

Transaction value

Article 1 - Price Paid or Payable

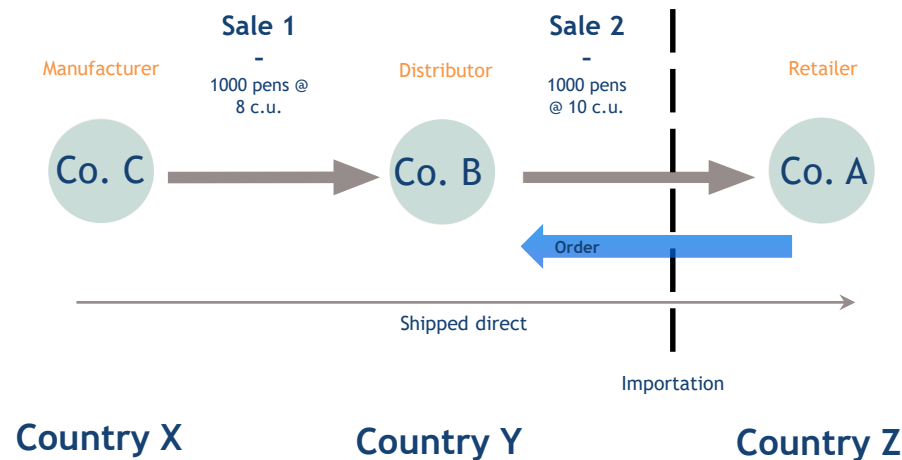


Article 1:

The price actually paid or payable is...

1. ... the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods.
 - Need not involve transfer of money. (e.g. could be letters of credit or negotiable instruments)
 - Payment may be direct or indirect
2. Activities undertaken by the buyer on the buyer's own account, are not considered to be an indirect payment to the seller.
 - Therefore, not to be added to the price actually paid or payable.
(Note to Article 1)
3. ... includes all payments actually made or to be 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
(Annex III, para. 7)

Sale for Export – Commentary 22.1 (I)



Sale for Export – Commentary 22.1 (I)

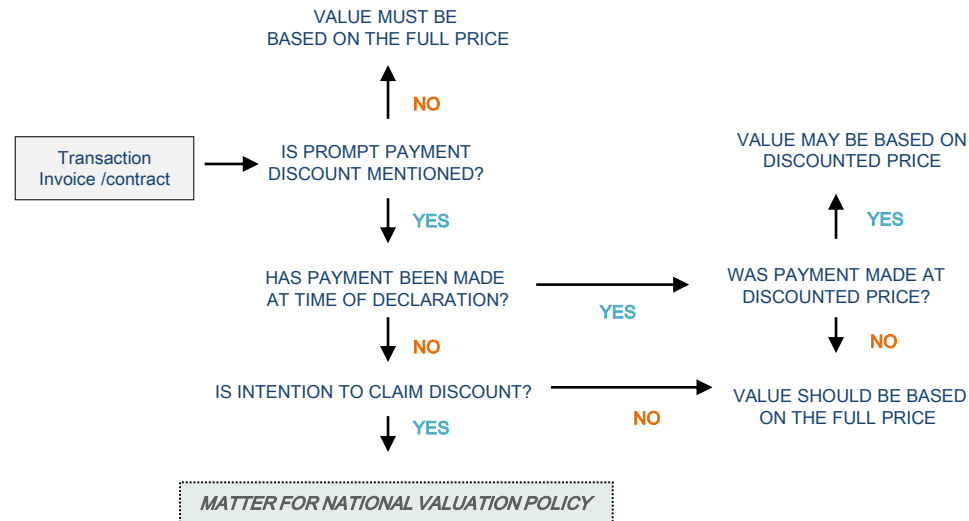
- Technical Committee view:

The underlying assumption of Article 1 is that normally the buyer would be located in the country of importation and that the price actually paid or payable would be based on the price paid by this buyer

In a series of sales situation, the price actually paid or payable for the imported goods when sold for export to the country of importation is the **price paid in the last sale occurring prior to the introduction of the goods into the country of importation**, instead of the first (or earlier) sale.

