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# Asia Pacific Industrials, Manufacturing & Transportation Webinar Series

18 August 2022 | 2:00 - 3:00 pm (PHT)



# Webinar Housekeeping Reminders



The session is being recorded.

All webinar materials will be shared post-event.



Please use the Q&A function at the bottom of your screen to submit your questions.

Questions will be answered at the end of session or post-event.

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# Welcome & Introduction



**Yaeko Hodaka**

Co-chair, Asia Pacific IMT Industry Group,  
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# Speakers

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\*Quisumbing Torres is a member firm of Baker & McKenzie International, a Swiss Verein.

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# Managing Customs Audits and Disputes in the Philippines



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Quisumbing Torres\*  
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Senior Associate, Tax  
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Manila

# Agenda

1 Overview of the Importation Process

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2 Border Disputes

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3 Seizure and Forfeiture Proceedings

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4 Post Clearance Audit

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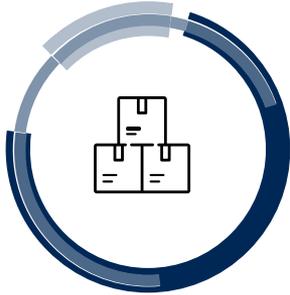
5 Voluntary Disclosure

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# Overview of Customs Audit Climate

# Overview of the Importation Process



Goods Declaration



Examination of Goods



Assessment



Clearance and Release

All imported articles are subject to duty and taxes, except when provided by law.

- Import Duty
- VAT on Importation

# Border Disputes

Common issues: Classification and Valuation Issues

## Remedies:

1

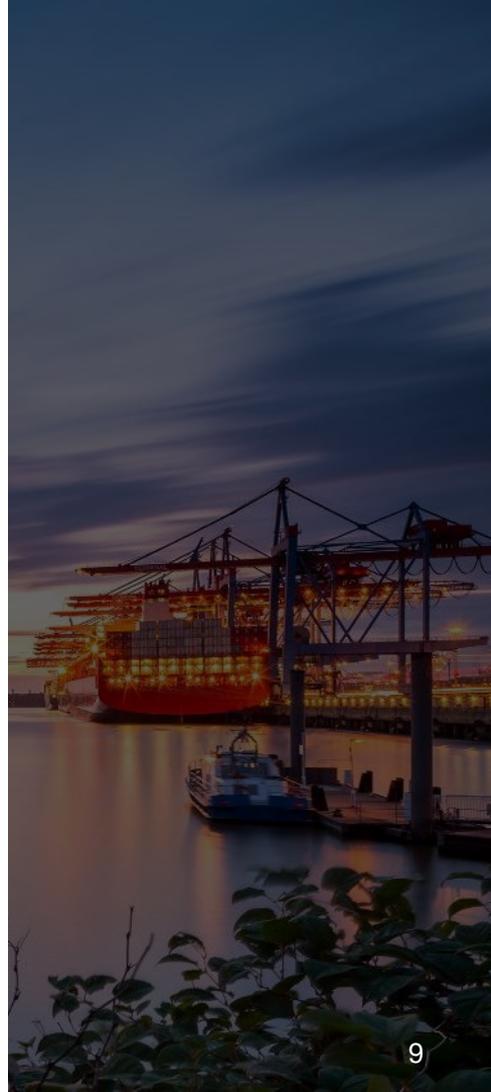
### Prior to arrival: Advance rulings

- Advance ruling on tariff classification
- Advance ruling on valuation

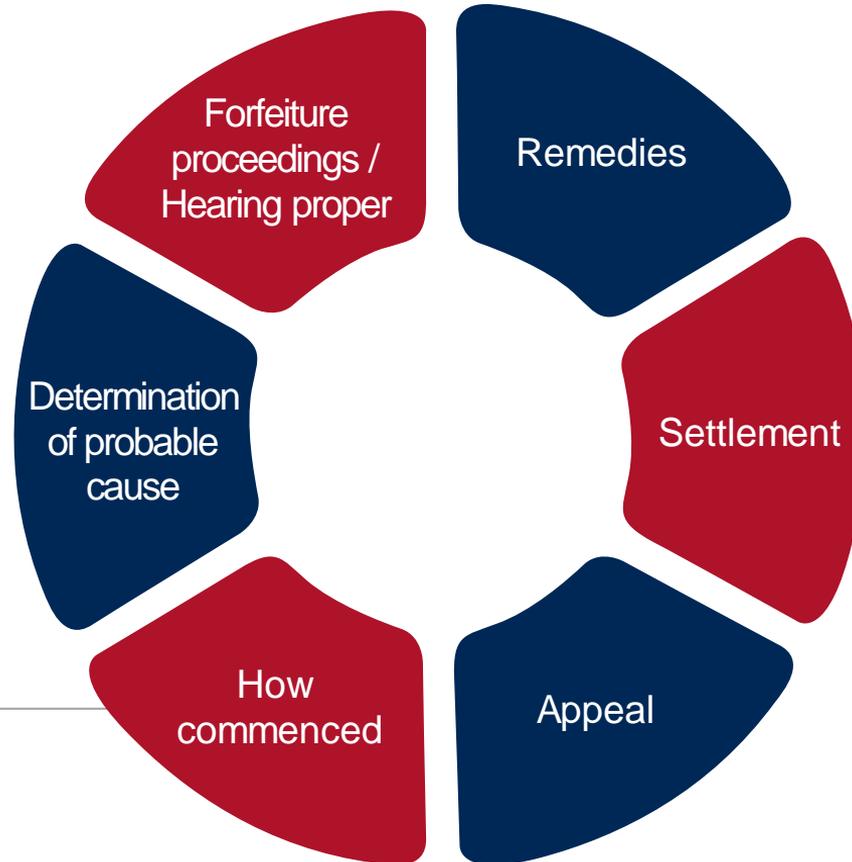
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### After arrival: Dispute settlement mechanisms

- Administrative protest
- Judicial appeal



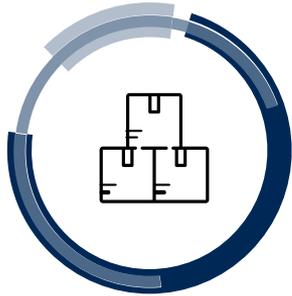
# Seizure and Forfeiture Proceedings



- Alert Order
- Warrant of Seizure and Detention

# Seizure and Forfeiture Proceedings

## Release of seized goods



The goods are  
**not** prohibited



The necessary permits  
and licenses are  
presented



The release of goods  
is not contrary to law

# Suspension of Importer Accreditation



## Ground for preliminary suspension

- When the importation contains any prohibited or restricted goods without permit or clearance from the regulatory agency, even for the first offense
- Those whose shipments have been forfeited within the preceding period of one year for violation of the CMTA and other customs laws, rules or regulations
- Other analogous circumstances



