Bloomberg Tax

Tax Management
International Journal™

July 2, 2025

How Intellectual Property Payments Impact US Tariffs on Goods

Andrew Siciliano, Elizabeth Shingler, and Lizeth Azuara*
KPMG US

Merchandise importers may owe significantly increased duties when the US CBP determines that customs values include not only the value of the goods, but also related royalty and license fees, say KPMG practitioners.

When it comes to US import duties, most importers recognize that tariffs are generally assessed against the imported merchandise's dutiable customs value. However, what often goes unnoticed are the off-invoice payment (e.g., royalties and license fee, etc.) that can significantly increase the dutiable value and duties owed. In today's elevated tariff environment, these costs can turn an ordinary import into major financial exposure. Should US Customs and Border Protection (CBP) determine that a royalty or intellectual property-related fee is dutiable, the importer must add it to the customs value. Understanding how CBP treats these payments is essential for minimizing risk, maintaining compliance, and avoiding costly surprises.

Tariffs

Import tariffs, also referred to as "duties," are taxes levied on certain imported merchandise. Tariffs can be categorized primarily into two types:

- **Ad Valorem Tariffs (most common):** Calculated as a percentage of the declared customs value of the goods.

* Andrew Siciliano is a partner and national practice leader, Elizabeth Shingler is a senior manager, and Lizeth Azuara is an associate within the U.S. Trade and Customs practice at KPMG Tax.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

- **Specific Tariffs**: Assessed as a fixed amount per unit of imported merchandise (e.g., $0.50 per kilogram).

The applicable tariff rate depends on the product's classification and its country of origin. In addition to standard duty rates, goods may also be subject to additional tariffs under various legal authorities:

- **Most-Favored Nation (MFN) / Permanent Normal Trade Relations (PNTR):** The standard, non-discriminatory duty rates that apply to goods imported from countries with PNTR status. Listed in Column 1 – General of the Harmonized Tariff Schedule of the United States (HTSUS) and apply to over 17,000 unique 10-digit tariff lines.
- **Anti-Dumping Duties (ADD):** Assessed against certain products from select countries to remedy unfair trade practices, whereby imported products are being offered below the fair market value or "dumped" into the US.
- **Countervailing Duties (CVD)** (similar to ADD, CVD duties): Used to protect domestic manufacturers from foreign manufacturers who are offering products below the fair market value. However, specifically used when products are being imported from foreign manufacturers below fair market value due to a foreign government subsidy.
- **Section 201 of the Trade Act of 1974**: Allows temporary tariffs or quotas when a surge in fairly traded imports causes serious injury to a US industry. Has been used, for example, in the solar panel and washing machine industries.
- **Section 232 of the Trade Expansion Act of 1962:** Authorizes the President to impose tariffs if imports are found to threaten US national security. Currently apply to automobiles and their parts, steel, and aluminum. 19 U.S.C. §1862.
- **Section 301 (Unfair Trade Practices):** Enables the US to impose tariffs in response to unfair foreign trade practices. The most well-known application is the section 301 tariffs on Chinese-origin goods, which range from 7.5% to 50%, depending on the product.
- **International Emergency Economic Powers Act (IEEPA) of 1977:** Allows the President to address "any unusual and extraordinary threat…to the national security, foreign policy, or economy of the United States[.]" 50 U.S.C. §1701 et seq. This authority has been invoked to justify the imposition of tariffs or other trade restrictions, including reciprocal tariffs targeting countries with which the United States maintains significant trade imbalance. Currently, tariffs are imposed on China, Canada, and Mexico under this authority as well as reciprocal tariffs applied against many countries.

How the US Determines Customs Value

A. Transaction Value: How it Works

When goods are imported into the US, duties are based on the customs value of the merchandise. The transaction value is the preferred valuation method. Other methods of valuation (e.g., deductive, computed, or fallback) are subordinate and can be applied only if the "transaction value" method is found inapplicable.

The transaction valued is defined as "*The price actually paid or payable for the merchandise when sold for exportation to the United States*" plus certain statutory additions. 19 U.S.C. §1401a(b)(1). The price actually paid or payable is "*the total payment…made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller*." 19 U.S.C. §1401a(b)(4)(A). Thus, the dutiable value includes any payment—made directly or indirectly—that benefits the seller or from which the seller ultimately profits.

Transaction value can still apply in related-party transactions, as long as the importer can show that the relationship didn't influence the price. 19 U.S.C. §1401a(b)(2)(B). There are instances where certain costs not listed on the invoice—such as packing, commissions, assists, resale proceeds, and royalties—must still be added to the transaction value as required additions. 19 U.S.C. §1401a(b)(2)(B). And "assists" refers to any item or service provided—directly or indirectly, free of charge or at a reduced cost—by the buyer for use in connection with the production or sale for export to the United States of the imported merchandise. This includes: (1) materials, components, parts, and similar items that are incorporated into the imported goods; (2) tools, dies, molds, and similar equipment used in the production process; (3) merchandise consumed during production; and (4) engineering, development, artwork, design work, and plans or sketches undertaken outside the United States that are necessary for producing the imported merchandise. 19 C.F.R. §152.102 (a)(1). When these materials are provided for free, it lowers the overall cost of the finished product because if the buyer had not provided these items, the seller would have procured them and charged the buyer. In order to achieve an accurate customs value, these costs must be added to the value declared to CBP.