This is consistent with the purpose and overall text of the Agreement,

Cash Discounts



Quantity Discount

- Designed to encourage buyers to purchase in bulk
- The larger the quantity ordered, the lower the unit price
- May require several purchases to be made before it takes effect.

Customs should check :

- That the discount offer is genuine.
- How the discount is obtained. If it takes effect retrospectively, deal with as a credit

“GOODS

- **“Actual”** – physical, tangible, some non-tangible (e.g. electricity **for some countries**)

- **Software**
 - Imported on carrier media - WTO Decision 4.1 may apply
 - Via the Internet - not treated as a “good” for Customs purposes
 - Contained on hardware - (e.g. televisions, DVD players)
 - Locked software – (accessible after importation on payment of fee for password/ key).

Article 1 : Restrictions and Conditions

Transaction value only acceptable if four conditions listed in Article 1.1 are satisfied.

1. No restrictions as to the disposition or use of the imported goods
2. Price not subject to a consideration in which value cannot be determined
3. No part of any subsequent proceeds will accrue directly or indirectly to seller
4. Buyer and seller not related

Transaction Value : Adjustment : Article 8

Include:

- ✓ Selling Commissions
 - ✓ The cost of container and packing
 - ✓ "Assists"
 - ✓ Dutiable Royalties
 - ✓ Proceeds of resale
 - ✓ Freight
 - ✓ Loading, unloading and handling charges
 - ✓ The cost of insurance
- } depending on the rules of each country

Do not include:

Buying Commission

Post-importation charges

What are royalties ?

- The Collins Dictionary and Thesaurus (1991) defines “royalty” as ***“a percentage of the revenue from the sale of a book, performance of a theatrical work, use of a patented invention ... paid to the author, inventor ...”***.
- royalties and license fees” usually describes the compensation that is paid for rights to use some form of intellectual property, such as patents, trade secrets, trademarks, or copyrights.

ROYALTIES : TO INCLUDE IN THE CUSTOMS VALUE *IF*

RELATED TO THE
GOODS BEING
VALUED

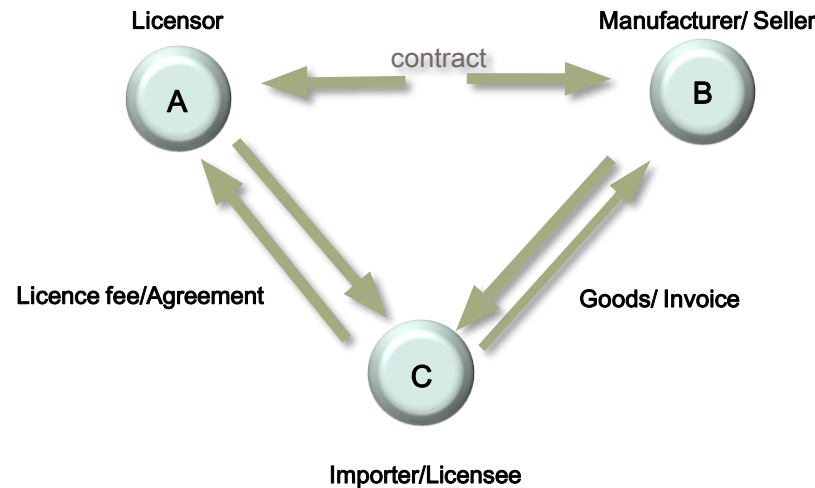
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PAID BY THE BUYER
AS A CONDITION OF
SALE