## Request for continuous processing

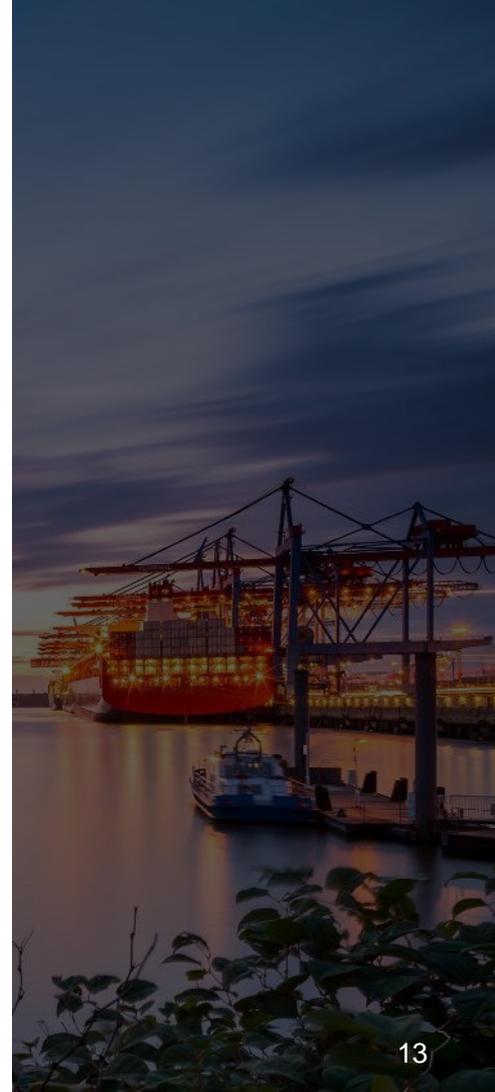
# Seizure and Forfeiture Proceedings

## Remedies



### Settlement

- Settlement by Fine
- Settlement by Redemption



# Seizure and Forfeiture Proceedings

## Case Resolutions



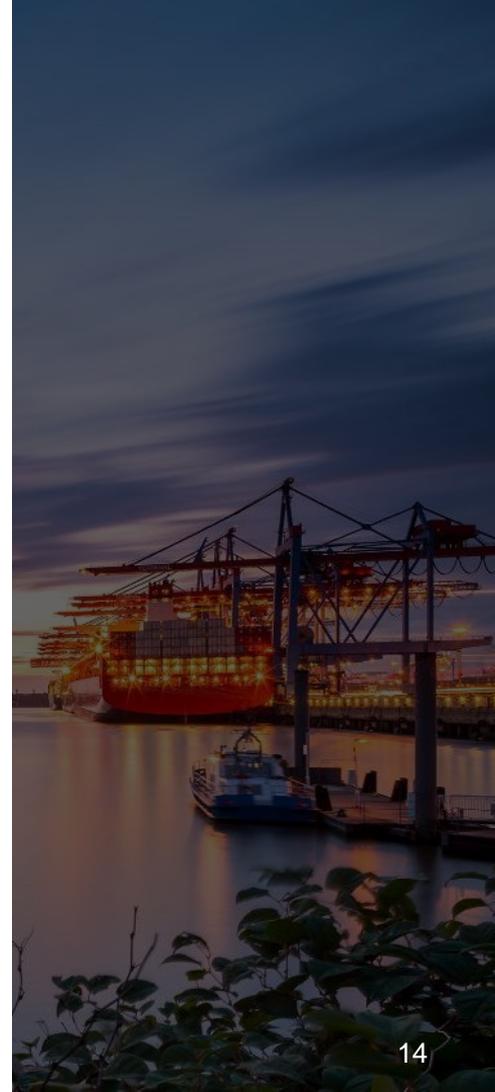
Decision of District Collector



Appeal to the Commissioner



Automatic Review



# Post Clearance Audit



Audit Procedure

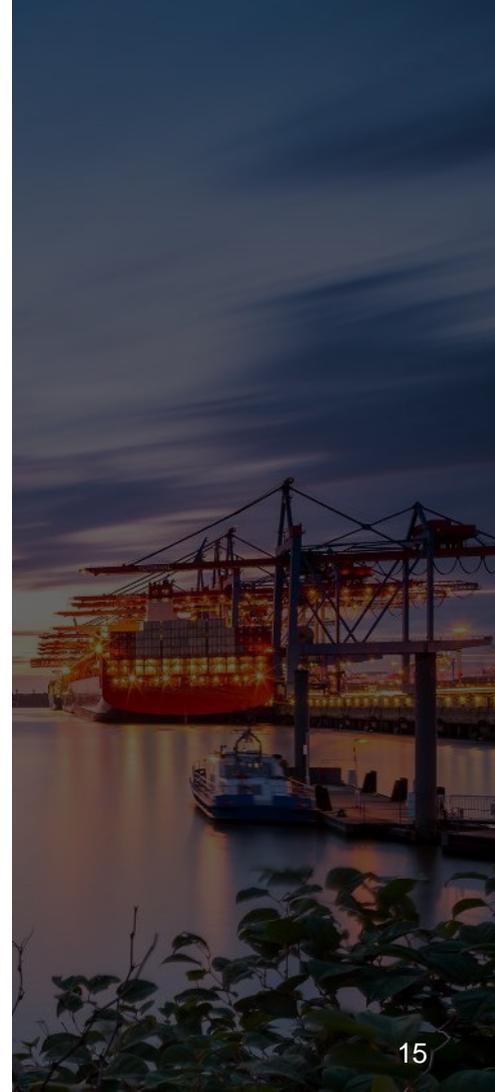


Common Issues Raised

- a. Classification
- b. Valuation
- c. Use of Preferential Rates



Remedies of Importer



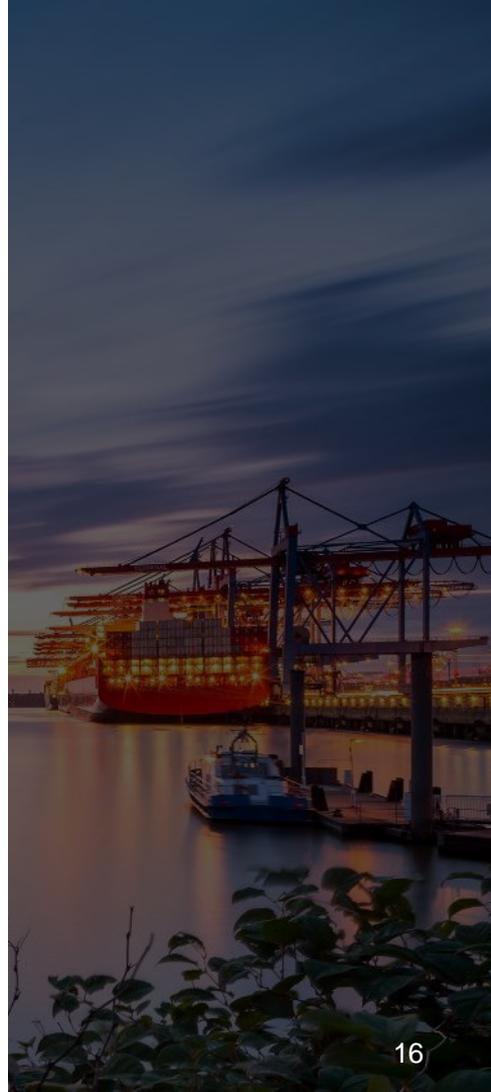
# Post Clearance Audit Group



Created back in October 2017



Post Entry / Clearance Functions was returned to the Bureau of Customs (BOC) from the Fiscal Intelligence Unit of the Department of Finance



# Audit Procedure

PCAG may conduct an audit within 3 years from date of final payment of taxes and duties

Pre-audit conference has been removed

Audit 60 days from issuance of Audit Notification Letter (ANL)

