

Transfer Pricing and Customs Valuation

Background and current developments



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Transfer Pricing & Customs Valuation - Bridging the gap



What is the issue?

- Customs aim to verify whether a price has been influenced in a related-party transaction
- Multi-nationals offer a transfer pricing study as ‘proof’ that the transactions are ‘arm’s length’
 - Is this helpful to Customs?
- What are implications for Customs of TP adjustments?

Competing tensions

Customs administration objective

Ensuring all appropriate elements are included in the Customs value

Direct Tax authority objective

Ensuring the transfer price does not include inappropriate elements



Trade objective

Lower Customs value desirable

Trade objective

Higher transfer price desirable = reduced taxable profit

Key Differences

Customs Valuation

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

Transfer Pricing

- Goods, services & property
- Based on aggregates/annual
- Confirmed retrospectively (some years after event)

Activities to date

- Two joint WCO/OECD conferences (2006, 2007)
- Focus Group 2007 – identified key issues
- On agenda of TCCV
- Commentary 23.1

Commentary 23.1

Examination of the expression “circumstances surrounding the sale” under Article 1.2 (a) in relation to the use of transfer pricing studies

- First text of the TCCV to refer to transfer pricing
- Key questions:
 - *Has price been settled in a manner consistent with the normal pricing practices of the industry?*
 - *Is price adequate to ensure recovery of all costs plus a profit representative of the firm's (seller's) overall profit realized over a ..period of time?*
 - Acknowledgement that a TP study may be of use in examining a related parties transaction

Case Study : 14.1

Use of information from a TP study

