and assessed dumping duties. Because dumping assessments can be astronomical, occasionally reaching several times the value of the goods, themselves, importing merchandise subject to an antidumping order can be very risky.

The countervailing duty law is aimed at foreign manufacturers and exporters whose products are unfairly subsidized by their governments, thereby causing injury to the competing U.S. industry. The law provides for the levy of import duties in an amount calculated to offset or “countervail” the amount of the subsidy. As in the antidumping scenario, countervailing duty deposits are not finalized for several years after importation.

Penalties: No discussion of the uncertainty of import costs would be complete without at least a brief mention of CPB’s civil penalties. Customs may assess civil penalties against the last 5 years of imports for negligence and gross negligence and for 5 years after the date of discovery by the government of fraudulent violations. Penalties assessed using the low threshold negligence standard often enable the government to charge an importer for tariff classification and valuation errors many years post-liquidation.

Importer strategies: CPB officials often learn of duty underpayments through “Focused Assessments”, Customs’ current euphemism for its audits. The Focused Assessment Program stresses importer training, importer systems and risk assessment in enforcing compliance. It is, therefore, recommended that importers establish their own internal compliance programs in anticipation of a CPB focused assessment. CPB also conducts limited focus audits known as quick response audits (QRA’s), which are usually limited to a single issue.

It is also possible to obtain a computer print of all unliquidated entries by importer number (usually a company’s tax i.d.). CPB’s National Finance Center will provide this information for a (currently) \$150.00 fee. This information will give an import company an idea of its outstanding liability in the event of any contemplated increased duty assessment between entry and liquidation. This information is of particular value for any company that has made antidumping duty deposits and would like to assess its ultimate duty liability for its merchandise subject to the order.