Completed within 120 days

# Common Issues Raised



Classification



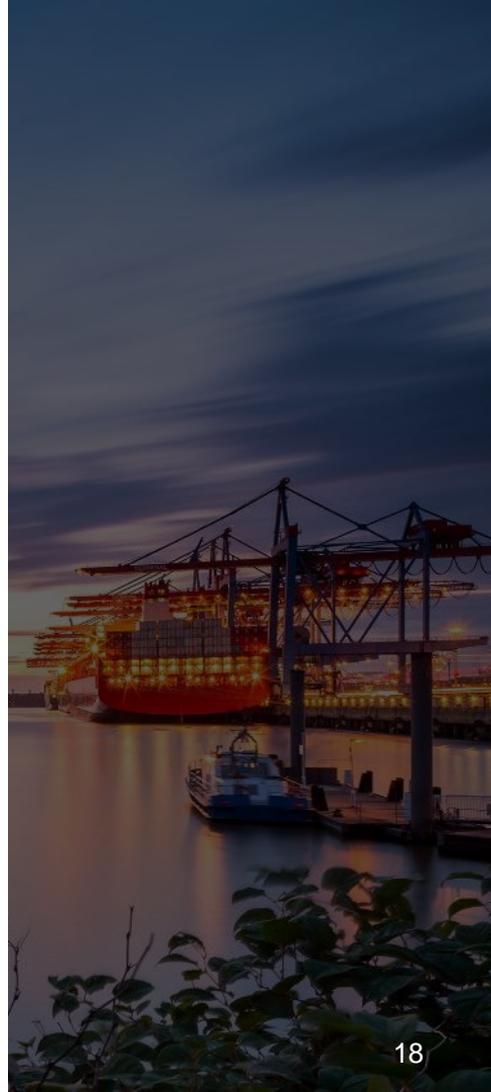
Valuation



Entitlement to Preferential Rates / Exemption



Record-Keeping



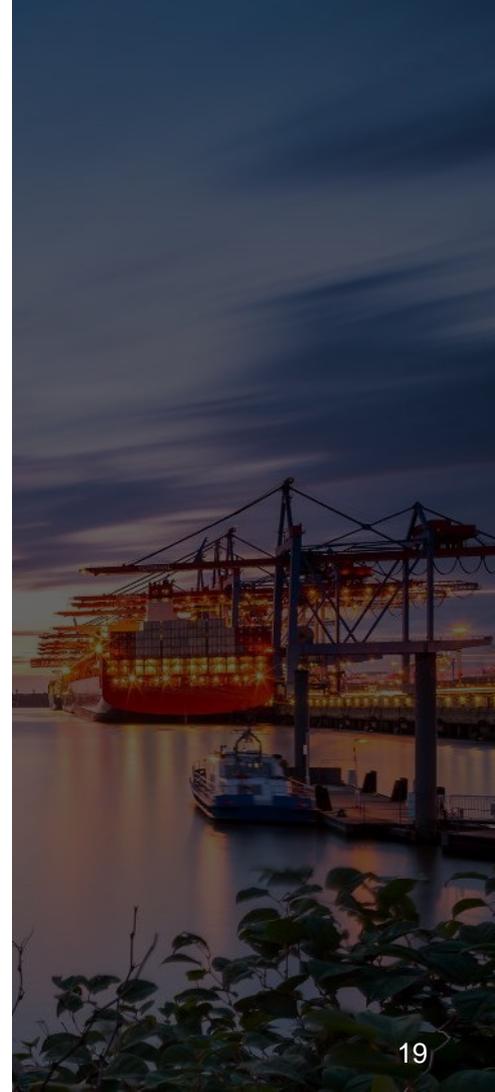
# Common Issues - Classification



Use of correct HS Code



Tariff Classification Ruling from the Tariff Commission



# Common Issues - Valuation



Sequential Application of Valuation Methods



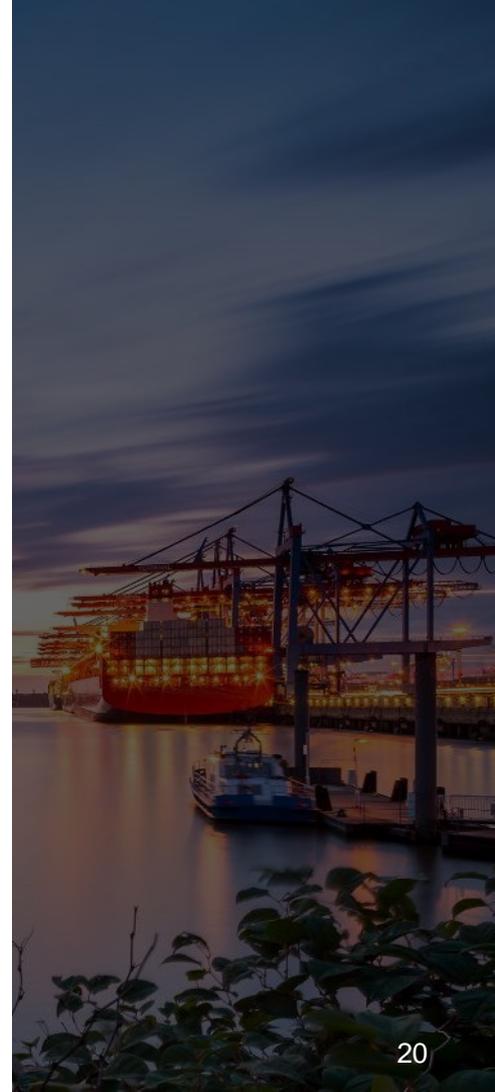
Additional Payments (e.g., royalties paid to suppliers)



Transfer Pricing Documentation



Advance Valuation Ruling



# Common Issues – Record Keeping



Single Administrative Document



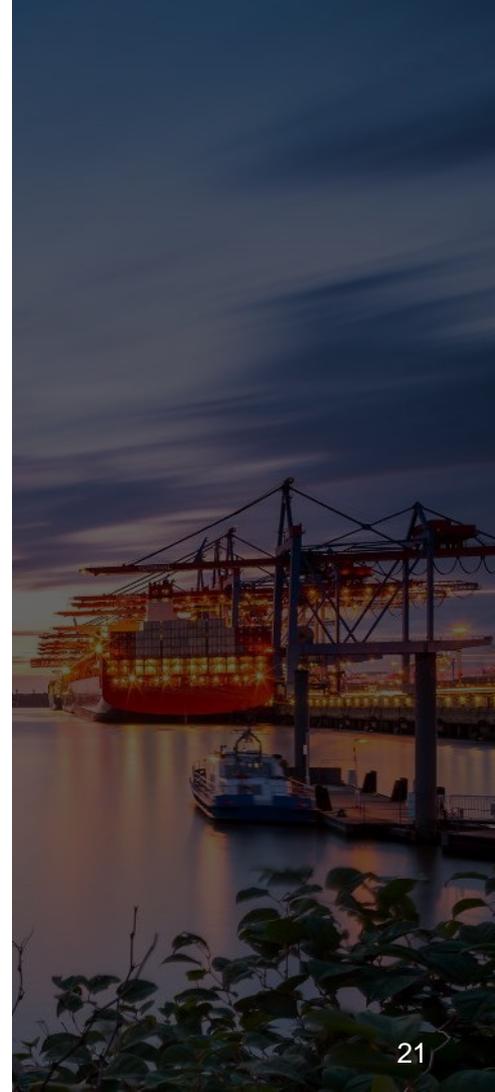
Certificates of Origin



Proof of payment of duties on domestic sales

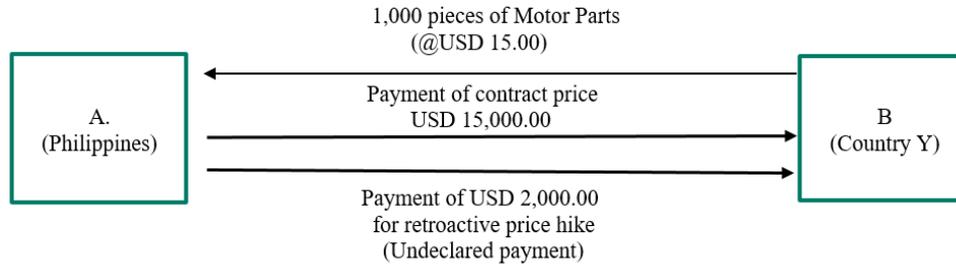


Transfer Pricing documentation



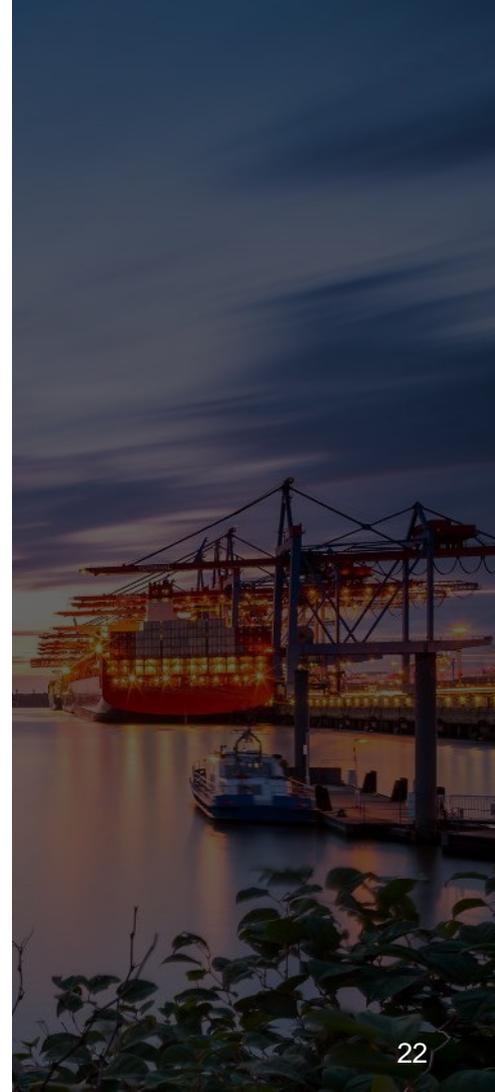
# Case Studies

## Case 1: Price actually paid or payable



### Facts of the Case

- Company A imported 1,000 pieces of motor parts at USD 15.00 from Company B of Country Y.
- Company A filed an entry with Customs and the declared value was USD 15,000.00 corresponding to the contract price.
- Three months later, company B requested retroactive price hike as a result of price review.
- The additional cost for the imported motor parts was at USD 2.00 and the importer paid \$ 2,000 on top of the contract price.



