



From Silos to Synergy: Uniting Customs and Tax for Strategic Success

Transforming tax.
Redefining connections.

2025 US Cross-Border Tax Summit



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Learning objectives



Understand the situational intersections between customs, tax, and transfer pricing



Learn how companies can breakdown the barriers between these functions: from silos to synergy



Come away with insights and strategies for enhancing company compliance while cutting costs

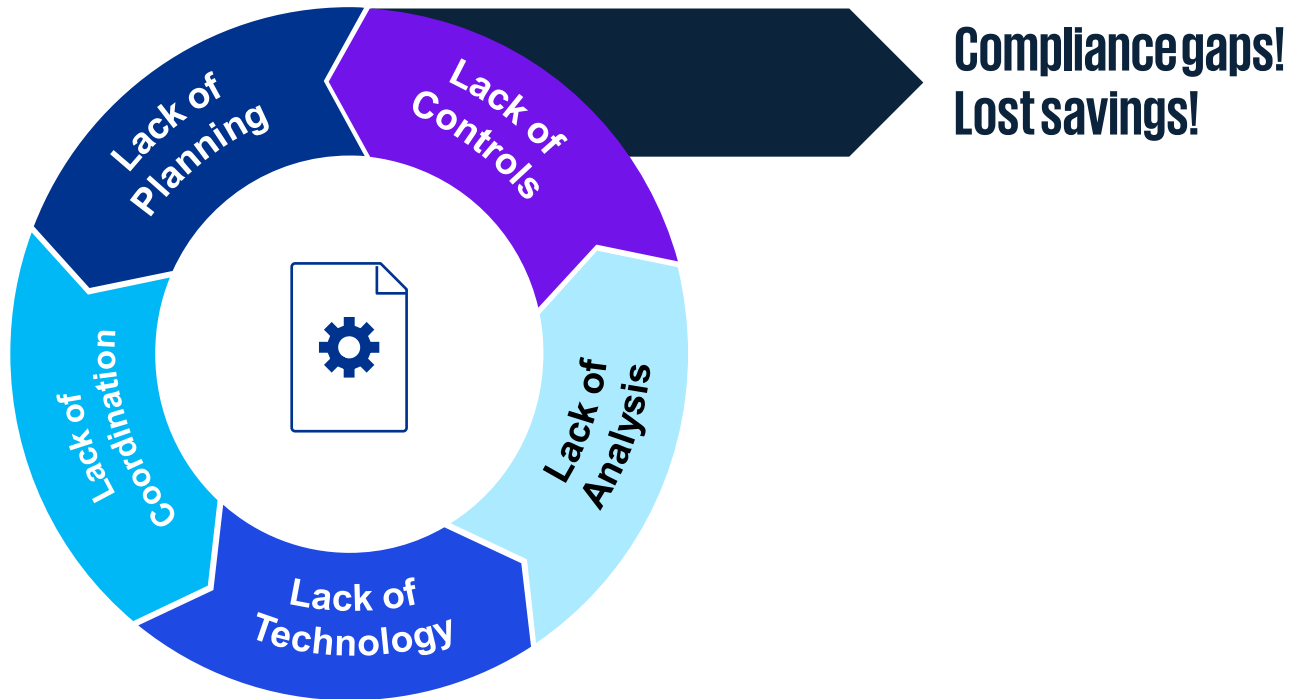
Agenda

- | | |
|----|---|
| 01 | Benefits and inhibitors of interdisciplinary coordination |
| 02 | Tax synergies |
| 03 | Transfer pricing synergies |
| 04 | Q&A |

01 Silos

Why interdisciplinary coordination has been a challenge

Coordinating customs, tax, and transfer pricing disciplines can be challenging:



Company culture often contributes to a lack of coordination:

- Concern for customs matters generally varies by industry (e.g., duty free vs. high duty);
- Different reporting lines (e.g., tax, supply chain, legal, etc.);
- Companies are exposed to taxes globally, but duties are only assessed upon import;
- Companies are always striving to “do more with less,” with little time available to understand what others in the company are doing.

Why an interdisciplinary approach is important

By aligning customs, tax, and transfer pricing, companies can...

