



WORLD CUSTOMS ORGANIZATION



conference information



Second Joint WCO/OECD Conference on Transfer Pricing and Customs Valuation

Transfer Pricing, Indirect Taxes and VAT: exploring possible convergences

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Location

WCO Headquarters
Brussels, Belgium

Date

22-23 May 2007

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Michel Danet
Secretary General
World Customs Organization



Thelma Askey
Deputy Secretary General
Organisation for Economic
Co-operation and
Development

Dear Participants,

We are pleased to welcome you to the WCO/OECD Conference on Transfer Pricing and Customs Valuation. The conference is being jointly organised by the World Customs Organization (WCO) and the Organisation for Economic Co-operation and Development (OECD) at the WCO Headquarters in Brussels on the 22-23 May 2007

Based on the outcome of the first joint conference held in May 2006, the WCO and the OECD are joining hands again to organize this second international conference that will bring together the most dynamic public and private sector specialists available to continue addressing the interaction between transfer pricing, customs, indirect taxes and VAT.

The conference provides a discussion forum for customs administrations, revenue/tax authorities and economic operators in international trade and taxation. We will explore ideas that could bridge the gap between direct and indirect taxation on the valuation of transactions between related parties and possible areas for strengthening coordination between customs and tax authorities.

The conference will also examine more closely the divergence of valuation methods for transfer pricing, customs and VAT, provide an update on latest developments at global, regional and national levels on the interaction between the three sets of rules, continue the debate on the desirability and feasibility of having converging standards and coordinated administrative approaches and explore the way forward towards possible convergence.

This event brings together all the major players in the international trade arena and provides an ideal opportunity for stimulating discussions and the robust exchange of ideas.

A programme and further information about this conference are included with this brochure for your convenience.

Enjoy the conference and thank you for joining us.

Our very best wishes.

Michel Danet
Secretary General
World Customs Organization

Thelma Askey
Deputy Secretary General
Organisation for Economic Co-operation
and Development



WORLD CUSTOMS ORGANIZATION



WCO

As the only intergovernmental organization with a unique Customs focus, the **World Customs Organization (WCO)** with its headquarters in Brussels currently has 171 Members across the globe at all stages of economic development that collectively process approximately 98% of world trade.

The WCO is particularly noted for its work in areas covering the security and facilitation of the trade supply chain, the development of global Customs standards, the simplification and harmonisation of Customs procedures, trade facilitation, risk management, integrity promotion, customs modernisation, valuation, origin, the Harmonized System goods nomenclature, and sustainable Customs capacity building initiatives.

Being the global centre of Customs expertise, the WCO provides an ideal forum for Customs administrations and their stakeholders to discuss, exchange experiences, and share best practices on a range of international Customs and trade issues.

World Customs Organization

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The **Organisation for Economic Co-operation and Development's** (OECD) roots go back to post-war Europe and the Marshall Plan for rebuilding the European economy after World War II. The OECD has evolved enormously in the intervening 50 years. Today the OECD Membership comprises 30 market democracies, which produce 60% of the world's goods and services.

The OECD is a unique forum where governments share ideas and develop policies to tackle the economic, social and governance challenges of the globalised economy. The members use the OECD to compare experiences, seek answers to common problems and work to co-ordinate domestic and international policies. Perhaps best known as one of the world's largest and most reliable sources of comparable statistical, economic and social data, the OECD is also at the forefront of efforts to understand, and to enable governments to respond to, new developments and concerns. These include corporate governance, the abuse of the international financial system by terrorists and other criminals, operating a national tax system in a global environment and the "new economy" and the challenges related to an ageing population.

To meet the challenges posed by globalisation, the OECD cannot work alone. It involves a growing number of non-OECD economies and other international organisations in its work as well as business, trade unions and other representatives of civil society.