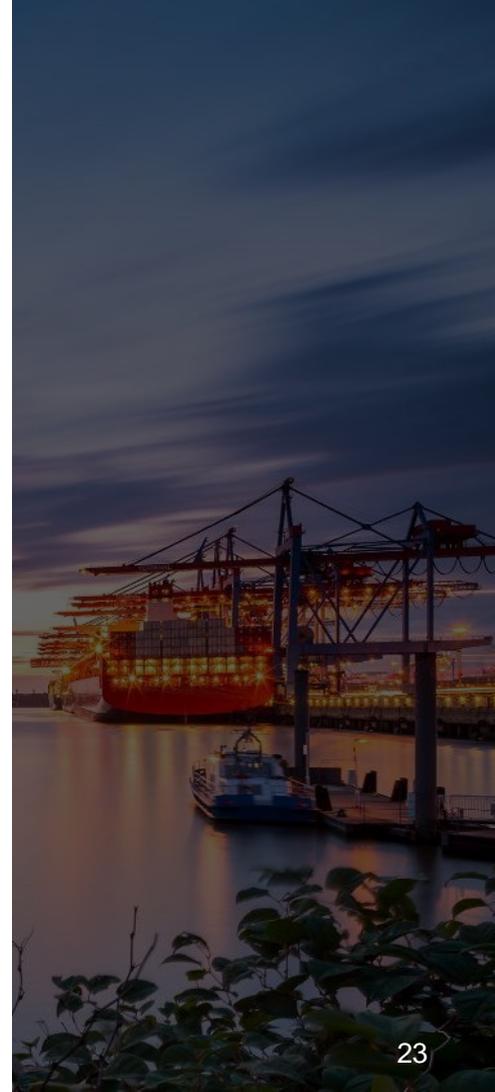
# Case Studies

## Case 1: Price actually paid or payable

### Errors identified as a result of post-clearance audit

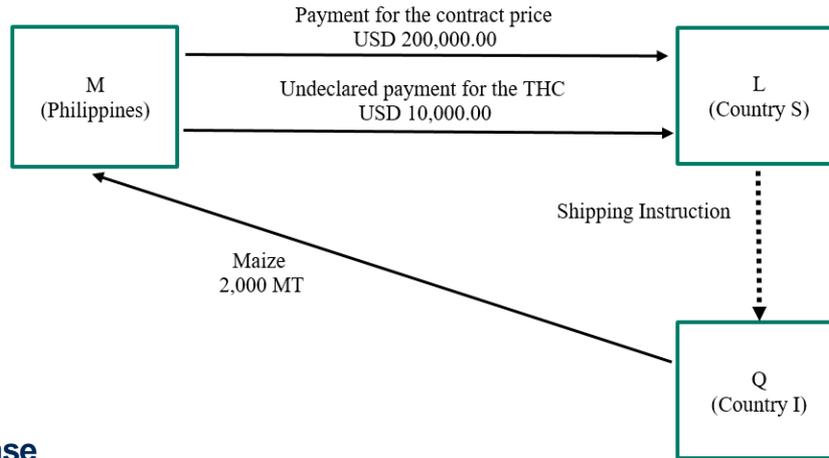
The additional payment for retroactive price hike of the imported motor parts shall be included in Customs value of the imported goods as price actually paid or payable.

Customs value declared for the entry	\$ 15,000.00
Undeclared value due to retroactive price hike	\$ 2,000.00
<hr/>	
Correct Customs value	\$ 17,000.00



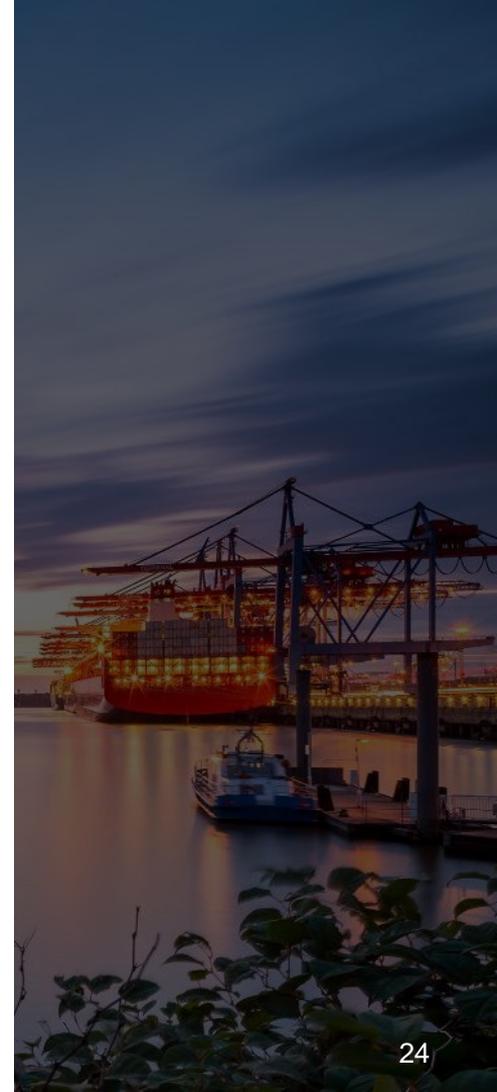
# Case Studies

## Case 2: Transportation cost of the imported goods



### Facts of the Case

- Company M in the Philippines ordered 2,000 MT of raw materials from Company L in Country S.
- The contract price was at USD 100.00/MT CIF or a total value of USD 200,00.00 per commercial invoice.
- Company L ordered Company Q situated in Country I to ship the raw materials to Company M.
- The import declaration of CIF USD 100.00/MT was accepted by Customs.
- Upon verification, the PCAG identified another payment remitted to Company L for terminal handling charge (THC) for the shipment of the materials which amounted to USD 10,000.00



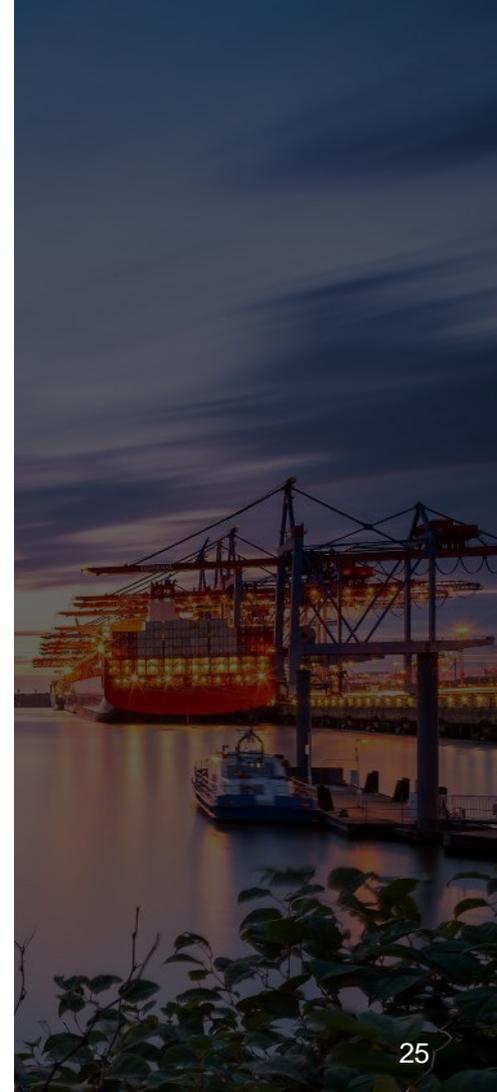
# Case Studies

## Case 2: Price actually paid or payable

### Errors identified as a result of post-clearance audit

The payment for the THC shall be included in the Customs value of the imported goods as a part of transportation cost of the imported goods.