1

Develop operating models that result in enhanced compliance, as well as optimized duty and tax spend;

2

Reduce cost, time, and resources needed to respond to agency inquiries and controversies;

3

Reduce or eliminate tax and customs penalties (and interest), potentially obtain tariff refunds where available;

4

Coordinate development and maintenance of company policies and procedures;

5

Eliminate “heads down”/“not my job” attitudes

What's the potential fall out if you don't align the disciplines?

01

Fines and penalties

02

Value added tax

03

Ad valorem Fees

04

SALT increases

05

Global pricing

06

Loss of privileges (e.g., FTAs)

02

Tax Synergy

Physical changes to sourcing, production, supply chain



Example



ACME Inc. has historically produced widgets in China. As a result of increased tariffs in the United States, ACME Inc. is considering moving some of its widget production steps to another country to change the origin of the widgets and lower the applicable tariff rate.



Customs



- Country of origin substantial transformation
- Free trade agreements
- Tariff classification
- Duty impact



Tax/Transfer Pricing



- Tax liability
- Intercompany transfer pricing
- Local incentives
- Withholding tax

Financial changes to transaction structure



Example



ACME Inc. has historically purchased widgets directly from its unrelated manufacturers. For tax reasons, ACME Inc. is considering creating a new Principal entity through which all transactions globally will be bought/sold.



Customs



- Customs value
- Customs arm's length
- Buy/sell vs. agent
- Duty savings (e.g., First Sale)
- Incoterms



Tax/Transfer Pricing



- Shifting functions or risks
- Transfer pricing

Movement of intellectual property



Example



ACME Inc. has historically purchased widgets from its manufacturing entity in Canada. In addition to purchasing widgets, ACME Inc. pays a dutiable royalty to Canada. In an effort to reduce its duty exposure, ACME Inc. is considering selling the intellectual property to the United States.



Customs



- Additions to customs value (SC.R.A.P.P.)
- Prior disclosures
- Duty impact



Tax/Transfer Pricing



- Exit charges
- New royalty streams
- Withholding taxes
- DEMPE analysis
- Pillar 2 considerations

Additions: Royalties or License fees

Transaction value includes “Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a **condition of the sale** of the imported merchandise for exportation to the United States” (19 CFR 152.103(b)(1)(4))

Condition of the sale? → the “Hasbro Test”

- Was imported merchandise manufactured under patent, trademark, license etc.?
- Was royalty involved in the production or sale of the imported merchandise?
- Could the importer buy the product without paying the fee?

Affirmative responses to the first two questions and a negative response to the third indicate the royalty is dutiable.

Even if not a condition of the sale, royalties/license fees can sometimes still be “caught” as a dutiable **proceed of subsequent resale**: “Any proceeds resulting from the subsequent sale, disposal, or use of the imported merchandise that accrue directly or indirectly to the seller are dutiable.”



Extra-territorial operations/Non-resident importing



Example



ACME S.p.A. manufactures widgets in Italy and sells it to customers in the United States, who have historically operated as the U.S. importers of record. To reduce tariff exposure, ACME S.p.A. is considering becoming a non-resident importer of goods in the United States.



Customs



- Customs legal liability
- Customs value (alternative methods)
- Duty liability
- Incoterms



Tax/Transfer Pricing



- PE risk
- Indirect tax exposure

Software implementations/configurations



Example



ACME Inc. utilizes an SAP ERP system. It is being required to upgrade to E4H by the end of the year.



Customs



- SAP GTS functionality
- Inclusive subscription pricing
- Timing of invoice/revenue recognition
- Incoterms



Tax/Transfer Pricing



- Timing of invoice/revenue recognition
- Incoterms
- (Proper charge outs and pricing for tax purposes for customization/implementation benefitting other companies within the organization)

