



MASTER CUSTOMS SPECIALIST (MCS) COURSE

Part 4: Valuation | Module 13: Assists

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INTRODUCTION

Assists are often either not reported or undervalued to CBP.

As a refresher, CBP defines an assist as goods or services supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise. (see 19 CFR 152.102 (a)(1)).

Key elements necessary to define an item as an assist are:

- Supplied by the buyer of the imported merchandise either free of charge or at a reduced cost
- Used in the production or sale for export

19 CFR 152.102 (a)(1) defines an assist by specifically listing items that would qualify as such.

They are:

- Materials, components, parts, and similar items incorporated in the imported merchandise
- Tools, dies, molds, and similar items used in the production of the imported merchandise
- Merchandise consumed in the production of the imported merchandise



- Engineering development, artwork, design work, and plans and sketches undertaken outside the United States and necessary for the production of imported merchandise

Lesson 1: Assist Identification

As assists are often underreported, if reported at all, each importer should develop its own unique “assist detection” process. Opportunities to identify potential assists include:

1. The product development lifecycle – Are there scenarios where suppliers are provided tools, dies, molds, etc.?
2. Asset management – Are there assets such as machinery, etc. that are currently owned by the buyer that will be provided to the supplier at a reduced cost or free of charge?
3. Vendor agreements – Are there scenarios where the buyer will provide materials to the supplier to include in the merchandise?
4. Accounting systems – CBP will request information on an organization’s accounts to identify general ledger codes that might capture potential assists. Importers should routinely monitor these accounts as well.

Customs brokers may also help customers in the identification of potential assists in a number of ways:

- If they are also the freight forwarder for the company’s exports. For example, an export of machinery, tools or dies to an import supplier may signal a potential assist.
- In periodic meetings with customers, brokers can also ask about how assists are handled and reported and sharing best practices.

Lesson 2: Assist Investigation

All potential assists should be investigated and outcomes documented, even if the item was determined not to be an assist. Let’s use the following example:

Engineering development, artwork, design work, and plans and sketches are not considered assists when:

- i. Performed by an individual domiciled within the United States;
- ii. Performed by that individual while acting as an employee or agent of the buyer of the imported merchandise; and
- iii. Incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.



Assist Investigation – Scenario 1

You work for an apparel importer. Your product development team purchases designs from a foreign designer. These purchases include unique knit design patterns that your U.S. design team then uses as inspiration to create their final designs. It is the policy of your company not to exactly copy a design to reduce risk of intellectual property right infringement. The final design artwork is provided to the supplier free of charge and is necessary for the creation of the apparel to be imported.

Are the designs purchased from the foreign designer considered assists?

This scenario was inspired by HQ 548532 dated July 16, 2004. In that ruling, CBP discussed the facts that:

1. The purchased designs were used as “inspiration” and not copied exactly.
2. The design work was conducted in the U.S.

The final holding was that the design purchased from the foreign company **did not constitute an assist**.

Assist Investigation – Scenario 2

You work for a retail importer. Your organization provides your buying agent, BAS, a computer disk that contains U.S.-produced artwork, including packaging graphics such as UPC bar codes. BAS provides this disk to your supplier who, in turn, provides the disk to their printing vendor to produce the packaging. Your supplier pays their printing vendor for all packaging and includes that price in their invoice unit price.

Recently, your retail stores have had problems with the UPC bar codes on the packaging. Your organization has decided that conducting some preliminary quality checks on the packaging will save them a lot of time at their U.S. stores. It decides to provide BAS the same scanner used in their retail stores (free of charge) to make sure the bar codes will read successfully. Each printing vendor will be required to provide packaging samples to BAS for testing. If the bar codes fail to scan, the packaging will be rejected and the packaging cannot be used. If the bar codes scan successfully, the packaging can be used by the supplier. There is no product in the packaging at the time the bar codes are tested.

Is the packaging scanner an assist?



This scenario was inspired by HQ 547451 dated October 22, 1999. In that ruling, CBP discussed the facts that:

1. The testing equipment, in this case the scanner, was used directly in the production of the product. The packaging could not be used if it did not pass the scan test.
2. The non-defective bar codes will be on the finished goods packaging.

The final holding was that the scanner provided free of charge **did constitute an assist**.

Lesson 3: Assist Valuation

Now that you've determined you have an assist, it is time to determine the value that needs to be reported to CBP. CBP's Informed Compliance Publication (ICP) titled Customs Value states that in determining the value of an assist, the following rules apply:

1. The value is either:
 - a) the cost of acquiring the assist, if acquired by the importer from an unrelated seller, or
 - b) the cost of producing the assist, if produced by the importer or a person related to the importer.
2. The value includes the cost of transporting the assist to the place of production.
3. The value of assists used in producing the imported merchandise is adjusted to reflect use, repairs, modifications, or other factors affecting the value of the assists. Assists of this type include such items as tools, dies, and molds.

You will also need to confirm your valuation method. While the most common is transaction value, your organization may use another of the below methods.

- Transaction Value
- Transaction Value (Identical Merchandise)
- Transaction Value (Similar Merchandise)
- Deductive Value
- Computed Value
- Values if other values can't be determined (e.g. fallback method)

Note: Assists are reported for all valuation methods except for deductive value.