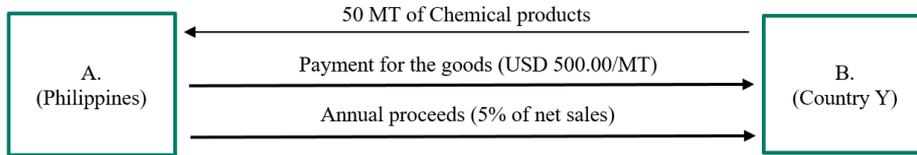
Customs value declared for the entry	\$ 200,000.00
Undeclared transportation cost	\$ 10,000.00
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Correct Customs value	\$ 210,000.00



# Case Studies

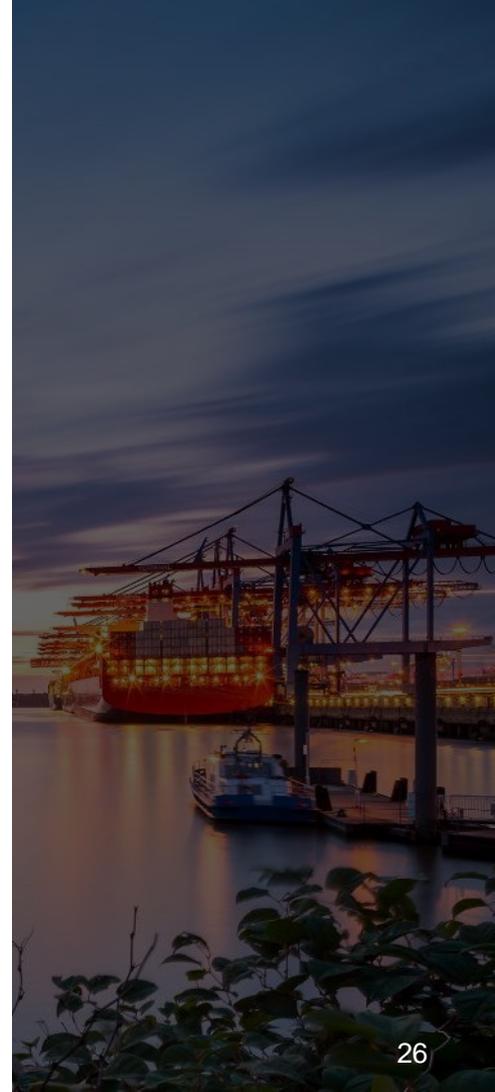
## Case 3: Proceeds of subsequent resale of the imported goods

Transaction Chart:



### Facts of the Case

- Company A in the Philippines imports chemical products and markets the chemical products.
- Company A is a wholly owned subsidiary of Company B in Country Y.
- Company A pays USD 500.00/MT corresponding to invoice per entry.
- Company A annually pays 5% of net sales to Company B as proceeds in accordance with their pricing agreement.



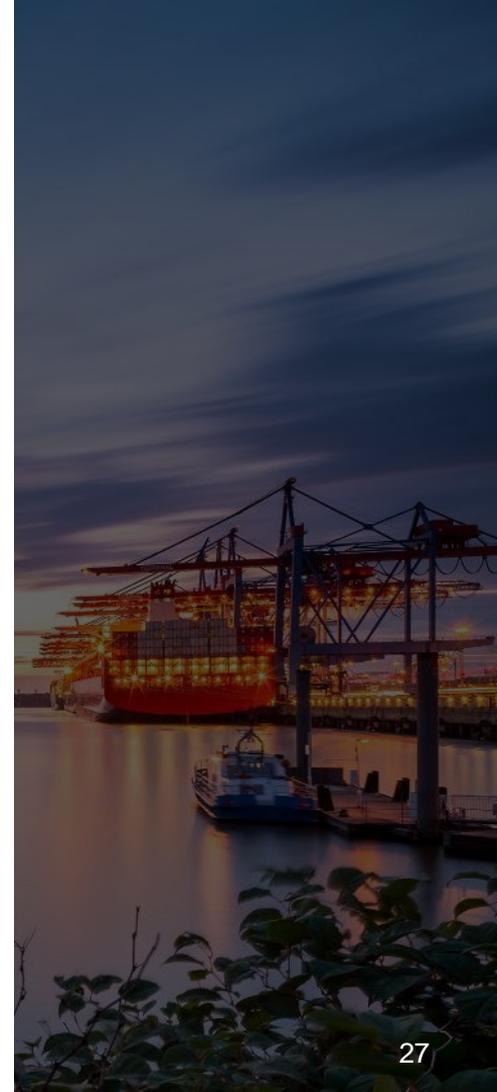
# Case Studies

## Case 3: Proceeds of subsequent resale of the imported goods

### Errors identified as a result of post-clearance audit

The proceeds remitted to the seller shall be included in the customs value of the imported goods since the annual proceeds constitute a part of adjustments.

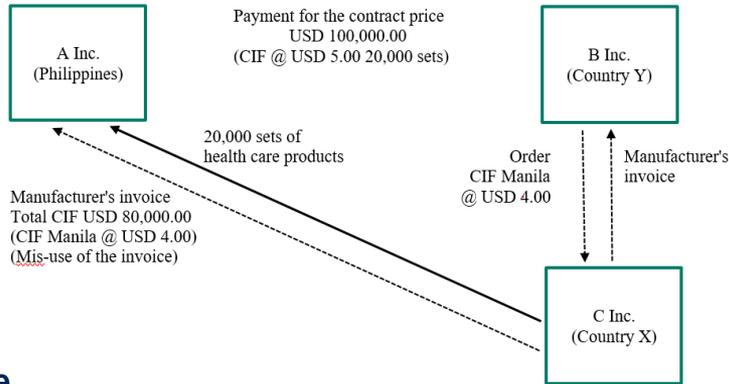
Customs value declared for entry	USD 25,000.00
Undeclared value (proceeds)	5% of net sales
<hr/>	
Correct Customs value	USD 25,000.00 + 5% of net sales



# Case Studies

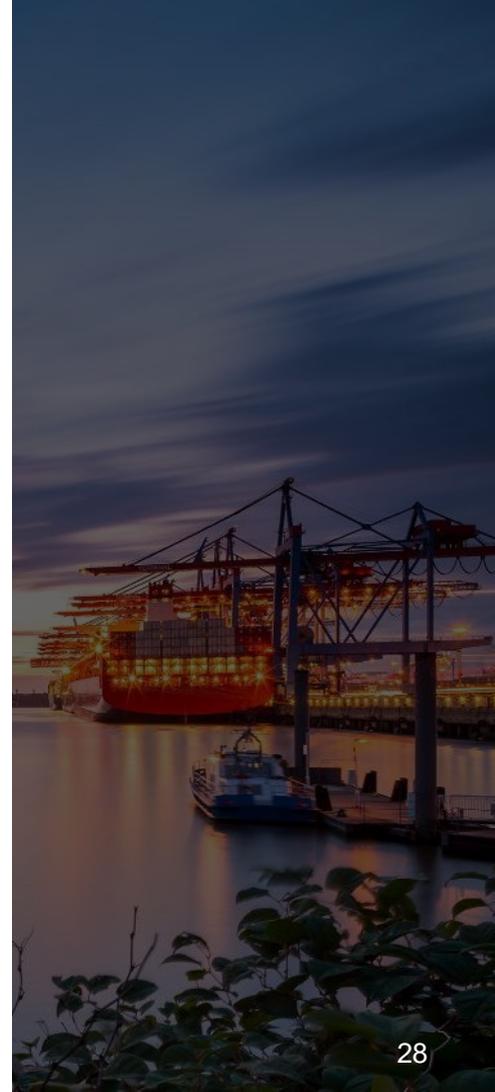
## Case 4: Inadvertent use of manufacturer's invoice

Transaction chart:



### Facts of the Case

- A Inc. of the Philippines purchased 20,000 sets of health care products @USD 5.00 from B Inc. of Country Y. The contract price was CIF USD 100,00.00
- B Inc. sourced the product @ USD 4.00 (CIF Manila) from its subsidiary manufacturer, C Inc. of Country X.
- C Inc. directly delivers the products to the importer and send copies of manufacturer's invoice for billing manufacturing costs (total CIF USD 80,000.00) to B Inc. and for shipping the products to A Inc.
- A Inc. used the invoice which was sent by C Inc. as basis for computing the Customs value.