03

Transfer Pricing Synergy

Introduction to intersection of TP and Customs

01

Transfer prices generally form the basis for customs values

02

Customs arm's length rules/tests are different from TP

03

TP adjustments trigger action by customs professionals

04

Various mechanisms exist for reporting TP adjustments

05

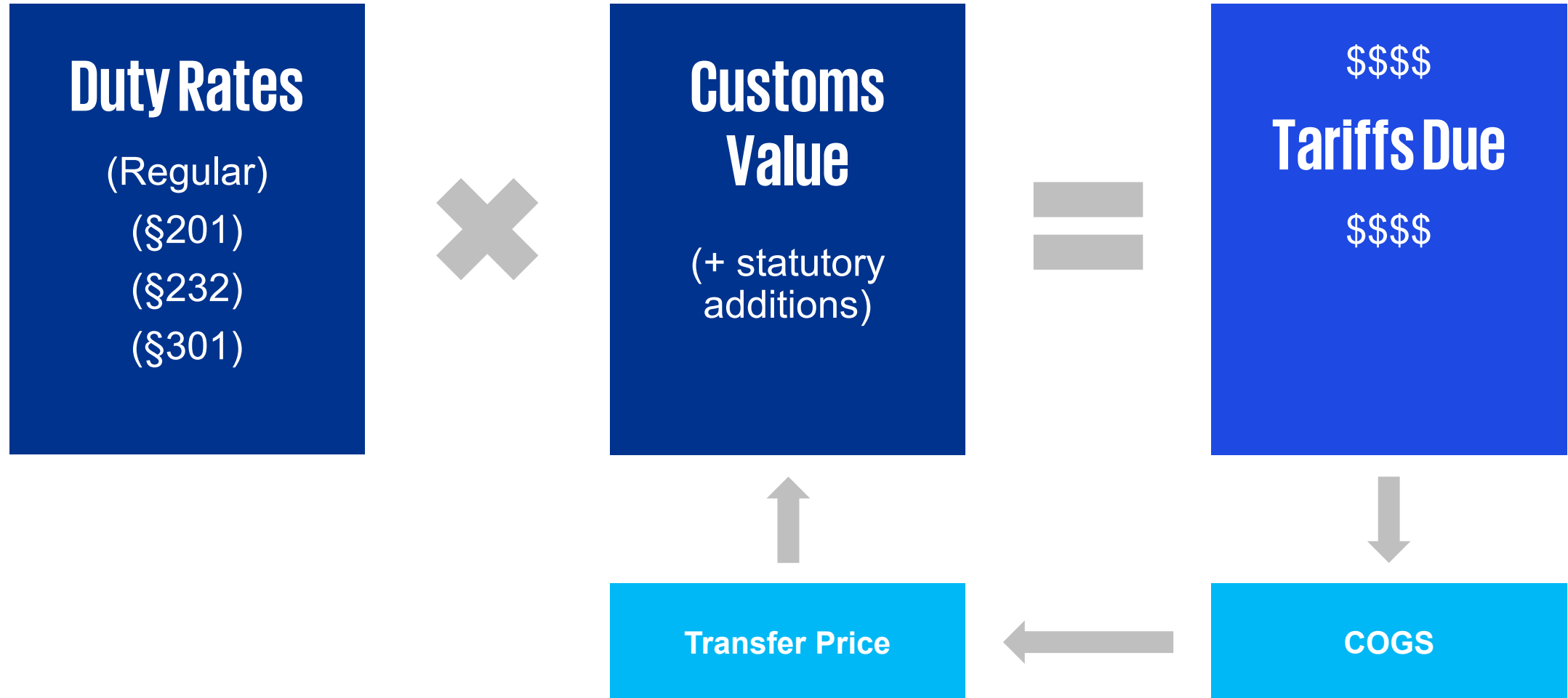
Proper planning may allow for duty refunds