Organisation for Economic Co-operation and Development

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Day I Tuesday 22 May, 2007

08:30	Registration
Opening 9:15	<p>Welcome by WCO and OECD</p> <ul style="list-style-type: none"> WCO Michel Danet, Secretary General, WCO OECD Thelma Askey, Deputy Secretary General, OECD Introduction: outcome of the 1st Conference and objectives of the 2nd Conference Chriticles Mwansa, Director, Tariff and Trade Affairs, WCO
Session 1:	<p>Transfer pricing, customs and VAT: where do they meet? How different/similar are the valuation rules for transfer pricing, customs and VAT?</p> <ul style="list-style-type: none"> <i>Definition, scope, principles and outcomes;</i> <i>Methods : transaction value and alternate methods (customs), open market value (VAT), traditional transaction methods and transactional profit methods (transfer pricing), arm's length range, hierarchy of methods, aggregation of transactions and post-import adjustments;</i> Valuation treatment of specific costs and charges, services and intangibles; <i>Documentation requirements</i>
9:45	Moderator: Kunio Mikuriya , Deputy Secretary General, WCO
9:55	Ian Evans , Global Leader - Tax services, Grant Thornton International
10:15	Caroline Silberztein , Centre for Tax Policy and Administration, OECD Liu Ping , Tariff and Trade Affairs Directorate, WCO
10:55	TAXUD, European Commission
11:05	Networking break
Session 2:	<p>Regional overview and recent developments on convergence and coordinated approaches</p> <ul style="list-style-type: none"> <i>Regional and national status and developments: what are the issues? What are the initiatives adopted or underway? What investments are customs and tax authorities making regarding the interaction between direct and indirect taxation rules, including institutional structure, administrative power and tools and training of customs/ tax officials?</i> <i>How is the business community working with the realities and corporate structures to comply with existing divergent rules? What business strategies MNEs are adopting to proactively integrate and manage the transfer pricing-customs valuation nexus? Where do they see the direction going?</i>
11:35	Moderator: Thelma Askey , Deputy Secretary General, OECD
11:45	Bill Methenitis , Americas Director--Customs and International Trade, Ernst & Young, LLP Franck Berger , Head of transfer pricing practice, Ernst & Young, France
12:05	Luc Dupont , Senior Program Advisor, Valuation Program Unit, Canada Border Services Agency
12:25	Ernest Sigande , Assistant Commissioner, Customs and Excise, Zambia Revenue Authority
12:45	Questions and answers
13:00	Lunch and networking time

Session 3:**Exploring convergence: The debate continues...****Desirability and feasibility of converging standards and coordinated administrative approaches from the perspective of customs and revenue authorities and from the operational perspective of business**

- *The two "schools of thoughts" and recommendations for possible ways forward as emerged from the 1st joint WCO-OECD Conference:*
 - *To what extent is it acceptable to maintain different rules because the policy objectives, legal frameworks and enforcement rules are different?*
 - *To what extent is it desirable to overcome the divergences and/or to encourage coordinated administrative approaches (e.g. in terms of lower compliance and enforcement costs)?*
- *If both sets of rules were to converge, what should be the common basis? Is there room for developing customs valuation guidelines based on the OECD Transfer Pricing Guidelines? Is there any contribution that customs valuation rules could make to the current or future review of the OECD Transfer Pricing Guidelines?*
- *How should regional variations be taken into account in identifying needs and means for possible convergence and coordinated administrative approaches?*

14:30	Eki Kim, Counsellor, Market Access Division, WTO
14:50	Darrel Pearson, Partner, Gottlieb & Pearson
15:10	Juan Martin Jovanovich, JMP Law
15:30	Richard Thompson Ainsworth, Director (International) Government Affairs, ADP-Taxware
15:50	Questions and answers
16:10	Networking break
Session 3:	Valuation methods: application of the transaction value method, post-import adjustments, functional analysis, traditional transaction methods and transactional profit methods
16:40	Panel discussion Lorrie Rodbart, Attorney-Advisor, U.S. Customs and Border Protection, Department of Homeland Security Mark Ludwig, Partner, World Trade Management Services, PricewaterhouseCoopers Montserrat Trapé, Partner, Tax, Global Transfer Pricing Services, KPMG, Spain
17:40	Questions and answers
18:00	Cocktail
18:30	Close of Day 1