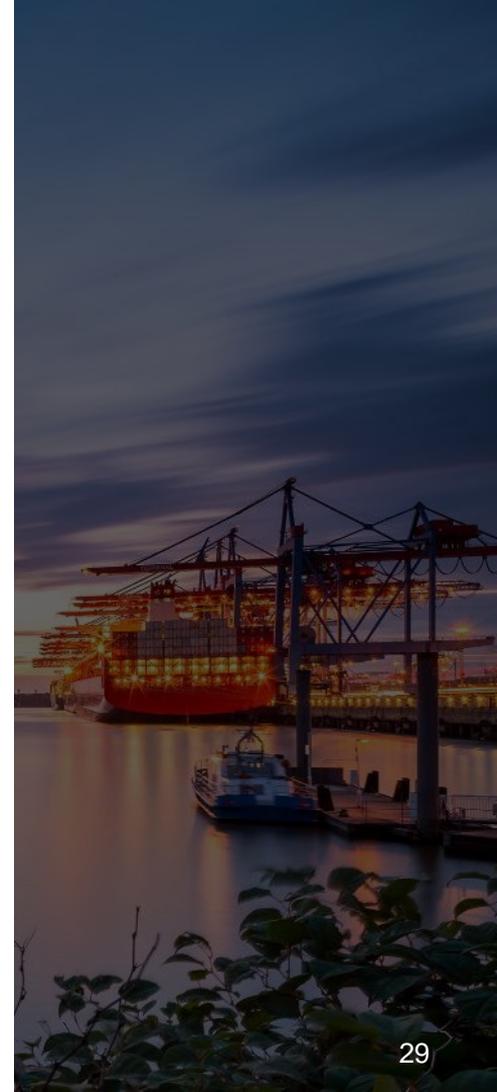
# Case Studies

## Case 4: Inadvertent use of manufacturer's invoice

### Errors identified as a result of post-clearance audit

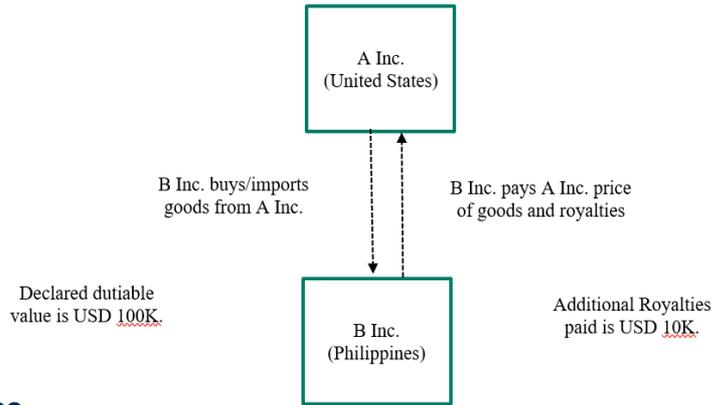
There were two sales, namely, first sale between C Inc. and B Inc., and last sale between importer and B Inc. In this case, the seller of the products shall be B Inc. Hence, the price actually paid or payable for the imported goods is USD 100,000.00.

Declared customs value for the entry	USD 80,000.00
Undeclared value due to miss-use of manufacturer's invoice	USD 20,000.00
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Correct Customs value	USD 100,000.00



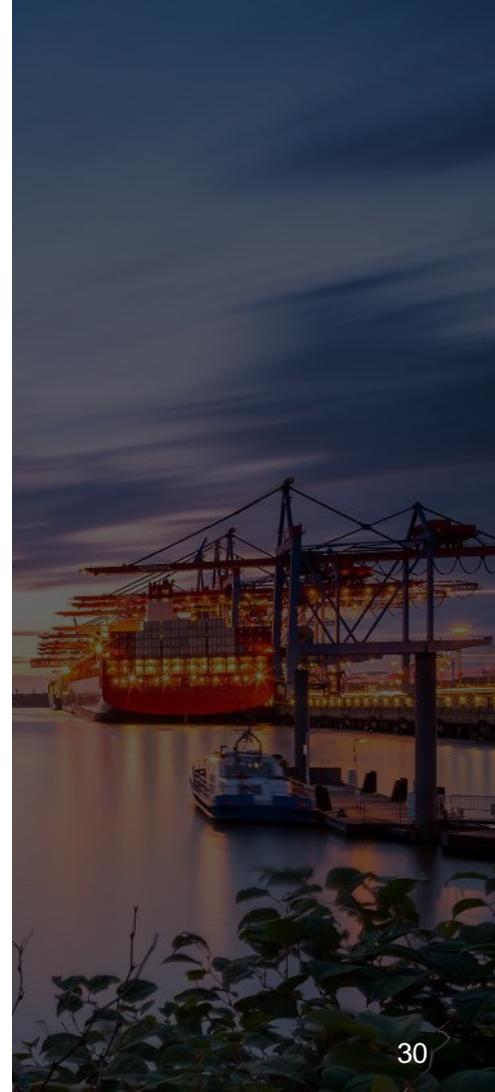
# Case Studies

## Case 5: Royalties paid as a condition of the sale



### Facts of the Case

- B Inc. of the Philippines, the Philippine distributor of products of A Inc. purchased consumer goods worth USD 100,000.00.
- A Inc. and B Inc. have an agreement whereby B Inc. has to pay A Inc. royalties equivalent to 5% of the sales.
- B Inc. paid royalties in the total amount of USD 10,000.00 for the taxable year subject to the audit.
- The tax base used in determining the duties and import VAT payable by B Inc. was USD 100,000.00 which is the invoice value of the goods imported



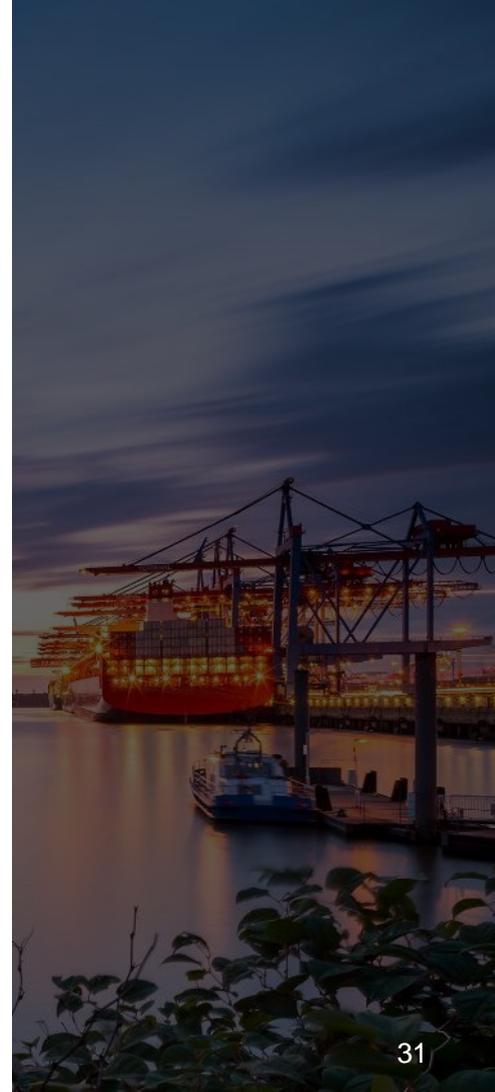
# Case Studies

## Case 5: Royalties paid as a condition of the sale

### Errors identified as a result of post-clearance audit

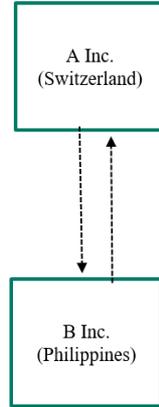
B Inc. should have included the amount of royalties paid (USD 10,000.00) as part of the transaction value, subject to duties and import VAT.