06

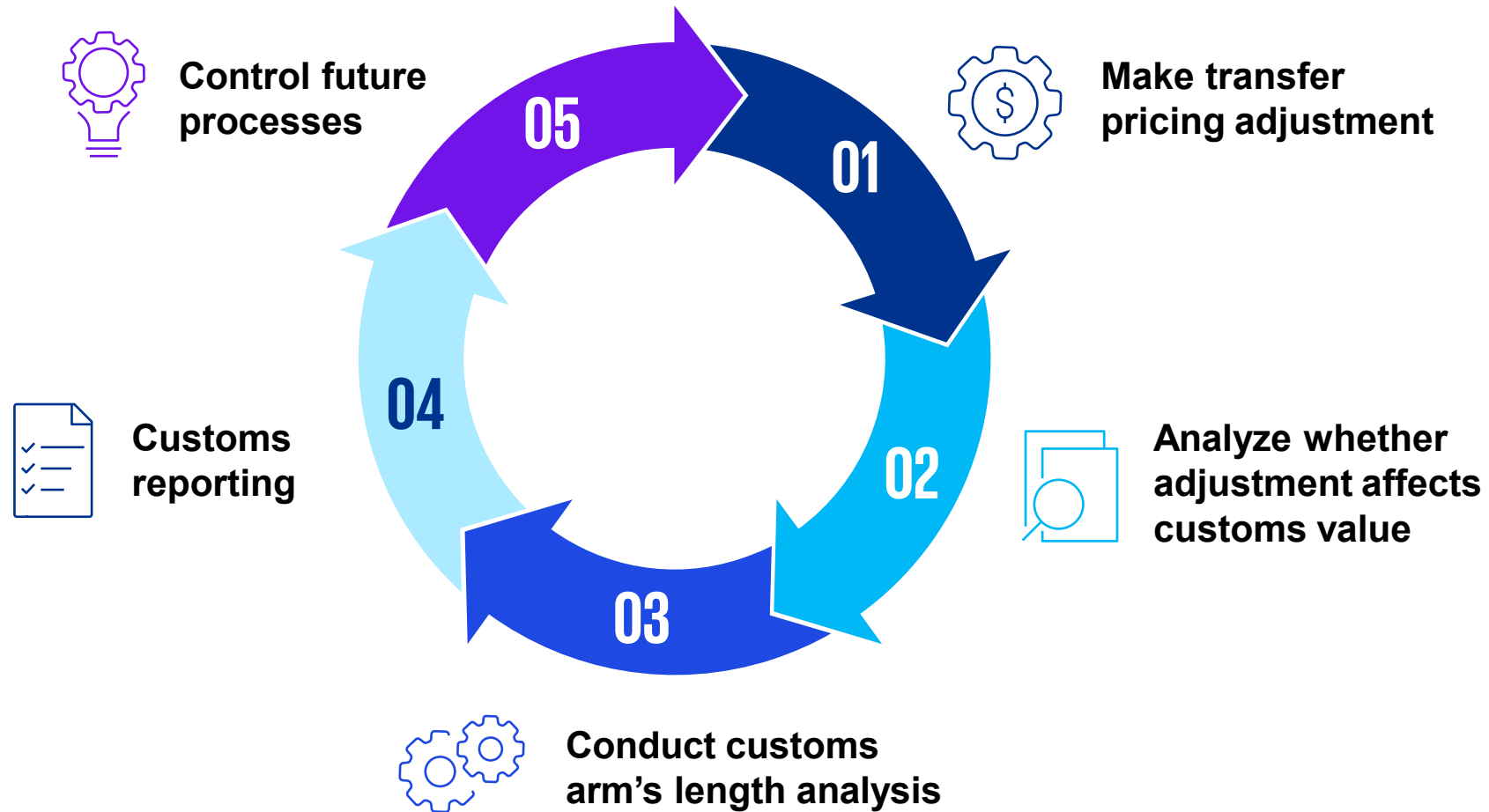
Align TP and customs teams to also decrease risk, enhance compliance



Transfer prices are the basis for customs value

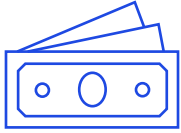


Adjustment, analysis, and reporting life cycle



Step 1: Make transfer pricing adjustments

When are transfer pricing adjustments needed?



Generally whenever the intercompany pricing is determined not to be at arm's length

- Arm's length pricing is usually determined through an economic/benchmarking analysis
- Adjustments can be made at different levels of the organization – transaction, product, business unit (within legal entity), or legal entity



Simple rule, but may be difficult in practice

- Countries often have slightly different ways to determine if intercompany pricing meets the arm's length test – arm's length in the U.S. may not result in arm's length elsewhere



Step 1: Make transfer pricing adjustments (continued)

When are transfer pricing adjustments made?

1



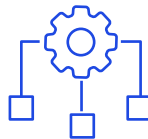
First, look to the terms of the related party contracts

2



In practice, I/C prices are often set at the beginning of the year and then adjusted monthly, quarterly, and/or yearly.

