

CUSTOMS VALUATION AND TRANSFER PRICING

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WORLD CUSTOMS ORGANIZATION
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What is the issue for Customs?

RELATED PARTY TRANSACTIONS

- Customs may examine whether price influence has taken place (*specific tests apply*)

Questions :

- To what extent, if at all, can a transfer price study be accepted as the basis for a customs value?
- How should post-importation adjustments be dealt with?



Key Differences

Customs Valuation

- Goods only
- Transaction based
- Confirmed at point of customs clearance

Transfer Pricing

- Goods & services
- Based on aggregates
- Confirmed retrospectively

Limitations

- Customs can't deviate from WTO Agreement
- No unilateral "acceptance" of a transfer price



What's possible?

- WTO Valuation Agreement gives two options :
 1. Test values offered by importer
 - Need to find identical/similar transactions
 - Very difficult to find so rarely used
 2. Examine circumstances surrounding the sale ...



Circumstances of Sale test (1)

WTO Valuation Agreement : Article 1.2 (a) *Interpretative Note*

Examine relevant aspects of transaction, including:

- the way in which the buyer and seller **organize their commercial relations and the way in which the price in question was arrived at.**
- Can it be shown that the buyer and seller, although related, buy from and sell to each other as if they were not related?



Circumstances of Sale test (2)

Examples given:

- Has the price had been settled in a **manner consistent with the normal pricing practices of the industry in question** or with the way the seller settles prices for sales to buyers who are not related to the seller?
- Is the price adequate to ensure **recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time** ... in sales of goods of the same class or kind?



What evidence can be used?

- WTO Valuation Agreement does not stipulate
- So, anything that can satisfy Customs!
- Customs cannot simply “accept” a transfer pricing decision made by tax authority
- But info in a TP study MAY be useful
- Principle established by Technical Committee on Customs Valuation (Commentary 23.1)
- Case by case basis



Possible use of info. from a TP study