Day 2 Wednesday 23 May, 2007

Session 4: Specific issues: (1) Valuing intangibles

Theoretical framework

- *Definitions and scope; how divergent the rules are*
- *Significance of intangibles in the commercial world and current business models in relation to the development and exploitation of intangibles*
- *Valuation approaches for transfer pricing, customs and VAT purposes*

9:00	Moderator: Carmine Rotondaro , Group Tax and Real Estate Director, GUCCI Group N.V.
9:20	Caroline Silberstein , Centre for Tax Policy and Administration, OECD
9:40	Isabel Verlinden , Partner, Transfer Pricing Eurofirm leader, Pricewaterhouse Coopers Ruud Tusveld , Partner, Customs & International Trade, Pricewaterhouse Coopers
10:20	John Malone , TAXUD, European Commission
10:40	Questions and answers
11:00	Networking break

Session 4: Specific issues: (2) Case study: Valuation of intangibles (transfer pricing, customs and VAT)

11:30	Moderator: Carmine Rotondaro , Group Tax and Real Estate Director, GUCCI Group N.V. Shanto Ghosh , Director and Principal Economist, Deloitte, Haskins and Sells, Mumbai Todd Smith , Senior Manager, International Corporate Services, West Region Leader, Trade and Customs Services, KPMG LLP Stefaan De Baets , First Attaché of Finance, Chair of the Knowledge Group on Transfer Pricing, Cabinet of the Administrator General of Taxes and Recovery Federal Public Service Finance, Belgium
12:20	Questions and answers
13:00	Lunch and networking time

Session 5: Specific issues: (3) Administrative cooperation for better dispute prevention

Can APAs (Advanced Pricing Agreements) work for customs?

- *What is an APA?*
 - *Under what circumstances can an APA for transfer pricing purposes be acceptable for indirect tax purposes?*
 - *Scope for joint APAs on customs and transfer pricing*
- Practical experience relating to the comparability and relevance of functional and economic analysis.*

14:30	Moderator: Shri Dutt Majumder , Chief Commissioner of Customs, Mumbai
14:50	Monique Van Herksen , Partner, Baker & McKenzie, Netherlands Jean-Philippe Lacroix , Customs Corporate Manager, PSA Peugeot Citroën
15:20	Matthew Bannon , Director, Valuation & Origin, Australian Customs Services Christopher Thomas , Director, Transfer Pricing Practice, Australian Tax Office
15:50	Damon Pike , President, the Pike Law Firm Steven Wrappe , Partner, Mayer Brown Rowe & Maw LLP
16:20	Questions and answers

16:40	Networking break
Session 6:	Specific issues: (4) Exchanges of information, international dispute resolution mechanisms: can more be done for customs?
17:10	Panel discussion Jeffrey Owens , Director, Centre of Tax Policy and Administration, OECD Pascal Saint-Amans , Head of Litigation Department, Direction Générale des Impôts, France
Wrap-up session	Outcome of the conference What does the future hold for Transfer Pricing, Customs and VAT?
17:40	Kunio Mikuriya , Deputy Secretary General, WCO Jeffrey Owens , Director, Centre of Tax Policy and Administration, OECD
18:00	Close of Conference

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Transfer Pricing and Customs Valuation: Exploring Convergence.

Liu Ping*

I. INTRODUCTION

With the rapid spread of globalization and the proliferation of multinational enterprises (MNEs), the number of international transactions between related parties (between parent company and their affiliates or between affiliates) has also increased considerably. When goods, intangibles and services are transferred across borders within MNEs, transfer pricing becomes an important issue for both MNEs as well as for national tax and customs authorities.

But what exactly is transfer pricing? It is the determination of the price and other conditions for the transfer of goods, services and assets between affiliated companies situated in different tax jurisdictions. As multinational enterprises are said to account for about 60 per cent of world trade,¹ transfer pricing has become the number one issue in the international tax arena. While the focus has traditionally been on direct taxation, the customs duties dimension of transfer pricing is now increasingly attracting the attention of both governments and business.