Declared customs value for the entry	USD 100,000.00
Amount of Royalties paid to A Inc. as a condition of the sale	USD 10,000.00
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Correct Customs value	USD 110,000.00



# Case Studies

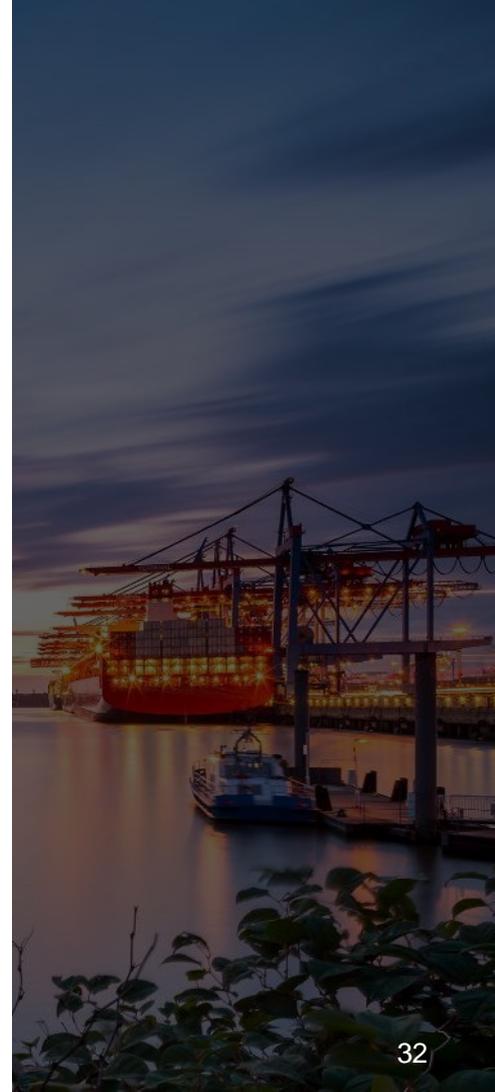
## Case 6: Incorrect use of HS Code



B Inc. imported "ingredient" of instant coffee mix and used a different HS Code subject to 10% duties

### Facts of the Case

- B Inc. of the Philippines is a seller of consumer goods including instant coffee.
- B Inc. imported USD 200,000.00 worth of coffee mix powder but used a different HS Code with a duty rate of 10% instead of the HS Code assigned to instant coffee mix, with a duty rate of 40%.
- B Inc. claimed that the imported commodity still has to undergo a process in order to meet their standards for an instant coffee mix
- Customs authority submitted the case for ruling by the Tariff Commission. The Tariff Commission ruled that as long as the product can be mixed with water to become instant coffee, the same should have been classified as instant coffee mix regardless of the standards of the importer.
- B Inc. was assessed deficiency duties.



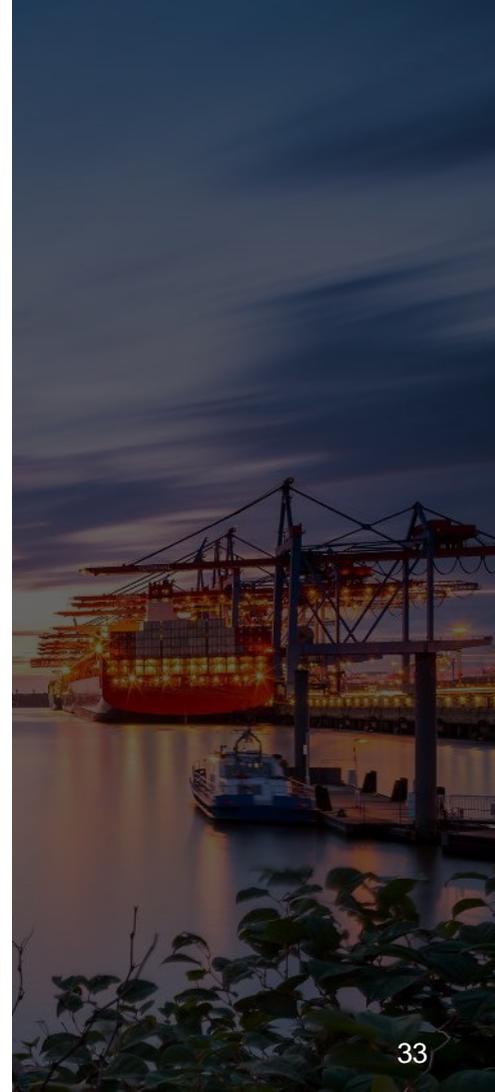
# Case Studies

## Case 6: Incorrect use of HS Code

### Errors identified as a result of post-clearance audit

B Inc. should have used the HS Code corresponding to the instant coffee mix regardless of the standards.

Amount of duties paid	USD	20,000.00
Correct amount of duties based on the correct HS Code	USD	80,000.00
<hr/>		
Deficiency Duties	USD	60,000.00
Penalty imposed (100% of revenue loss)	USD	60,000.00



# Revised Rates of Penalties

Tariff and Customs Code	CMTA
Negligence – 50% to 200%	Simple Negligence / Inadvertent Error – 10%
Gross Negligence – 250% to 400%	Negligence – 125%
Fraud – 500% to 800%	Fraud – 600%
Interest – none	Interest – 20% per annum counted 15 days from receipt of demand letter

# Remedies of Importer



Protest



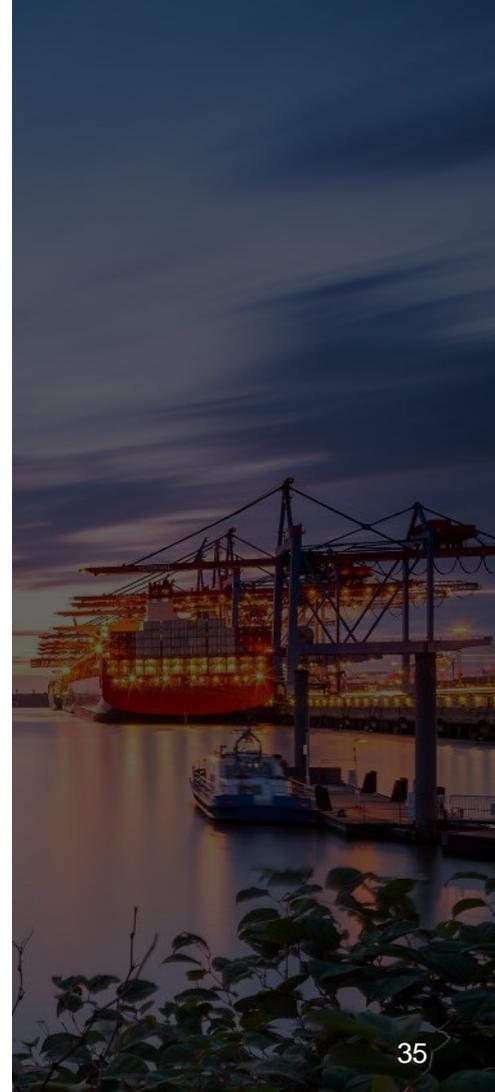
Request for Reconsideration



Appeal to the Courts



Voluntary Disclosure



# Voluntary Disclosure



Procedure



Cases excluded by  
voluntary disclosure



Benefits of  
approved application

# Prior Disclosure Program



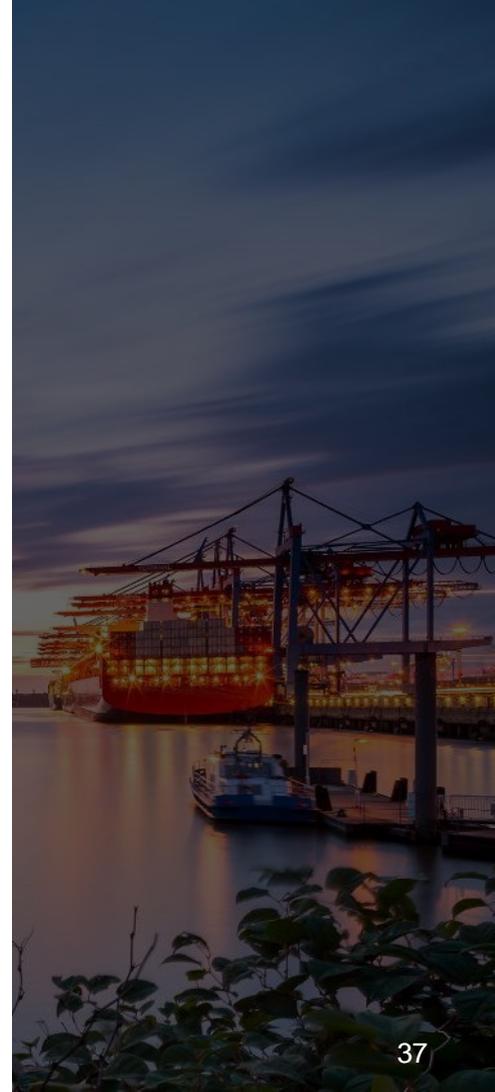
Submit application form disclosing the errors and amounts



