



FILE NO: 2008/039291

INSTRUCTIONS AND GUIDELINES

Valuation Advices
July 2012

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: STRATEGIC MANAGEMENT – Policy - Guidelines

FILE NUMBER: 2008/039291

THIS INSTRUCTION AND GUIDELINE REFERS TO:

PRACTICE STATEMENT NO: 2009/01 Valuation

PUBLISHED DATE: 24 JULY 2012

AVAILABILITY: *(Internal and external)*

SUBJECT: Valuation Advices

PURPOSE: To provide information on the Valuation Advice process in a clear and concise manner to internal and external users.

OWNER: *National Director Cargo and Trade*

CATEGORY: *Operational Procedures*

CONTACT: Inquiries about this Instruction and Guideline may be directed to:

valvic@customs.gov.au

(03) 9244 8441, or fax number (03) 9244 8680

Manager Trade Advice Unit

Trade Policy and Implementation Branch

Australian Customs and Border Protection Service

GPO Box 2809

MELBOURNE VIC 3001

The electronic version published on the intranet is the current Instruction and Guideline.

INTRODUCTION

The Australian Customs and Border Protection Service (Customs and Border Protection) provides a Valuation Advice (VA) service to assist importers with specific issues relating to the assessment of the customs value of imported goods. This advice does not extend to calculating the amount of the customs value.

Customs and Border Protection has a service standard of 30 days for providing a valuation advice after receipt of all required information. If the issue involved in the VA is complex and likely to extend beyond the 30 day period, written advice of the extension will be provided to the applicant.

The Customs and Border Protection Valuation Advice service is designed to aid in the delivery of uniform valuation decisions throughout Australia. A VA is not a formal decision under the *Customs Act 1901* (the Customs Act), but rather an advice to an importer as to how particular goods will be valued by Customs and Border Protection on importation.

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The responsibility for entering goods correctly rests with the person, firm or company shown as the “owner” on the import declaration. Customs and Border Protection provides, in approved circumstances, a VA as a service to that “owner”.

A VA will only be given for a specific valuation issue to a particular owner and cannot be transferred.

There are times when an importer may receive advice from Customs and Border Protection other than through the medium of a VA. Customs and Border Protection stresses that the only advice given by way of a formal VA will be considered to be binding.

The customs value for imported goods is determined pursuant to the rules set out in Division 2 of Part VIII of the Customs Act. That division gives effect to Australia’s commitment under the General Agreement on Tariffs and Trade (GATT) to facilitate international trade by the implementation of the GATT Valuation Agreement, now the WTO Valuation Agreement.

PROCEDURAL STATEMENT

The Customs Act provides a number of different methods for arriving at the customs value and those methods must be considered in the strict order set out in Division 2 Part VIII; that is, if the first method fails to produce a value, then proceed to the second, and so on.

1. APPLICATIONS

A formal VA decision can only be given where:

- (a) evidence is presented of a commitment or firm intent to import;
- (b) the application contains sufficient information; and
- (c) the application contains an explanation, with reference to the Customs Act, of the valuation issues involved and the reasons for the applicant’s proposed valuation method.

VA applications that do not satisfy the above criteria may be rejected.

A VA will not be provided where the importer's purpose is to get information on how to alter or structure transactions to avoid or to minimise the payment of duty and/or indirect taxes.

1.1 Number of issues

Each application must be for a single valuation issue. Where there is more than one issue, separate applications must be lodged for each issue.

1.2 Withdrawal of application

An importer may withdraw an application by advising Customs and Border Protection at any time between registration of the application and the decision by Customs and Border Protection on the application.

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1.3 Forms - Electronic

An application for a VA can be made electronically using the Customs and Border Protection ICS (TAPIN) system. If this system is used, the applicant has five days in which to lodge the supporting documents at any Customs House in any State or Territory. If the documents are not received, the application will be automatically voided.

1.4 Forms - Manual application (non-electronic)

Applications can also be made by completing a VA application Form B174. This form is available from the Customs and Border Protection website www.customs.gov.au. Once completed, the manual application can either be faxed or be sent by email to Customs and Border Protection. The supporting documents should be lodged with the Form B174.

2. CONTENT

All information that is relevant to the request for advice is to be supplied with the application. As a general rule, for an application to be accepted it must:

- (a) identify the goods and also the parties to the importation/transaction;
- (b) where relevant, explain the roles of each party;
- (c) identify all contracts, agreements and arrangements and the portions of them that are relevant to the transaction;
- (d) where relevant, explain the financing and payment arrangements; and
- (e) nominate the relevant provisions of the Customs Act that the applicant has considered and detail the reasoning on the claimed issue.