Governments are concerned about transfer pricing as it influences the level of both direct and indirect taxes. The price of cross-border transactions is the starting point for assessing customs duties and for determining profits that arise to each party involved and as such touches the allocation of tax bases among countries. Transactions between related parties or associated enterprises are not always subject to the same market forces as transactions between independent actors. As a consequence there is a potential for manipulation, through under or over pricing, of the basis for customs duties basis and revenue allocation.

For tax purposes, the transfer price determines the amount of income that each party earns and thus, the amount of income tax that is due in both the country of export and the country of import. A high transfer price reduces the earned income in the country of importation and increases the earned income in the country of export, while a low transfer price has the opposite effect.

For customs purposes, the transfer price has a direct impact on the determination of the customs value. The transfer price may form the basis of the transaction value of the imported goods. The lower the transfer price, the lower the transaction value which in turn means lower revenue collections as the applicable customs duties and other internal taxes (e.g., value added tax (VAT) and excise duties) are calculated on the basis of the customs value of the imported goods.

Transfer pricing is no longer an issue for developed economies only. It is also becoming important for developing and emerging economies to come to grips with transfer pricing so that they may better protect their tax base and avoid double taxation.

Institutionally, it is often the case that two different administrative bodies² value international transactions between related parties or associated enterprises. While both customs valuation and transfer pricing rules set standards for determining the 'arm's length' or 'fair' value of those transactions, different international rules and guidelines have existed in the customs and tax domain.

Tax authorities use the arm's length principle and customs address transfer pricing through the provision on related party transactions. At international level, this is the World Trade Organization (WTO) Agreement on Customs Valuation (the WTO Agreement), which all WTO members are obliged to apply through their national legislation, and the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) which set the international standard for transfer pricing. Differences also exist with respect to the application of these instruments at national level by customs and tax authorities in those countries that have different statutory and administrative requirements.

The business community has voiced concerns about the struggle that it has to satisfy the regulatory requirement of both tax and customs authorities that each apply their own transfer pricing rules. The MNEs³ have become increasingly concerned about the complications and costs that could result from the application by government agencies of inconsistent standards and different rules. The different rules of both agencies and the absence of coordinated efforts could also lead to double taxation that might create barriers to trade and investment contrary to the objectives of the international organizations and national governments concerned.

* World Customs Organization. The author is grateful to Caroline Silberstein, Head of the Transfer Pricing Unit at the OECD, for her invaluable comments on the draft article and input into the material jointly developed as a result of the WCO/OECD Conference on Transfer Pricing and Customs Valuation that was held in Brussels during 3–4 May 2006, and on which this article is largely based.

¹ Source: UNCTAD World Investment Report 1995.

² Some countries have merged customs and revenue (or tax) administrations into a single authority (e.g., Belgium, Denmark, Ireland, Mexico, Netherlands, South Africa, Spain, the United Kingdom, Zambia and many other countries in Africa in particular). Some countries did merge their authorities but later split them again (e.g., Canada).

³ This is not only true for many industry sectors such as the automotive industry and the pharmaceutical industry, but also for other industries with significant cross-border flows of physical goods.

Does this situation make sense from a theoretical and practical perspective? To what extent is it acceptable to have different rules because the policy objectives are different? Do different answers to the same question – what is the arm's length price? – alter the credibility of the assessing authorities? Is there a need for greater convergence? If so, what should be the conceptual framework, at national and international level? Should both sets of rules converge? And, to what extent should they converge and towards what standard? These are indeed the challenging questions posed by transfer pricing for both governments and business, in particular for tax and customs authorities.

