



Customs Valuation from the Trader's Point of View: Compliance Challenges

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WTO Customs Valuation Agreement

- Intended to provide a single system that is fair, uniform and neutral for the valuation of imported goods for Customs purposes, conforming to commercial realities, and outlawing the use of arbitrary or fictitious Customs values
- Applies to all member countries of the World Trade Organization, who must establish local laws that are consistent with the principals of the Agreement

Valuation Hierarchy

- Per the Agreement, the preferred method of valuation is Transaction Value
 - i.e., the price paid or payable, plus selling commissions, royalties, assists, proceeds from subsequent sale, and packing costs
- In the event the merchandise cannot be appraised on the basis of Transaction Value, the other methods are to be considered in the prescribed hierarchical order:
 - Transaction value of identical merchandise;
 - Transaction value of similar merchandise;
 - Deductive value;
 - Computed value; and
 - Article 7 value (follow the above, with certain prohibitions)
 - Specifically, Article 7 states: "No customs value shall be determined under the provisions of this Article on the basis of ... arbitrary or fictitious values."

Method 1: Transaction Value

- The price actually paid or payable for the imported goods.
- What is “the price paid or payable”?
 - The total payment that the buyer makes to the seller. This payment may be direct or indirect.
 - Some examples of an indirect payment are when the buyer settles all or part of a debt owed by the seller, or when the seller to settle a debt he owes the buyer reduces the price on a current importation.
 - Intercompany “netting systems” can create a challenge in terms of traceability of amounts actually paid for a particular product or shipment.

Method 1: Transaction Value (cont')

- In order to use Transaction Value, ALL of the following conditions must be satisfied:
 - There must be evidence of a sale for export to the country of importation (i.e. commercial invoices, contracts, purchase orders, etc.).
 - There must be no restriction on the disposition or use of the goods by the buyer.
 - The sale or price must not be subject to conditions for which a value cannot be determined.
 - No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, for which appropriate adjustment to transaction value cannot be made.
 - Sufficient information is available to enable the specific adjustments to be made to the price paid or payable.
 - **The buyer and seller are not related**, but even if so, the use of the transaction value is acceptable if the importer demonstrates that:
 - the relationship did not influence the price, or
 - the transaction value closely approximates a test value.

Valuation Challenges

- **Conflicting goals for Transfer Price and Customs Value**
 - TP focus is entity profitability
 - Generally resale minus for Abbott, which looks at the profitability of the buyer/importer
 - Target 5% local profitability and back into the transfer price
 - Residual profit goes to IP rights holder
 - CV focus is on individual products
 - More focused on profitability of seller/exporter and whether they are covering costs plus a normal profit for each product
 - Cross-functional team reviews prices and YOY changes annually
 - Division TP Groups, Corporate Tax, Corporate Customs & Trade Compliance, local Finance Director
 - TP system has caps/floors and system flags to highlight large YOY changes
 - Larger variances are analyzed to determine drivers
 - Customs risks are assessed
 - Detailed COS testing is conducted, as needed

Valuation Challenges

- Changes in local reimbursement schemes can result in significant year-on-year (YOY) changes and customs scrutiny
 - Korea:
 - Resale minus
 - Local NHI reimbursement (and therefore, the local selling price) is reduced by 30% in one year
 - TP should follow, but what will be the customs implication if it does?
- Reference pricing, not in line with WTO Valuation Agreement
 - Ukraine:
 - Used computed value for new clinical trial materials, not being sold, not previously imported
 - Local customs invoked a Reference Price based on the HS Code and other companies' importations of commercial drugs under the same tariff code
 - Claimed it to be “Transaction Value of Similar Goods” which falls higher on the hierarchy than Computed Value, but not looking at the same producer, same country of export
 - Also not looking at similar drugs (HS codes in Heading 3004 are very broad)

Valuation Challenges (cont')

- Retroactive price adjustments
 - Few countries have adequate mechanisms for dealing with it
- Royalties, license fees, development fees, milestones, etc.
 - Always a focus in the US
 - Now seeing increased scrutiny in Asia, Europe
- Assists
- R&D materials
 - Usually computed value
 - Some disputes over “normal profit” for R&D materials that are of a class and kind that is never sold