3



The process for identifying/adjusting transfer prices can be performed manually or enabled with technologies



Step 2: Analyze whether the adjustment affects customs value

Factors to consider; Impact on duties



Factors to consider:

- Retroactive vs. prospective adjustments
- Mechanism for making the adjustment (e.g., TP adjustment vs. “market support”)
- Transfer pricing policy/study
- How the adjustment is booked in the general ledger (e.g., COGS vs. other)

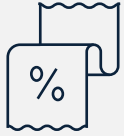


Impact on duties:

- Upward adjustments (increases to transfer prices) generally result in increased duties
 - Duties are commonly assessed as a percentage of value (“*ad valorem*”)
 - But, some products may be naturally duty free, benefit from FTAs, or have duties assessed based on other considerations (e.g., weight, quantity)
- Downward adjustment (decreases to transfer prices) may result in duty refunds
 - See next slide: Five Factors

Step 2: Analyze whether the adjustment affects customs value (continued)

Duty refunds; 5-factor test



Importers with retroactive decreases to transfer prices may only receive a duty refund if an “objective formula” is in place prior to importation, as indicated by whether five formulaic factors established by U.S. Customs and Border Protection are satisfied.

The “five factors”

01	02	03	04	05
A written Intercompany “Transfer Pricing Determination Policy” (“TP policy”) is in place prior to importation and the policy is prepared taking IRC Section 482 into account;	The U.S. taxpayer uses its TP 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;	TP policy specifies how the transfer price and any adjustments are determined with respect to all products covered by the transfer pricing policy for the which the value is adjusted;	The company maintains and provides accounting details from its books and financial statements to support the claimed adjustments in the United States; AND	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).



What if “five factors” can’t be satisfied?

- TP adjustments should be disregarded? Transaction value allowable?
- Duty to report “existence” of TP adjustment?

Step 3: Conduct customs arm's length analysis

Considerations for transactional analysis

Per WTO valuation rules, the “transaction value” method can be used to appraise imported merchandise sold between related parties if the importer demonstrates that:

01

the relationship did not influence the price, or

02

the transaction value closely approximates a test value.

A Customs arm's length analyses should be undertaken on a reoccurring basis and regardless of whether a TP adjustment impacts value.

Considerations for conducting Customs arm's length analysis:

- How many samples should I analyze?
- What is the correct “transaction value” to analyze (i.e., pre-or post-adjustment)?
- How do you calculate the adjusted transfer price on an individual transaction?
 - Reasonable allocation under GAAP (e.g., weighted average allocation)
 - Be sure to only allocate adjustments to transactions between the relevant parties (filter by MID) and, potentially, by business unit/product family
- Should the transaction value include other additions to the price paid or payable?
- Should the transaction value exclude certain costs (e.g., EXW)?
- What is the appropriate Customs arm's length test to apply?



Step 3: Conduct customs arm's length analysis (continued)

Methods for establishing customs arm's length

Under transaction value, CBP will determine a value is at arm's length where the price...

01 Closely approximates certain **test values** pertaining to identical or similar goods exported at or about the same time sold to unrelated buyers; or

02 An examination of the **circumstances of sale** of the imported goods indicate the relationship between buyer and seller did not influence the price actually paid or payable:

01

All costs plus profit test

- *The price is adequate to ensure recovery of all costs plus a profit that is equivalent to the firm's overall profit realized over a representative period of time in sales of merchandise of the same class or kind*

02

Normal pricing practices of the industry in question

- *The price was settled in a manner consistent with the normal pricing practices of the industry in question*

03

Settling prices as with unrelated buyers

- *The price was settled in a manner consistent with the way the seller settles prices for sales to buyers who are not related to it*

Step 3: Conduct customs arm's length analysis (continued)