II. CONVERGENCE UNDER THE SPOTLIGHT

Given the challenging questions posed by transfer pricing for both business and governments – particularly tax and customs authorities – the World Customs Organization (WCO) and the OECD took the opportunity to jointly host the first international Conference on Transfer Pricing and Customs Valuation⁴ aimed at addressing these challenges. The event took place at WCO headquarters in Brussels during 3–4 May 2006 and was attended by almost 300 participants from all over the world, representing customs as well as revenue authorities, large multinational enterprises and consulting firms. Participants actively contributed to the rich exchange of views on this highly challenging topic, identifying significant issues for all parties and discussing possible areas for further exploration, thus initiating a very promising dialogue. Clearly, this conference is seen as the starting point for major international efforts towards a coordinated approach and the possible convergence of two different regimes.

During the conference, panellists and participants from the WCO, the OECD, the WTO, national customs administrations, national tax administrations, the academic world and the business community explored numerous policy and technical issues with respect to valuation rules, practical problems encountered by business, administrative approaches, and domestic and international opportunities. The three conference sessions were devoted to the following specific topics:

- *Transfer pricing methods*

While the importance of transfer pricing is increasingly appreciated, it still largely remains a subject for tax specialists. This session enabled all role-players to gain a better understanding and perception of transfer pricing in an increasingly globalized world: how it works in practice for multinational enterprises; its importance for business and government stakeholders, in particular, tax and customs agencies; and how transfer pricing is dealt with in the OECD Guidelines for Multinational Enterprises and Tax Administrations.

- *Customs valuation of related party transactions*

This session revealed the customs approach to transfer pricing which determines the customs value of goods traded across borders between related parties under the terms of the WTO Agreement on Customs Valuation.

- *Bridging the gap between customs valuation and transfer pricing methods*

This session focused on how convergent or divergent customs and transfer-pricing requirements were in relation to cross-border transactions between related parties or associated enterprises, and how desirable and feasible it would be to have greater convergence of standards and a more coordinated administrative approach. National, regional and global practices were analysed while business strategies to deal with the gap were discussed.

More specifically, based on a comparison between how tax and customs authorities treat transfer pricing in accordance with their specific international standards, the differences and similarities between the two sets of rules applied by the two agencies were demonstrated. The pros and cons of the desirability and feasibility of having converging standards for the two systems were reflected upon from the perspectives of both government and business.

On the question of coordinated administrative approaches, the consequences of a transfer pricing adjustment on a previously accepted customs value and vice versa, and the scope for joint customs and transfer pricing audits were discussed. Furthermore, the scope for joint advanced customs and transfer pricing agreements,⁵ the exchange of information, and cooperation between customs and revenue authorities at both domestic and international level were explored. In this connection, relevant practical issues such as advanced pricing agreements, end of year adjustments and transfer pricing documentation were often at the centre of the discussion.

⁴ For more background information, see <http://events.wcoomd.org> and <http://www.oecd.org>.

⁵ Some jurisdictions (e.g., Australia and Canada) have tried coordinated approaches through advance pricing arrangements whereby a multinational taxpayer can seek approval for the pricing of its future transactions but this did not work well.



Two schools of thought emerged on the desirability and feasibility of having converging standards for the two systems and their future relationship: those that view convergence of rules as desirable and feasible and those that are cautious about this approach. Those who are in favour of convergence point out that a credibility question does arise if two sets of rules on value determination exist within one government where two arms of the same ministry come up with different answers to virtually the same question – what is the arm's length/fair value for a transaction? They hold that this situation results in greater compliance costs for business (including MNEs) and as MNEs must follow two sets of rules, this also implies greater enforcement costs for governments that must develop and maintain two types of expertise (customs specialists and transfer pricing experts examining and auditing the same transactions).

A particular point of concern was the fact that customs and revenue authorities within the same country often have conflicting interests. On a given import transaction, a customs officer's natural inclination would be to verify whether the value declared by an importer should be increased in order to collect more duties, while a tax official's natural inclination would be to verify whether the value declared by a resident should be decreased in order to limit the tax deductible amount. Or to put it in another way, within a multinational enterprise the customs specialist might want to declare the lowest possible import value, while the tax manager might be interested in a higher transfer price if it can generate greater deductions.

