

## CBP Offers to Negotiate With Foreign Customs on Exporters' Behalf

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On June 18, 2015, **U.S. Customs and Border Protection (CBP)** [announced](#) in the Federal Register that it would be accepting “requests for assistance” from exporters who are dealing with valuation or classification issues with foreign customs agencies. In the notice, CBP highlights its experience both on the World Customs Organization’s (WCO) Harmonized System Committee, which makes decisions concerning the Harmonized Tariff Schedule, and the World Trade Organization’s (WTO) Technical Committee on Customs Valuation, which makes decisions concerning the valuation of imported products.

CBP acknowledges that individual parties and firms do not have standing to initiate dispute settlement procedures or consultations under the Harmonized System Convention or the WTO Valuation Agreement. If an individual party or firm faces treatment from a foreign customs agency that appears to be at odds with the uniform nature of the Harmonized Tariff Schedule or the WTO Valuation Agreement, its only recourse is to file an inquiry or complaint with the U.S. Government and hope that the matter will be duly elevated for consideration to the WCO or WTO.

CBP offers an alternative to filing a formal inquiry in this Federal Register Notice. It invites U.S. exporters to file requests for assistance with CBP when they need assistance to resolve any tariff classification or valuation dispute with foreign customs agencies. CBP states that, in order to receive assistance, CBP must agree with the classification or valuation argument being set forth by the U.S. exporter. CBP states that it will “endeavor” to provide an initial response to such requests within 60 days of their receipt, during which time CBP will begin negotiating with the foreign customs agency and will keep the U.S. exporter informed of developments in resolving the matter. CBP will consider the appropriate cause of action, including the initiation of dispute settlement mechanisms under the Harmonized System Committee or the WTO Valuation Agreement.

While CBP’s offer is a generous one, U.S. exporters should consider the offer carefully. First, CBP may not necessarily agree with your company’s position and, in fact, may have previously advocated to the WCO or WTO a position that is in accordance with the foreign customs agency’s position. Similarly, it is possible that the WCO or WTO has already issued an Advisory Opinion on the matter and the U.S. Government is in the process of implementing a change in its laws and

regulations. In such instances, CBP is not likely to provide assistance and may make inquiry into your company's specific practices relating to this matter. Second, although CBP commits to respond to requests within 60 days, it does not state that matters will be resolved within this time period. For time-sensitive issues, there are no guarantees you will receive expedited treatment or even timely treatment. Third, these requests for assistance are subject to the Freedom of Information Act (FOIA), although confidential treatment may be requested for confidential commercial or financial information. Finally, CBP states its goal with this program is to facilitate lawful international trade, but that is no guarantee that CBP will diligently advocate for your company. The needs of international diplomacy may outweigh the tariff classification or valuation challenges of your company.

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