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*Paper*  
**WTO**

***Item 9: Customs Valuation***

# WTO Agreement on Customs Valuation

## Background information

### Sources

WTO, ITTC, Fact sheet and Background material, Trade Policy Courses  
WTO, Internet, Customs Valuation, Seminar on Technical assistance on Customs Valuation  
ITC, Business Guide to the World Trading System

### Introduction

The statistical value is the value assigned to goods by compilers of international merchandise trade statistics, according to the rules adopted by the compiling country. The values placed on goods for customs purposes are available to statisticians, but as practices are different in national administrations, statisticians need to be aware of these differences [IMTS, Rev.2, p.90].

For importers, the process of estimating the value of a product at customs is important. The WTO Agreement on Customs Valuation adopts the transaction value as the customs value of imported goods, aiming for a fair, uniform and neutral system for the valuation of goods for customs purposes.

### Coverage of the Agreement

The Agreement sets forth a number of principles which must be implemented by the customs administrations of WTO Member countries. Six customs valuation methods are described in the Agreement. When determining customs value, national administrations must begin by applying the first method described (transaction value). Where customs administrations have reason to doubt the accuracy of the declared value of imported goods, the agreement provides the right to request further information from importers. If the administration maintains a reasonable doubt and the value cannot be determined by this method, customs must apply the second and subsequent methods in the order provided for in the Agreement [WTO, ITTC, Fact sheet].

### Technical information on the Agreement

For *ad valorem* duties, the WTO Agreement on Customs Valuation provides a procedure to determine the customs value of imported goods.

#### Basic principle: Transaction value

The Agreement stipulates that customs valuation shall, except in specified circumstances, be based on the actual price of the goods to be valued, which is generally shown on the invoice. This price, plus adjustments for certain elements listed in Article 8, equals the transaction value, which constitutes the first and most important method of valuation referred to in the Agreement.

This rule should be applied not only to arms-length transactions but also to transactions between related parties (i.e. transnational corporations, parent – affiliate). In case of doubt, customs should inquire whether the relationship has influenced the price. Importers have the right to ask for acceptance of the price if they can demonstrate that in the past imports are valued at about the same prices between unrelated parties of identical or similar goods.

#### The 5 other methods

For cases in which the transaction value is not acceptable as the customs value because the price has been distorted as a result of certain conditions, or where no transaction value is available, the Agreement lays down five other methods of customs valuation, to be applied in the prescribed hierarchical order:

- Transaction value of identical goods
- Transaction value of similar goods
- Deductive method
- Computed method

- Fall-back method

Other provisions

The sequence of the deducted and computed method can be switched at the request of the importer (not, however, at the discretion of the customs officer). Moreover, the Agreement contains provisions for special and differential treatment of developing countries and for technical assistance. Since this Agreement is an integral part of the single WTO undertaking, all WTO Members are Members of the Customs Valuation Agreement.

### **Exchange rates**

The rate of exchange to be used shall be that duly published by competent authorities of the country of importation and shall reflect...the current value of such currency in commercial transactions in terms of the currency of the country of importation. The conversion rate to be used shall be that in effect at the time of exportation or time of importation, as provided by each Member.

### **Implementation issues**

Factors that can hinder the implementation are either economic, infrastructure, or of political nature. For example, economic concerns may centre on loss of customs revenues as a major source of government income, (or on how to record informal trade). Infrastructural aspects centre on lack of resources (financial, human (e.g. communication) and technological (e.g. electronic docs), staff competencies, training and turnover -- risk management (cargo suspicion, establishing "doubt", valuation and classification disputes -- or the lack of political will to introduce necessary measures or political instability.

## **Annex**

### **Method 1 — Transaction value**

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, and includes all payments made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

#### Required conditions

- Evidence of sale for export to the country of importation (i.e. commercial invoices, contracts, purchase orders, etc.)
- No restriction on the disposition or use of the goods by the buyer, other than restrictions which:
  - are imposed or required by law in the country of importation;
  - are limited to the geographic area in which the goods may be resold;
  - do not substantially affect the value of the goods.
- The sale or price must not be subject to conditions or considerations for which a value cannot be determined with respect to the goods being valued. Some examples:
  - the seller establishes the price of the imported goods on the condition that the buyer will also buy other goods in specified quantities;
  - the price of the imported goods is dependent upon the price or prices at which the buyer sells other goods to the seller;
  - the price is established on the basis of a form of payment extraneous to the imported goods.
- Full prices, unless...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, unless adjustment can be made in accordance with provisions in Article 8.
- Sufficient information is available to enable the specific adjustments to be made under Article 8 to the price paid or payable such as:
  - commissions and brokerage, except buying commissions

- packing and container costs and charges
- assists, i.e goods and services supplied free or at reduced costs by the buyer for use in the production of the imported goods
- royalties and licence fees
- subsequent proceeds of any sale accruing to the seller as a result of the resale or use of imported goods
- the cost of transport, insurance and related charges up to the place of importation if the Member bases valuation on a C.I.F. basis
- **but not:** costs incurred after importation (duties, transport, construction or assembly), [Annex I, Note 3 to Article 1].
- Buyer and seller not related, otherwise ...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.
- The definition of related persons is found in Article 15 of the Agreement, which states that persons are to be deemed to be related only if:
  - they are officers or directors of one another's businesses;
  - they are legally recognized partners in business;
  - they are employer and employee;
  - any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
  - one of them directly or indirectly controls the other (the Interpretative Note to Article 15 provides that for the purposes of the Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter. The note also states that “persons” includes a legal person, where appropriate).
  - both of them are directly or indirectly controlled by a third person; or
  - they are members of the same family.

