



# Year-End Tariff Refunds

Don't miss out on tariff refunds because of insufficient transfer pricing policies and documentation

Transfer Pricing and Trade & Customs Services

Recent tariffs imposed by the Trump Administration have significantly increased financial and compliance burdens on many organizations. However, with proper planning and preparation, substantial year-end tariff refunds for importers could be available.

How is this possible? As a result of increased tariff uncertainty, many multinational enterprises (“MNEs”) may be required to make new or larger-than-usual year-end transfer pricing adjustments. The mechanism for doing so generally requires the intercompany price of goods to be retroactively decreased. Retroactive reductions to intercompany prices may result in tariff refunds— but only if specific requirements are met.

## The challenge

U.S. President Donald Trump has imposed—and in some cases, retracted—a litany of tariffs on goods imported into the United States. U.S. importers of record pay these tariffs to U.S. Customs and Border Protection (“CBP”) and, from an accounting standpoint, have been booking the additional costs as increases to Costs of Goods Sold. As a result, related party importers may find at year end that their profits are not in line with the arm’s length requirements under Section 482. These U.S. entities will therefore need to contemplate making new or larger-than-usual transfer pricing adjustments to bring their profits in line with arm’s length ranges for income tax purposes. Making these adjustments on a retroactive basis may result in considerable trade compliance obligations, including but not limited to needing to report changes in previously declared customs values; however, where certain requirements are met, these importers may also potentially be eligible for duty refunds.

## The opportunity

Where MNEs utilize a U.S. importer of record, a retroactive transfer pricing adjustment to offset increased tariff costs is effectively a reduction in the price of previously imported inventory. Retroactively reducing these transfer prices generally triggers an importer’s ability to reduce the value of that inventory previously declared to CBP at the time of importation and claim refunds of value-based tariffs—but only where certain conditions exist. For example, importers who utilize the transaction value method for customs appraisal purposes may only retroactively reduce customs values if an “objective formula” is in place prior to importation, as indicated by whether **five formulaic factors** established by CBP are satisfied (see Customs Bulletin and Decisions, Vol. 46, No. 23, dated May 30, 2012).

# What are the “five factors?”

CBP has established the following five factors to determine whether an objective “formula” is in place prior to importation for purposes of determining the price within the meaning of 19 C.F.R. §152.103(a)(1):

- 1 A written “Intercompany Transfer Pricing Determination Policy” is in place prior to importation, and the policy is prepared taking Internal Revenue Code section 482 into account;
- 2 The U.S. taxpayer uses its transfer pricing policy in filing its income tax return, and any adjustments resulting from the transfer pricing policy are reported or used by the taxpayer in filing its income tax return;
- 3 The company’s transfer pricing policy specifies how the transfer price and any adjustments are determined with respect to all products covered by the transfer pricing policy for which the value is to be adjusted;
- 4 The company maintains and provides accounting details from its books and/or financial statements to support the claimed adjustments in the United States; and
- 5 No other conditions exist that may affect the acceptance of the transfer price by CBP (e.g., the adjusted price must be an arm’s length from a CBP perspective).

## How KPMG can help

The KPMG Transfer Pricing and Trade & Customs practice can assist importers with obtaining tariff refunds resulting from retroactive transfer pricing adjustments, including assisting companies with the following:

- Establishing a written transfer pricing determination policy and generally meeting CBP’s other “five factors” requirements;
- Filing post summary corrections, protests, and or prior disclosures (as applicable) to receive tariff refunds and/or offsets;
- Utilizing CBP’s Reconciliation program to make annual retroactive adjustments;
- Assessing whether reduced customs values are arm’s length from a customs perspective, which is determined using a framework that is different from that which is used for tax purposes;
- Identifying additional tariff optimization strategies; and
- Enhancing overall trade compliance.



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