The proponents suggest that since the provisions specific to related party transactions in the WTO Agreement are relatively concise,⁶ compared to the much more elaborated and comprehensive OECD Guidelines, there might be room for developing guidelines or explanatory/interpretative notes for their better application by making use of the methodologies provided in the OECD Guidelines. They maintain that this approach does not necessarily imply the revision of the WTO Agreement, but is rather intended to facilitate and complement the proper implementation of the existing WTO rules with respect to related party transactions, which share the same basic principle as the OECD Guidelines. Within the current legislative framework, the approach should provide customs administrations with a choice, instead of imposing an obligation. They encourage customs, in particular, to follow the functional analysis epitomized in the OECD Guidelines in determining whether the relationship influenced the price.

Meanwhile it has also been suggested that the customs valuation approach has its own merits and should also be taken into account by tax authorities when necessary. In this connection, it was suggested that inputs from the customs area could be beneficial in any future review of the OECD Guidelines.⁷

Those who are cautious about convergence point out that the two systems are based on different principles when viewing the valuation of imported goods. Whereas customs generally determines the value of the goods at the time of importation with respect to individual transactions based on information available at that time, in practice transfer pricing practitioners often determine the value of the goods based on aggregated transactions, where appropriate, and quite often using information available at the year end.⁸ Hence

they argue that convergence could be more costly than leaving the current difference as they are. In this connection, concern is expressed about the implementation of capacity building on customs valuation in developing countries, many of which are still having difficulties in applying the basic provisions of the WTO Agreement. Their advice is to focus more on dispute resolution mechanisms to solve the questions that might arise from the divergence in the two systems.

The significance of transfer pricing is not limited to income tax and customs duties: transfer pricing has a VAT⁹ dimension too. While for the time being the major issue is not about the notion of value on which VAT is based, the situation could change in the future as a consequence of a draft European Commission (EC) proposal. In order to tackle tax avoidance and evasion in supplies between related parties, the draft proposal authorizes limited application of an 'open market value' as the basis for VAT which is not fully deductible.¹⁰ In Spain more recently, as part of a series of new anti-avoidance tax measures approved by the parliament,¹¹ transactions between related parties are to be adjusted to market price (arm's length principle) where the recipient of the transaction has no right to fully deduct the corresponding VAT and the agreed consideration is significantly lower than the market price.

6 Notably Article 1.2(a) and its Note.

7 While customs valuation rules in the WTO Agreement are not the same as those contained in the OECD 1995 Transfer Pricing Guidelines, the WTO rules are closer to the 1979 OECD Guidelines (fundamentally revised in 1995).

8 These issues are currently under review by the OECD.

9 Although the WTO Agreement on Customs Valuation only governs the value of goods for the purpose of levying Customs ad valorem duties on imported goods, in many countries the calculation of VAT and certain other internal taxes (e.g., excise) also levied on imported goods is based on the customs value too.

10 Draft Article 11(A)(8) VI Directive of 3 July 2005. An EU Council Decision of 27 February 2006 authorizes the Netherlands, as a derogation from Article 11 of the Sixth Directive and where certain conditions are met, to take the open-market value (as defined in Article 11(A)(1)(d) of Directive 77/388/EEC) as the taxable amount for the supply of capital items or any other supply of services between connected persons.

11 Law 36/2006 of 29 November 2006 as published in the Official Gazette of 30 November 2006. The new Law would generally enter into force from 1 December 2006.

For the time being, the main issue lies with the impact on VAT of subsequent 'adjustments' to be made under transfer pricing and customs valuation rules. The way in which these adjustments are made can influence the amount of VAT that is finally charged, the manner in which the declarations are to be reported and amended, and how the VAT should be deducted or refunded. It can also result in possible double taxation.