B. The Generra Presumption: Is the Payment Part of the Price Paid or Payable?

Under the *Generra Presumption*, **all payments made by a buyer to a seller are part of the price actually paid or payable for the imported merchandise.** *Generra Sportswear Co. v. United States*, 8 CAFC 132, 905 F.2d 377 (1990). Importers can rebut this presumption—but only if they clearly show that the payment is unrelated to the goods. For example, payments that would be made regardless of whether the goods are imported, like certain legal fees, may not be dutiable. The key is whether there's a connection between the payment and the imported goods. If the payment benefits the seller and is tied to the merchandise, it's often hard to prove it shouldn't be included in the customs value.

In sum, as a starting point, if an intellectual property payment is made to or for the benefit of the seller of the imported goods, the company must first examine whether the payment should be included as part of the "*price actually paid or payable*" before considering whether it is an addition to the payment. [19 C.F.R. §152.102 (a)(1)].

C. Royalty Payments

1. The Hasbro Test: Is the Royalty Dutiable as a Condition of Sale?

Royalty cases can be more complicated because royalties are often paid to parties other than the seller, which can make them appear non-dutiable at first glance because they do not meet the *Generra* requirements. However, CBP has found that the royalty payment may still be a condition of sale and therefore included as an addition to the transaction value even when the payment is not made directly or indirectly to the seller of the imported goods.

In assessing whether royalty and license fees are dutiable as a condition of sale CBP must identify (1) whether the buyer was required to pay them as a condition of sale of the imported merchandise for exportation to the US; and (2) to whom and under what circumstances they were paid.

To make this determination, CBP applies the three-prong *Hasbro* test, asking:
1. Was the imported merchandise manufactured under patent?
2. Was the royalty involved in the production or sale of the imported merchandise?, and
3. Could the importer buy the product without paying the fee? General Notice, Dutiability of Royalty Payments, Vol. 27, No. 6 Cust. B. & Dec at 1 (Feb. 10, 1993) ("Hasbro II ruling").

If the answer is "yes" to the first two and no to the third, CBP will likely consider the payment dutiable—even if it wasn't made directly to the seller. However, this is a highly fact specific analysis. Further, royalty and trademark payments are treated differently, although subject to the same test.

CBP also presumes patent-related royalties are dutiable because they cover essential manufacturing rights, while trademark and copyright royalties paid to third parties for US use are typically considered the buyer's selling expenses and are not dutiable. [H004991] (Apr. 2, 2007).

CBP rulings show that even trademark royalties—typically considered non-dutiable—can be treated as dutiable if they are a condition of sale. In HQ H234735, CBP found that royalty payments were dutiable because the royalties were tied to each import, calculated on a per shipment basis, and the licensor controlled both the suppliers and quantities of the merchandise. HQ H234735 (June 23, 2014). Another example is in HQ H294766, CBP ruled that the royalty patented technology was dutiable because it met all three prongs of the Hasbro test: the royalty related to a patent, was tied to production, and was required to obtain the goods. HQ H294766 (May 31, 2018).

2. Proceeds of Subsequent Resale:Royalty Payments Made After the Sale

Even if a royalty doesn't meet the *Hasbro* test, it may still be dutiable as proceeds of a subsequent resale. CBP regulations require importers to add any resale proceeds that accrue—directly or indirectly—to the seller. This typically applies when an importer makes an additional payment to the seller after reselling the goods which are generally sold in the same condition. The assumption is that the seller would have charged more upfront had it not expected that later payment.

However, there are cases where license fees may not be dutiable. For example, in HQ H242894, CBP reviewed a "Territorial Exclusivity Fee" paid by a US subsidiary to its foreign parent for the right to distribute branded products and use associated IP. CBP found the payment was not dutiable as part of the price actually paid or payable, nor as a royalty. HQ H242894 (Dec. 4, 2018). It also ruled the fee was not dutiable as proceeds of resale, since it wasn't tied to the resale of specific imported goods.

Importers should be aware that CBP may work through an extensive analysis for each royalty or license agreement. This is a fact specific analysis and importers should be familiar with the details of each contract—the dutiability determination for one agreement may be inapplicable to another.

Conclusion

In the current high-tariff environment, overlooking applicable tariffs can lead to unexpected costs or penalties. A key part of this process is understanding how CBP determines customs value, which serves as the basis for calculating duties. More specifically, understanding how CBP treats royalty and license payments can help avoid costly post-importation financial surprises. Should CBP identify a royalty or license fee that was undeclared and is in fact dutiable, there is a contingent financial risk. In sum, importers that pay for intellectual property rights, directly or indirectly, should conduct a detailed review of any intellectual property payments and assess the potential customs impact.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.