

Meeting of the Focus Group on Transfer Pricing Brussels, 26 October 2007

Summary of the proceedings

The first meeting of the Joint WCO-OECD Focus Group on Transfer Pricing was held on the 26th October at the WCO headquarters in Brussels and was attended by representatives of the WCO, OECD, WTO, Customs administrations, Tax administrations and the Private Sector. A list of the participants is at Annex A.

Mr Kunio Mikuriya, Deputy Secretary General, WCO opened the meeting welcoming the participants and stated that the Focus Group was set up as a follow up to the recommendations of the second Joint WCO-OECD Transfer Pricing Conference of May 2007 to raise the awareness on Customs valuation and Transfer Pricing with a smaller group to identify problems and suggesting possible solutions. The aim was to have a meaningful discussion on the way forward and the outcome would be reported to the Technical Committee on Customs Valuation (TCCV) at its spring session in 2008. He further clarified that the purpose of the presentations by Private Sector representatives on the three topics of convergence, intangibles and greater certainty for the business, was to kick start the deliberations and to stimulate discussion. He then invited Mr. Ian Cremer the Chairperson of the TCCV to preside over the meeting.

Ms. Caroline Silberztein from the OECD in her opening remarks stated while the initial focus of the two Conferences on Transfer Pricing had been on the valuation methods for Customs and Transfer Pricing purposes, it had become obvious that there were other promising topics such as how to provide greater certainty for the business e.g through joint rulings or Advance Pricing Agreements or through dispute resolution mechanisms. She said that she was looking forward to concrete proposals that could be made by from this Focus Group on the way forward.

The Chairperson then invited the following presenters to make presentations, some of which were based on case studies. These were followed by active discussions involving all participants :

Convergence

Mr. Juan Martin Jovanovich
Mr. Richard Gottlieb
Mr. Bill Methenitis

Intangibles

Mr. Todd Smith
Mr. Ruud Tusveld

Greater certainty for business

Richard Ainsworth

The presentations on Convergence and Greater certainty for business evoked considerable interest and discussion amongst the presenters as well as the participants with

several concrete suggestions. However the issue of Intangibles did not evince much interest, as it was considered mainly relevant to income tax matter.

The Chairperson welcomed the free and frank discussions and stated that the TCCV had been informed of the two Transfer Pricing Conferences and had also discussed the Focus Group at the just concluded 25th Session. He suggested that a summary of the conclusions of this Group could be circulated to all the participants and the Secretariat could prepare a document for the next TCCV to take certain key issues forward. He said that it was not necessary at this stage to determine the precise future role and work of the Focus Group.

Ms Silberzstein, said that the OECD was pleased with its cooperation with the WCO in organizing two Joint Conferences in 2006 and 2007 and welcomed the follow up-meeting of the Focus Group, which had had very useful discussions. She added that there was a need to move forward with concrete proposals and that the OECD would be happy to continue to support the WCO initiatives in this area.

Mr. Mikuriya while appreciating the valuable inputs given by the presenters as well as the ideas exchanged during course of intensive discussions, stated that he agreed with the Chairperson that the TCCV should review the recommendations of this Group and indicate the way forward, possibly supported by this Group. The WTO Committee on Customs Valuation in Geneva too would be kept informed of these initiatives and recommendations on Transfer Pricing. He thanked all the participants for their valuable contributions.

Recommendations of the Focus Group

Following recommendations were made by the Focus Group as a way forward :

- The summary of these recommendations to be presented to the Technical Committee on Customs Valuation (TCCV) at the 26th Session for the information of Members;
- Presentations and case studies presented to the Focus Group to be made available to the Members of the TCCV for their information;
- A proposal be made to the TCCV at their next session that the following technical points be taken up for examination and consideration of the need for further instruments:
- The phrase “circumstances of sale” in Article 1.2 (a) of the WTO Valuation Agreement in respect of its application to Transfer Pricing situations.
- Consideration of the Customs valuation treatment of situations where a Transfer Pricing agreement indicates that the declared Customs value will be adjusted as necessary at a later date to achieve a pre-determined profit margin (known as price review clauses). This could be a development of earlier work of the Committee on Price Review Clauses.
- Members of the Focus Group from the Private Sector could contribute to TCCV discussions on these issues, via the ICC or by the invitation of the Chairperson.
- Greater dialogue between the Customs and Tax administrations to be encouraged;
- The OECD to continue support.