

# The Current Role of Reference Pricing in International Trade

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# Current Role of Reference Pricing

- The Valuation Agreement advocates a fair, neutral and uniform system for carrying out customs valuation.
- Customs valuation rules establish a hierarchy of methods to be applied, with Transaction Value preferred
- Def. Price Actually Paid or Payable (PAPP) in a qualifying sale for exportation.

# Current Role of Reference Pricing

- Reference pricing may be defined as the practice by which customs officials directly apply a dutiable value on the basis of some external standard, such as a minimum price or other referent.
- The prices are ordinarily assigned to a tariff classification taken from the Harmonized System.

# Current Role of Reference Pricing

- Reference pricing is specifically prohibited by Art. 7 of the Valuation Agreement, among other practices. Namely, it is not possible to apply minimum prices or a price based on an arbitrary or fictitious value.

# Current Role of Reference Pricing

Countries can still find a rationale for using reference prices in two scenarios, although never identifying them as such:

- (1) An alternative valuation methodology is the Transaction Value of Identical or Similar Merchandise. In related party transactions, countries may turn to reference prices—think “secret comparables.”

# Current Role of Reference Pricing

- (2) In a third party, arm's length transaction, external prices from a database can be used as a “risk assessment tool” to combat under-invoicing or fraud per the TCCV's Guidelines on the Development and Use of a National Valuation Database (2004) and Practical Guidelines for Valuation Control (2012).

# Current Role of Reference Pricing

- Q. What is the real “driver” to go to a reference price system?
- A. Boost revenue.
- Q. How to go there?
- A. Use a customs valuation database ostensibly as a risk assessment tool but in reality as a basis for disregarding a declared value and a source of substitute values.

# Current Role of Reference Pricing

- Use of the reference prices is a return to the external standard of a “normal price” utilized by the Brussels Definition of Value (1950)—and scrapped by the Valuation Agreement.
- N.B. exchanges of trade data, whereby prices declared at export are compared with prices declared at import, and comparisons with insured values are to be distinguished.

# Current Role of Reference Pricing

Reference pricing is the subject of

1. continuing formal inquiries at all recent sessions of the WTO's Customs Valuation Committee, and
2. formal complaints lodged against Argentina (2012), and
3. WTO dispute settlement proceedings against Colombia, Romania and Mexico

# Current Role of Reference Pricing

- This serious problem is not going away.
- Reference pricing is a growing threat to the international trading system and is not justified by developing countries' clamor for revenue or by the real risks of customs fraud that they face.
- The ICC and others are very concerned about this undermining of the rule of law.