3. PROCESSING VALUATION ADVICE APPLICATIONS

The application will be subjected to an initial examination to establish whether:

- (a) the claimed issue is identified;
- (b) the application is correctly completed;
- (c) the required supporting statements and documents are included; and
- (d) a detailed statement is provided that cites the relevant sections of the Customs Act and shows why the applicant believes the claimed issue should be treated in the way submitted in the application.

The initial examination will be completed as soon as possible after the application is received to determine whether the applicant is entitled to claim a temporary indemnity from administrative penalty until the VA has been completed.

3.1 Valuation Advice input

When a VA application is received, a check is done to ensure it is completed correctly and sufficient information concerning the valuation issue is attached. If this is satisfactory, the VA can then be entered/validated in the TAPIN system.

3.1.1 Electronic valuation advice applications

The VA application can be electronically created in TAPIN by the applicant. Electronic VA applications are automatically numbered by the TAPIN system when created.

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Electronically created applications can be found by searching ICS by inputting the VA number.

A paper copy of the electronic VA application must be lodged with Customs and Border Protection with supporting documents within five days of creation. A Customs and Border Protection officer then validates the VA in TAPIN.

If the paper copy and supporting documents are not lodged within the required time, the VA is rejected automatically by the system.

3.1.2 Manual valuation advice applications

The manual VA application (Form B174) together with supporting documents may be lodged at a Customs House, Melbourne, faxed to 03 9244 8680 or sent electronically by email to valvic@customs.gov.au.

4. REQUEST FOR FURTHER INFORMATION

If insufficient information has been provided with the VA application to reach a decision or the information supplied requires clarification, a *Request for Further Information* letter will be forwarded to the applicant requesting the required information within 28 days. If the further information is not provided by the applicant within 28 days, Customs and Border Protection has the right to reject the VA application.

This 28-day time frame is to allow the applicant a reasonable amount of time to obtain the required information. The processing time for a VA is 30 days. VAs would not be rejected where the 30 days have expired if a *Request for Further Information* letter has been sent to the applicant. The 30 day time frame stops during this period.

If the applicant contacts Customs and Border Protection and requests additional time to produce the requested information, the time limit can be extended, within reasonable limits. If this request is oral, it should be noted in writing on the VA file and on the VA checklist.

5. ADMINISTRATIVE PENALTY - INDEMNITY

From the time of registering an application until the decision of Customs and Border Protection, the applicant is indemnified from administrative penalty in respect of duty short paid in relation to the claimed issue.

The VA will also indemnify the applicant from any administrative penalty in respect of any duty short paid in relation to the claimed issue for any future shipments during the validity period of the VA if the importer relied on the VA.

Where the circumstances and merits of the case are the same as those set out in the VA, the owner will also be similarly indemnified for other importations entered in the period referred to above.

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However, the indemnity ceases when an application is withdrawn or where Customs and Border Protection voids it because of an inadequacy with the application or supporting documents.

The quoting of a VA number on declarations is optional and failure to quote the VA number does not affect the indemnity.

6. PAYMENTS UNDER PROTEST

If any demanded short paid duty and/or indirect tax resulting from a VA is paid under protest, the status of that VA will be amended in the Customs and Border Protection ICS (TAPIN) system.

7. PAYMENT OF DUTY FOLLOWING ADVICE

When Customs and Border Protection has finalised a VA application and notified the owner of the decision, and the reasons for that decision, any Customs duty or indirect tax short paid on declarations becomes payable if the goods have been imported at the time the VA is made. If the VA is made before the goods are imported, the importer must pay any Customs duty or indirect tax in accordance with the VA at the time of importation.

8. VALIDITY OF ADVICE

Customs and Border Protection's decision will be made on the basis of the statements and supporting documents provided within the application. Advices are valid for all ports in Australia for 5 years from the date of notification of the VA. After 5 years the VA is automatically cancelled and if an advice is still required a new application must be made.

Customs and Border Protection may cancel or amend a VA within 5 years, where particular circumstances warrant. Such circumstances include:

- (a) where an amendment is made to the legislation which has relevance to the advice;
- (b) where incorrect information was provided to Customs and Border Protection or relevant information was withheld from Customs and Border Protection;
- (c) where Customs and Border Protection changes its view (this may occur as a result of legal precedent); and
- (d) where Customs and Border Protection has issued conflicting advices.

9. CANCELLED OR AMENDED ADVICE

Where Customs and Border Protection cancels or amends a VA, in-transit provisions may be applied at the discretion of Customs and Border Protection.

10. IN-TRANSIT PROVISIONS

Where in-transit provisions apply, the cancelled or amended VA continues to apply in relation to goods that:

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- (a) were imported into Australia on or before the date on which the cancellation or amendment came into effect, and were entered for home consumption before, on, or within 30 days after that date; or
- (b) had left the place of export on or before that date, and were entered for home consumption before, on or within 30 days after the date on which they were imported into Australia.