Let's look at how the CBP regulations put this information together. 19 CFR 152.103 (d) states, "If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the port director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:

1. If the assist consists of materials, components, parts, or similar **items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise**, acquired by the buyer from an unrelated seller, the value of the assist is the **cost of its acquisition**. If the assist were **produced by the buyer or a person related to the buyer**, its value would be the **cost of its production**. In either case, **the value of the assist would include transportation costs to the place of production**.
2. If the assist consists of tools, dies, molds, or similar items **used in the production of imported merchandise, acquired by the buyer from an unrelated seller**, the value of the assist is the **cost of its acquisition**. If the assist were **produced by the buyer or a person related to the buyer**, its value would be the **cost of its production**. If the assist has been **used previously** by the buyer, regardless of whether it had been acquired or produced by him, the **original cost of acquisition or production would be adjusted downward** to reflect its use before its value could be determined. If the assist were **leased** by the buyer from an unrelated seller, the value of the assist would include the **cost of the lease**. In either case, **the value of the assist would include transportation costs to the place of production**. **Repairs or modifications to an assist may increase its value**.

Assist Valuation – Example 1

Let's try applying some of these principles.

An importer previously has supplied an unrelated foreign assembler with fabricated components ready for assembly having a value or cost at the assembler's plant of \$1.00 per unit. The importer pays the assembler 50 cents per unit for the assembly.

What is the transaction value for the assembled unit?

The transaction value for the assembled unit is \$1.50. \$1.00 for the cost of the unit and 50 cents for the cost of assembly. *Example from 19 CFR 152.103.*

Assist Valuation – Example 2

An importer has determined that its labels are inconsistent across its supplier base in China. To ensure brand cohesiveness, the importer contracts with a third-party in China to be the sole



approved label provider. The importer is trying to determine if valuation is impacted by how it distributes the labels.

1. If the supplier purchases the labels directly from the third-party provider, pays to ship the labels to its factory and includes both costs in the invoice value, does the label price need to be added as an assist? What about the shipping?
2. If the importer purchases the labels directly from the third-party provider and pays for shipping to the factories, does the label price need to be added as an assist? What about the shipping?

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1. **No.** The label and shipping costs are already included in the invoice value or the price paid or payable.
 2. **Yes.** Both the label and shipping costs are not included in the invoice value and are part of the manufacture of the finished goods.

Assist Valuation – Example 3

A U.S. importer supplied molds free of charge to a foreign supplier. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country.

Should the appraised value of the merchandise include the total value of the molds?

Yes. Since the molds are not design work in the U.S., the molds are considered assists. See HQ 545336 dated Nov. 23, 1992 for a detailed discussion.

Lesson 4: Assist Apportionment

We have now confirmed we have an assist, determined the value of the assist and now we must report the assist to CBP. It must be apportioned to the proper entries.

CBP relies on generally accepted accounting principles (GAAP) to govern how an assist is apportioned. GAAP are the generally recognized consensus of how assets, liabilities and changes are recorded and used when preparing financial statements. These are principles and not hard and fast rules. At times, it is appropriate to request a binding ruling from CBP to determine if the accounting method you plan to use will be accepted.

Another key consideration when reporting assists is when/how they are reported to CBP. When the entire production run using the assist is to be exported to the U.S., it is common to either report the full value of the assist in a number of ways:



1. Over the first shipment if the importer wants to pay duty on the entire value at one time
2. Over the number of units produced up to the time of the first shipment,
3. Over the entire anticipated production.

If part of the production isn't shipping to the U.S. the assist value can be pro-rated in a manner consistent with GAAP.

Assist Valuation and Apportionment – Example 4

An importer previously has supplied an unrelated foreign assembler with fabricated components ready for assembly having a value or cost at the assembler's plant of \$1.00 per unit. The importer pays the assembler 50 cents per unit for the assembly. The importer also provides tooling to the foreign assembler that it acquired for \$1,000. It also paid \$100 to ship the tooling to the foreign assembler.

What should be included in the transaction value of the merchandise? What, if any, additional considerations need to be made?

The transaction value for the assembled unit would be \$1.50 per unit plus a pro rata share of the tooling assist valued at \$1,100. An importer will need to determine if it wants to report the \$1,100 on the first shipment or if it wants to pro-rate the value of the assist over the anticipated production volume.

Lesson 5: Assist Documentation

If something isn't documented, it's hard to prove it happened. Documenting the facts considered when identifying and investigating possible assists can be crucial when defending a decision, either internally or externally. Elements to capture include:

- How a potential assist was identified
- Who provided information used when making the final determination
- If it was determined to be an assist, how would the assist be reported and tracked
- How the value of the assist was determined

Documenting how valuation was determined, including any ruling you used to support your position is also crucial. It is possible CBP will have a change of position later. It is easier to capture this information at the time a decision is made rather than reconstruct that logic later.



CONCLUSION

The Customs Valuation Encyclopedia is 580 pages long.

While the regulatory guidance on assists seems fairly straightforward, the real world application is complex. CROSS has many decisions regarding complex topics such as employee compensation, materials, trade agreement nuance and the like. Be diligent when seeking and evaluating assists. In audits, it is common to find assists that have not been properly reported.