Tender payment of deficiency duties and taxes



Importer who has received ANL may still avail of the Application within 60 days from receipt of ANL



# Exclusions from Voluntary Disclosure



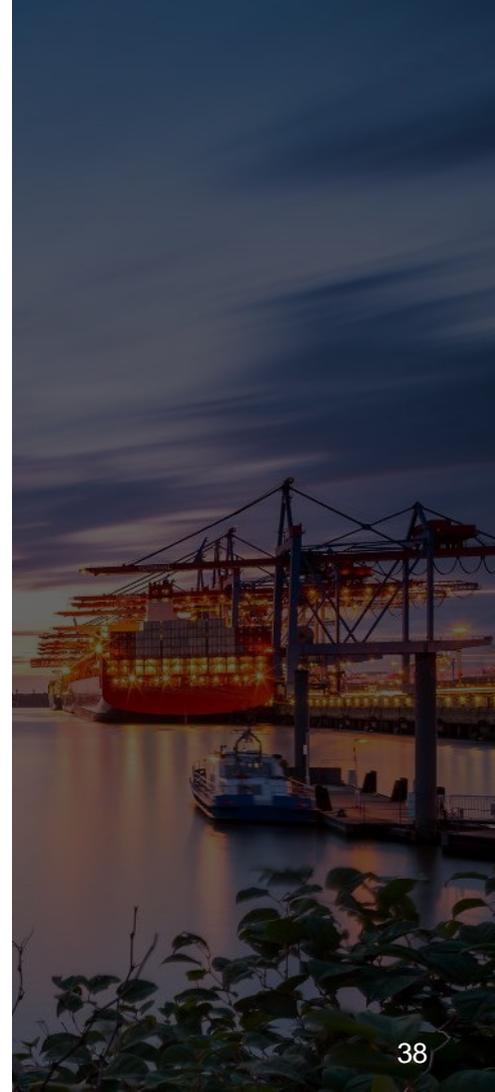
Subject of pending case with any other office of the BOC



Covered by cases filed in courts



Involving fraud



# Benefits of Approved Voluntary Disclosure Application



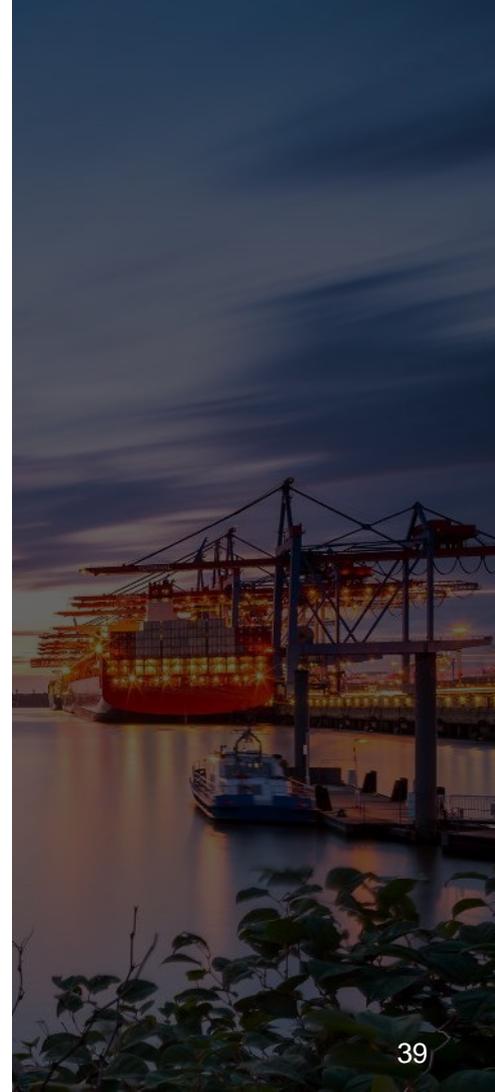
5% penalty if application filed prior to receipt of ANL



10% penalty if with ANL



Disclosures on royalties not subject to penalty if Application is filed within 45 calendar days from payment of accrual of subsequent proceeds to the seller



# Questions



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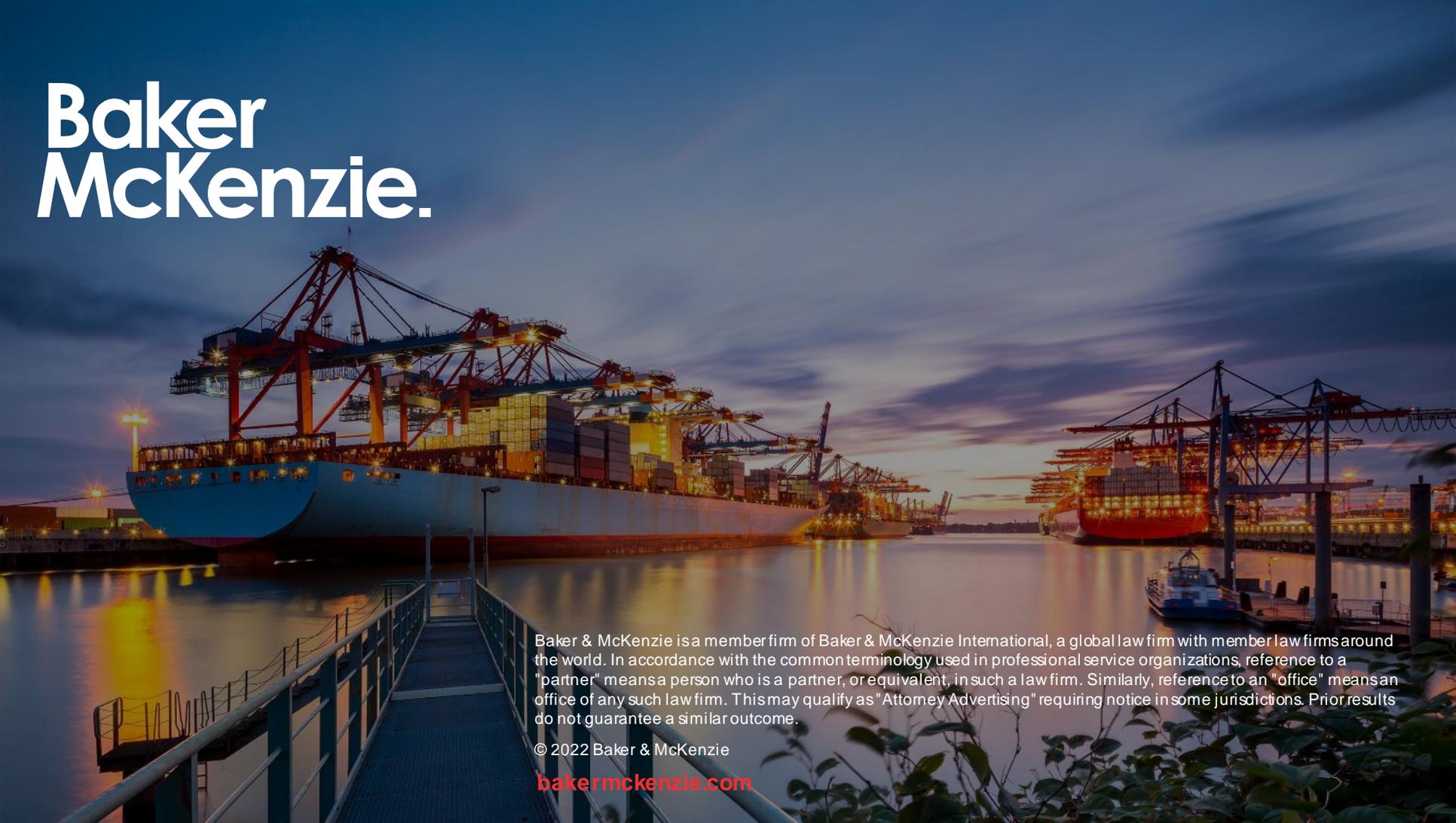
# Closing & Wrap-up



**Yaeko Hodaka**

Co-chair, Asia Pacific IMT Industry Group,  
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