11. CUSTOMS AND BORDER PROTECTION TO HONOUR ADVICE

A VA is not legally binding on Customs and Border Protection. However, Customs and Border Protection will honour a VA unless it was provided on the basis of false or misleading information or where the applicant failed to provide Customs and Border Protection with all the relevant information and documents that were available.

12. CONFLICTING ADVICES

Should an applicant hold or be aware of any conflicting VAs from Customs and Border Protection for a valuation issue, both advices are to be treated as being void and Customs and Border Protection is to be notified immediately.

13. APPEALS AGAINST CUSTOMS AND BORDER PROTECTION ADVICES

Where a Customs and Border Protection decision in a VA is disputed, it should be first discussed with the decision maker. If the advice is still disputed, a review by a Manager in Valuation and Origin in Canberra may be requested.

If the applicant is dissatisfied with the review decision and has paid the duty under protest, the applicant may seek external review by the Administrative Appeals Tribunal (AAT) or a court of competent jurisdiction. However, it should be noted that a VA in itself is not a decision capable of review by the AAT or a court.

14. REVIEW OPTIONS

14.1 Consideration of further information

If, after the finalisation of the VA, the applicant obtains further information, which may change the decision on that VA, they may request the original decision-maker to reconsider the original decision.

The request for reconsideration must be in writing, fully address the reasons for review and incorporate all additional information concerning the decision.

Provided the submission contains full details of the arguments against the decision, the review of the VA should be completed within 30 days.

If the review is complex and likely to extend beyond the 30 day review period, written advice of the delay will be forwarded to the applicant.

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When the original decision-maker has reconsidered the original decision and has made a fresh decision supporting or dismissing the appeal, the applicant will be advised of the decision in writing.

14.2 Review of Valuation Advice

If after finalisation of a VA, the applicant is dissatisfied with the decision, they may seek to have the decision reviewed by a Manager, Valuation and Origin, in Canberra. A request for a review must fully address the reasons for disputing the decision and should be forwarded to:

Director Valuation & Origin
Trade Policy and Implementation Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2600

15. ADMINISTRATIVE APPEALS TRIBUNAL

None of the above procedures precludes a broker/importer from seeking external review (pursuant to s.167 of the Customs Act) by the AAT or any Commonwealth or State Court of competent jurisdiction, where payment has been made under protest.

Customs and Border Protection will not commence work on a VA or a review of a VA and it will cease work on any incomplete VA or review of a VA in the following circumstances:

- (a) where Customs and Border Protection commences duty recovery proceedings for the imported goods that are the subject of the VA, or
- (b) the applicant for the VA or review of the VA commences proceedings in a court or the AAT in relation to the goods that are the subject of the VA.

Valuation and Origin, Canberra handles all appeals lodged with the AAT and the courts, in consultation with the Trade Advice Unit, Melbourne.

Valuation and Origin, Canberra, will request the decision-making officer to prepare a draft AAT Section 37 statement, setting out the reasons for the decision.

16. COMPLIANCE ACTIVITIES

Where Compliance Assurance Branch has commenced compliance activities in relation to goods that have been imported into Australia, the importer may apply for a VA, or request a review of an existing VA, in respect of future imports of the goods. The VA or revised VA will not apply to past shipments of those goods that are subject to the Compliance activities.

If Compliance Assurance Branch has any questions relating to the valuation of the imported goods under such circumstances, Compliance Assurance Branch may request internal advice from the Trade Advice Unit in Melbourne.

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If insufficient information has been provided or the information provided requires clarification, the Trade Advice Unit may seek further information from the importers. Copies of all correspondence between the importers and the Trade Advice Unit will be provided to Compliance Assurance Branch.

Advice provided to Compliance Assurance Branch will only apply to the shipments covered in the compliance activities and will not have prospective operation.

Importers will have to apply for a VA if they would like the ruling to have prospective operation.

RELATED POLICIES AND REFERENCES

Practice Statement – Valuation

Practice Statement – Applying for a Valuation Advice Relating to Transfer Pricing

Instructions and guidelines – Valuation

KEY ROLES AND RESPONSIBILITIES

The policy owner of this Instruction and Guideline is:

Director Valuation and Origin Section
Trade Policy and Implementation Branch
Australian Customs and Border Protection Service

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CONSULTATION

Industry Consultation

Not required.

Internal Consultation

The following internal stakeholders have been consulted in the development of this Instruction and Guideline:

- Legal Services Branch
- Compliance Assurance Branch

APPROVAL

Approved on 16 July 2012 by:

Raelene Vivien
National Director Cargo and Trade
Australian Customs and Border Protection Service

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