

Franklin Vargo

Vice President
International Economic Affairs

October 21, 2011

The Honorable Alan Bersin
Commissioner
U.S. Customs and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Avenue, NW
Washington, DC 20229

RE: Request for Advance Public Comments on the Proposed Revocation of Headquarters Ruling Letter 547654 and of Treatment Relating to the Applicability of Transaction Value and Post-Importation Adjustments.

Submitted via email to EarlyInputMailbox@dhs.gov

Dear Commissioner Bersin:

The National Association of Manufacturers (NAM) is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Its membership includes both large multinational corporations with operations in many foreign countries and small and medium manufacturers engaged in international trade on a more limited scale. Our members depend heavily on imported parts, components, and finished products to compete within the U.S. marketplace and abroad.

The proposed change outlined by U.S. Customs and Border Protection (CBP) in the "Request for Advance Public Comments on the Proposed Revocation of Headquarters Ruling Letter 547654 and of Treatment Relating to the Applicability of Transaction Value and Post-Importation Adjustments" would be a significant step toward the integration of customs values and income tax transfer pricing. The NAM supports CBP in broadening the interpretation of what constitutes a "formula" for purposes of using transaction value. This new approach would allow post-importation adjustments in related-party transfer prices, and the ability to make post-importation transfer price adjustments is critical to many of our members' transfer pricing processes.

In a November 2001 ruling (HRL 547654), CBP examined a related seller and importer who followed a written policy that specified the transaction value as the anticipated U.S. resale price, less international freight, duty, U.S. fixed costs and the importer's profit. The importer claimed that the policy required frequent price adjustments to ensure that profits remain consistent with the policy. CBP found, at the time of the ruling, that transaction value is not applicable where the price is not fixed at the time of importation or determinable by an objective formula agreed to prior to importation.

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NAM appreciates CBP's willingness to now reexamine this ruling and consider a policy that determines prices after importation when an objective formula and policy are established in advance of importation. A more flexible definition of "formula" for determining transaction value, which would allow certain costs under the parties' control to be a sufficiently objective formula for transaction value purposes, could allow more importers to agree on transfer pricing policies with their related sellers. The NAM additionally supports CBP's proposal to allow importers to use the ACS reconciliation process for post-importation adjustments. The reconciliation process represents an efficient and cost-effective means of ensuring that appropriate values are declared to CBP while providing manufacturers with time to make any necessary periodic or end-of-year adjustments.

As the proposal is finalized, the NAM urges CBP to consider modifying the condition that the transfer pricing policy or methodology identify the specific products for which the transfer value is to be adjusted. Such policies and methodologies are intended – and, in fact, required by transfer pricing rules – to apply to all intercompany, related party transactions. We also suggest that the CBP consider providing a detailed analysis of the application of transaction value to the circumstances of HRL 547654, so companies may have the opportunity to apply that logic to their own circumstances. It would also be helpful if CBP would reissue its 2007 informed compliance publication, titled "Determining the Acceptability of Transaction Value for Related Party Transactions."

Further, the NAM suggests that CBP consider the list of "Factors to Consider" that were included in the proposal. Criteria 1 and 7, which both require that the importer's transfer pricing policy and method be in place prior to importation, seem redundant and may require further clarification to differentiate the two requirements. The "Factors to Consider" also substantially overlap with the traditional analysis for related parties, possibly requiring unnecessary and duplicative work by importers and CBP.

Multinational corporations and related party imports represent nearly 50 percent of imports by value, and the resolution of the tension between compliance with the transfer pricing rules and requirements set by the IRS and compliance with customs valuation rules set by CBP is of tremendous importance to manufacturers. We look forward to CBP's careful consideration of a binding revocation of HQ 547654, and the NAM stands ready to provide further information in a meeting with CBP officials or in a more detailed written submission.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Vargo", with a long, sweeping horizontal line extending to the right.

Frank Vargo