### **Cases where Customs Administrations have reasons to doubt the truth or accuracy of the declared value**

The customs valuation based on the transaction value method is largely based on documentary input from the importer. Article 17 of the Agreement confirms that customs administrations have the right to “satisfy themselves as to the truth or accuracy of any statement, document or declaration.” A “Decision Regarding Cases Where Customs Administrations Have Reasons To Doubt The Truth Or Accuracy Of The Declared Value” taken by the Committee on Customs Valuation pursuant to a Ministerial Decision at Marrakesh spells out the procedures to be observed in such cases. As a first step, customs may ask the importer to provide further explanation that the declared value represents the total amount actually paid or payable for the imported goods.

If the reasonable doubt still exists after reception of further information (or in absence of a response), customs may decide that the value cannot be determined according to the transaction value method. Before a final decision is taken, customs must communicate its reasoning to the importer, who, in turn, must be given reasonable time to respond. In addition, the reasoning of the final decision must be communicated to the importer in writing.

### **Method 2 — Transaction value of identical goods (Article 2)**

The transaction value is calculated in the same manner on identical goods if the goods are:

- the same in all respects including physical characteristics, quality, and reputation;
- produced in the same country as the goods being valued;
- and produced by the producer of the goods being valued.

For this method to be used, the goods must be sold for export to the same country of importation as the goods being valued. The goods must also be exported at or about the same time as the goods being valued. Some exceptions are accepted, in particular:

- where there are no identical goods produced by the same person in the country of production of the goods being valued, identical goods produced by a different person in the same country may be taken into account
- minor differences in appearance would not preclude goods which otherwise conform to the definitions from being regarded as identical.

The definition excludes imported goods which incorporate engineering, artwork etc, provided by the buyer to the producer of goods free of charge or at a reduced cost, undertaken in the country of importation for which no adjustment has been made under Article 8.

### **Method 3 — Transaction value of similar goods (Article 3)**

The transaction value is calculated in the same manner on similar goods if:

- goods closely resembling the goods being valued in terms of component materials and characteristics
- goods which are capable of performing the same functions and are commercially interchangeable with the goods being valued
- goods which are produced in the same country as and by the producer of the goods being valued. For this method to be used, the goods must be sold to the same country of importation as the goods being valued. The goods must be exported at or about the same time as the goods being valued.

### **Method 4 — Deductive value (Article 5)**

The Agreement provides that when customs value cannot be determined on the basis of the transaction value of the imported goods or identical or similar goods, it will be determined on the basis of the unit price at which the imported goods or identical or similar goods are sold to an unrelated buyer in the greatest aggregate quantity in the country of importation. The buyer and the seller in the importing country must not be related and the sale must take place at or about the time of importation of the goods being valued. If no sale took place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued.

Since the starting point in calculating deductive value is the sale price in the country of importation, various deductions are necessary to reduce that price to the relevant customs value:

- commissions usually paid or agreed to be paid, the sum of profits and general expenses added in connection with sales must also be deducted;
- the usual transport costs and corresponding insurance are to be deducted from the price of the goods when these costs are usually incurred within the country of importation;
- the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods are also to be deducted;
- value added by assembly or further processing, when applicable.

### **Method 5 — Computed value (Article 6)**

Computed value, the most difficult and rarely used method, determines the customs value on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the country of importation of goods of the same class or kind. Computed value is the sum of the following elements:

Production cost = value of materials and fabrication.

The cost or value of materials and fabrication or other processing employed in producing the imported goods. Materials would include, for example, raw materials, such as lumber, steel, lead, clay textiles, etc.; costs to get the raw materials to the place of production; subassemblies, such as integrated circuits; and prefabricated components which will eventually be assembled. Fabrication would include the costs for labour, any costs for assembly when there is an assembly operation instead of manufacturing process, and indirect costs such as factory supervision, plant maintenance, overtime, etc. Cost or value is to be determined on the basis of information relating to the production of the goods being valued, supplied by or on behalf of the producer. If not included above, packing costs and

charges, assists, engineering work, artwork, etc. undertaken in the country of importation would be added.

#### Profit and general expenses

Profit and general expenses are usually reflected in export sales to the country of importation, by producers in the country of importation on the basis of information supplied by the producer, of goods of the same class or kind. The latter phrase means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods. The amount of profit and general expenses has to be taken as a whole (i.e. the sum of the two). General expenses could include rent, electricity, water, legal fees, etc.

#### Other expenses to be added

Finally, other expenses should be added to the price such as the cost of transport of the imported goods to the port or place of importation, loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation, and the cost of insurance.

#### **Method 6 — Fall-back method (Article 7)**

Customs value determination based on “reasonable means consistent with the principles and general provisions of the Agreement, Article VII GATT and on the basis of available data”.

When the customs value cannot be determined under any of the previous methods, it may be determined using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of GATT, and on the basis of data available in the country of importation. To the greatest extent possible, this method should be based on previously determined values and methods with a reasonable degree of flexibility in their application.

Under the fall-back method, the customs value must not be based on:

- the selling price of goods in the country of importation (i.e. the sale price of goods manufactured in the importing country);
- a system which provides for the acceptance for customs purposes of the higher of two alternative values (the lowest should be used);
- the price of goods on the domestic market of the country of exportation (valuation on this basis would go against the principle in the Preamble that “valuation procedures should not be used to combat dumping”);
- the cost of production other than computed values which have been determined for identical or similar goods (valuation must be arrived at on the basis of data available in the country of importation);
- the price of goods for export to a third country (two export markets are always to be treated as separate and the price to one should not control the customs value in the other);
- minimum customs value (unless a developing country has taken the exception which allows for use of minimum values);
- arbitrary or fictitious values (these prohibitions are aimed at systems which do not base their values on what happens in fact in the marketplace, as reflected in actual prices, in actual sales, and in actual costs, reason of the importation or sale of the goods are also to be deducted;