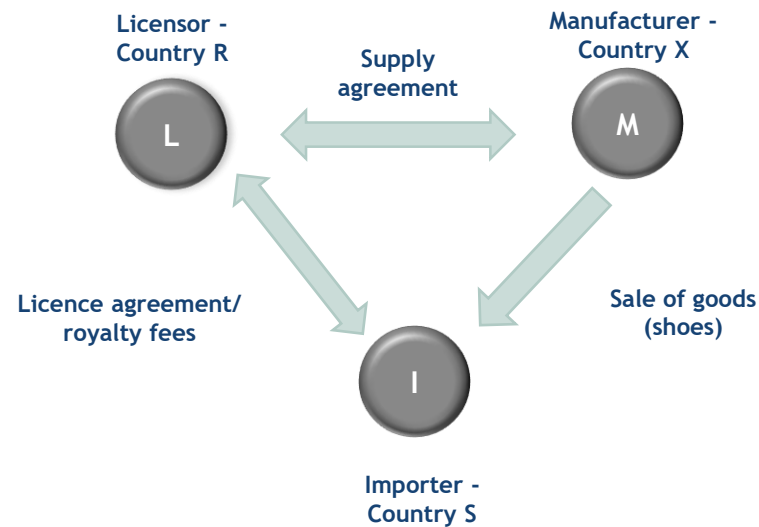
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NOT ALREADY
INCLUDED IN THE
PRICE

Third Party Royalties and License Fees – Commentary 25.1



Advisory Opinion 4.15



Cases where Customs have Reasons to doubt the TV

1. Article 17
 - Customs have the right to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented to them
2. Decision 6.1
 - If after receiving further information, Customs still have doubts on the truth or accuracy of the TV, Customs should inform the importer before making a final decision
3. Article 13
 - If necessary to delay final determination of Customs value, Customs should allow the release of the goods to the importer subject to the provisions of a guarantee



Alternate valuation methods

WTO Valuation Agreement : Articles 2 – 7

Alternate methods

- If there is no transaction value
- OR
- If the transaction value is rejected

Alternate valuation methods

1. Transaction value of identical goods (Article 2)
2. Transaction value of similar goods (Article 3)
3. Deductive value method (Article 5)
4. Computed value method (Article 6)
5. Fall back value method (Article 7)

Second method – transaction value of identical goods (Article 2)

- Goods produced in the same country as the goods being valued
- The same in all respects, including :
 - ✓ Physical characteristics
 - ✓ Quality
 - ✓ Reputation

Third method – transaction value of similar goods (Article 3)

- Goods produced in the same country as the goods being valued
- Are not alike in all respects, but
 - ✓ Have like characteristics
 - ✓ Perform the same function
 - ✓ Are commercially interchangeable

Conditions for Articles 2 & 3

- **Time factor** : compare with identical or similar goods exported *at or about the same time*
- **Commercial level and quantity** :
 - ✓ Wherever possible, use same commercial level and substantially the same quantity, if not, adjustments can be made
- Where more than one transaction value for identical or similar goods is found :
 - ✓ the lowest value will apply

Fourth method – deductive (Article 5)

Identify sales :

- Of the imported goods, or identical or similar imported goods, occurring “*at or about the time of importation*”
 - ✓ In the condition as imported
 - ✓ In the greatest aggregate quantity

Deduct from unit price:

1. Either commissions or profit & general expenses
2. Costs of post importation transport & insurance
3. Costs and charges of Article 8.2, as appropriate
4. Customs duties & taxes payable in country of importation

Fifth method – computed (Article 6)

Build up value including :

- The cost or value of materials and fabrication
- Other processing employed in producing the imported goods
- An amount for profit and general expenses
- The cost or value of Article 8.2 expenses

Note : very limited use of this method!

Fallback – Article 7

What cannot be used as basis for value :

- Selling price in the country of importation of goods produced in that country
- The higher of two alternative values
- Price of goods on the domestic market of the country of exportation
- Cost of production other than a computed value under Article 6
- Price of goods sold for export to a country other than the country of importation
- Minimum values (except for the situation provided for in Annex III)
- Arbitrary or fictitious values



Advance Ruling For Valuation

BACKGROUND

- Concept of advance rulings well established for classification and preferential origin
- Easier to express and define (e.g. HS Code or country of origin)
- More problematic for valuation purposes:
 - ✓ Value varies between consignments; quantity, freight terms etc.
 - ✓ Different elements make up Customs value (e.g. Article 8 adjustments)
- Obligation to provide classification and origin rulings under **WTO Trade Facilitation Agreement, Article 3** (encouraged for valuation)
- RKC refers to provision of rulings and decisions by Customs (Chapter 9)

BENEFITS

- An important part of an effective Customs compliance programme
- Trader gets benefit of greater certainty regarding duty liability
- Reduces likelihood of Customs' interventions = leading to swifter clearance of goods
- Customs benefit from advance knowledge of anticipated importations
- Useful for risk management purposes.