III. A WAY FORWARD

The following recommendations were offered during the conference as a possible way forward:

- At national level, there is a need to encourage more dialogue between customs and tax authorities, in close consultation with business, with the possibility of establishing a mechanism for liaison.
- At international level, customs and tax administrations through the WCO and the OECD should create an appropriate joint forum for dialogue, study and possible liaison, with invitations being extended to the WTO, business and academics. The issues for dialogue and study might include: (i) a more thorough comparison between the two sets of rules; (ii) the identification of areas for possible convergence of rules and a coordinated approach, including possible development of guidelines or explanatory notes; (iii) the examination of specific issues relating to the degree of acceptability by one agency of a value determination by the other, advance pricing agreements, joint audits, the consequences of subsequent adjustments of values made by one agency on another, the exchange of information, and cooperation between customs and tax agencies.
- The recognition that there are regional variations that need to be taken into account in identifying needs and developing strategies for possible guidelines and a coordinated approach. It must also be accepted that such a joint initiative would mean a long road ahead, because the course of action would involve the review of own processes and systems by customs, tax and business including the identification of where and how they can converge.

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The WCO and the OECD intend to explore further with their members and other stakeholders how best to pursue these recommendations. Both organizations are also committed in principle to holding more joint conferences on this issue in the future given the enormous interest generated during the first event. A 2nd joint WCO/OECD Conference on Transfer Pricing and Customs Valuation 'Transfer Pricing, Indirect Taxes and VAT: Exploring possible convergence' will be held in Brussels 22–23 May 2007.¹²

V. COMPARATIVE ANALYSIS

Further discussions on the prospects for the convergence of rules and/or coordinated administrative practices would warrant a more analytical perspective of the differences and similarities between transfer pricing methods and customs valuation rules. This comparison is based primarily on the relevant provisions of the WTO Agreement and the OECD Guidelines. A comparison can be more complex if different national legislation and practices are taken into consideration. The comparison is not intended to cover in an exhaustive manner all the costs and charges that are involved in the determination of the customs value and of the transfer price. It focuses rather on some of the main issues that stand out in terms of structural and methodological differences and similarities between transfer pricing methods and customs valuation rules. These main specific issues can be categorized as follows:

- Theoretical framework: scope of application (parties and transactions covered) and selection and application of valuation methods;
- Looking for certainty: acceptability by customs of a transfer price approved or adjusted by tax authorities, and vice versa as well as advanced pricing agreements (APAs);
- Compliance issues: documentation and audits;
- Administrative cooperation: dispute resolution and exchange of information

CONCLUSION

There is no systematic equivalence between transfer pricing and customs valuation methods while certain common concepts and elements do overlap in both methods. The two sets of rules have differences in many aspects (regarding agency objectives, operational functions, methodologies, treatment of certain costs and charges, etc.). However, as far as the acceptability of the transfer price set for imported goods (and related intangibles) between related parties or associated enterprises is concerned, as a principle, both transfer pricing and customs valuation seek to determine transfer pricing at 'an arm's length' level, in essentially the same terms. And the nature of the analytical process to arrive at a conclusion tends to converge towards an economic and functional one according to the terms of each rule.

At national level the situation varies as far as the degree of understanding of the issue and coordinated efforts are concerned. As things stand now, customs administrations need to develop specific strategies, procedures and expertise to address transfer pricing. Tax and customs administrations need to work together. As far as MNEs are concerned, while their main concern in the area of transfer pricing remains with direct taxation, their transfer pricing policies need to take into account obligations under both tax and customs laws as well as other regulatory requirements¹³ where applicable.

¹² For more information, see <<http://events.wcoomd.org>> and <<http://www.oecd.org>>

¹³ For instance, foreign exchange control regulations..

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From a business perspective many of the changes in rules and attitudes of revenue bodies are welcome. It is early days yet and one of the key factors in determining whether there is to be a win-win for business and tax authorities from the hoped-for enhanced relationship is the extent to which the recent pronouncements from leading revenue bodies are put into practice. A particular issue is whether in all this change revenue bodies (within countries and between countries) co-operate in resolving the differences that arise in their treatment of the same matter(s).

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