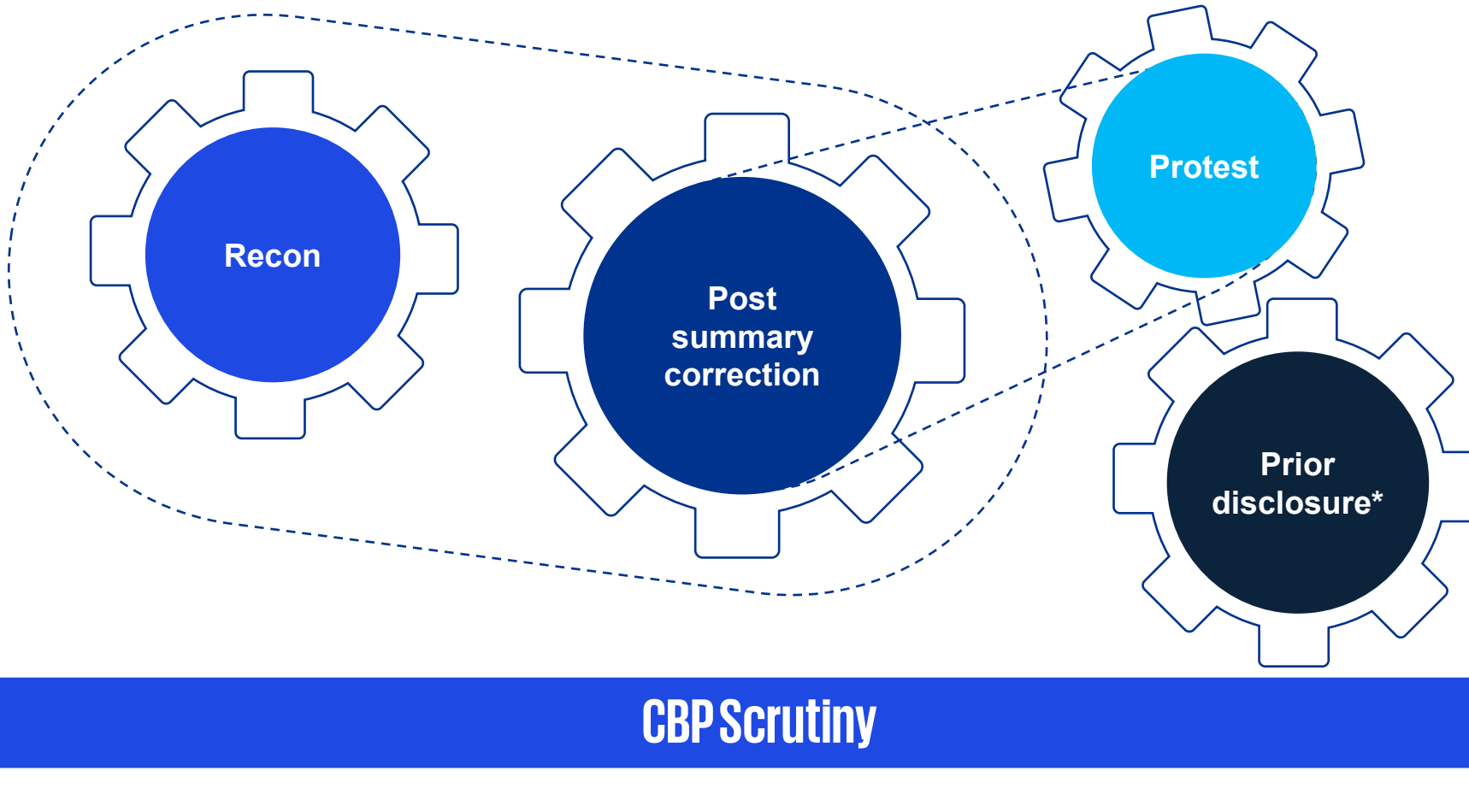
Results of arm's length analysis

What to do with the results of your arm's length analysis:

- *Passing: continue forward to reporting/using transaction value*
- *Failing: when the Customs arm's length analysis fails, companies don't make adjustments – rather, companies must use alternative methods of appraisalment*
 - Companies should analyze further whether there are economic or market justifications for why the price fails arm's length
 - Percentage of SKUs/transactions that pass; aggregate pass
 - Trends in passing year over year

Hierarchy				
01 Transaction Value <ul style="list-style-type: none">• Price actually paid or payable	02 Transaction Value of Identical or Similar Goods <ul style="list-style-type: none">• Transaction value of Identical goods or similar goods	03 Deductive Value <ul style="list-style-type: none">• Resale price in the U.S. after importation of the goods, with deductions for certain items	04 Computed Value <ul style="list-style-type: none">• Cost build up plus profit	05 Fallback <ul style="list-style-type: none">• Value derived from one of the five previous methods

Mechanisms for reporting adjustments



Step 5: Control future processes

People, processes, and technology

1



Establish well-written policies and procedures for annual review and reporting of transfer pricing adjustments

2



Ensure Transfer Pricing and Customs disciplines maintain regular contact and communication about adjustments and other changes that may impact values, sourcing locations, intercompany payments, etc.

3



Utilize technology and automation to enhance the process



04

Questions



Thank you!

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