GENERAL RECOMMENDED PROCEDURES (I)

- Provide in form of written statement issued by Customs that interprets facts presented
- Subject to national decision, a ruling may be binding on both Customs and the importer
- Some administrations provide general advice which is not considered binding
- Examine all relevant information provided; request more if not sufficient
- Respond as appropriate; for example, based on the information provided, a particular element is/is not included in the Customs value

GENERAL RECOMMENDED PROCEDURES (II)

- Make clear that ruling will be invalid if any particular changes
- Applicant must give notice of change in status (e.g. a variation to the terms and conditions of sale etc.). Customs should then review and update ruling as necessary
- Applicant should make reference to the ruling on applicable entry documents
- Customs may verify the facts at the time of importation to ensure they are the same as those on which the decision was based
- Customs should advise that rulings may be modified or revoked when found to be in error or no longer in accordance with official Customs position

GENERAL RECOMMENDED PROCEDURES (III)

- Established time frames for Customs to respond to requests for rulings, e.g. 90 days, and length of time rulings will be valid, e.g. 3 years (unless otherwise amended or revoked)
- Establish legal basis or administrative arrangement governing request and issuance of rulings, including right of appeal
- Whether rulings are issued centrally or regionally, advice and rulings should be made available to all Customs offices responsible for valuation controls, ideally via database
- Rulings may be published on Customs web site for reference, respecting confidentiality considerations etc.
- Typically, no fees are charged for providing rulings. Any charge should be made in accordance with Article VIII:1 of GATT 1994, i.e. only apply on a cost recovery basis.

INFORMATION TO BE PROVIDED (I)

Complete statement of background facts, including:

- Names, addresses and other identifying information of all interested parties
- Name(s) of Customs clearance point(s) at which the merchandise will be entered (if known)
- A statement that there are, to the best of the importer's knowledge, no issues concerning the commodity for which a ruling is sought pending before any Customs offices or ports of entry or before any court
- Whether advice has been previously sought from Customs concerning the commodity in question. If so, state from whom and what advice was given etc.
- Applicant may also state their own opinion on decision being sought.

INFORMATION TO BE PROVIDED (II)

All relevant facts relating to the transaction, including:

- Description of the transaction/s, (contract, terms of sale etc.)
- Any relationship between the parties
- Specific information, depending on issue in question. For example:
 - ✓ Regarding a commission paid by buyer, provide details and documentation pertaining to roles of parties and the payment of the commission
 - ✓ Concerning a royalty payment, provide the licence agreement and sales contract
- Any other information relevant to determination of the value

A standard application form may be devised to assist applicants in providing all relevant data.



Transfer Pricing and Customs Valuation

What is Transfer Pricing

- “Transfer Pricing” is a term used to describe how MNEs set prices for the transfer of property/goods/services between (or within) their related companies
- A price established for property, goods & services transferred between companies of a multi-national enterprise (“MNE”) that control each other or that are controlled by a common entity.

Why is it important ?

- MNEs account for over 60% of international transactions
- □ There are approximately 60,000 MNEs worldwide and 900,000 overseas branch offices

OECD Transfer Pricing Guidelines

- Guidelines provide an international standard for direct taxation authorities. (not restricted to OECD Members)
- Guidelines require that determination of a corporate tax liability in each tax jurisdiction is based on the “arm’s length price” incurred.
- Issued in 1979
- Substantially revised in 1995 and 2009

OECD Transfer Pricing Guidelines

Comparison with WTO Valuation Agreement

OECD Transfer Pricing

1. Comparable Uncontrolled Price (CUP)
2. Resale Price Method
3. Cost-plus Method
4. Profit Methods:
 - Transactional Net Margin Method
 - Profit Split Method

WTO Valuation Agreement

1. identical value method & similar value method (Article 2 & 3)
2. Deductive value method (Article 5)
3. Computed value method (Article 6)
4. Fallback value method (Article 7)

Customs valuation and transfer pricing

- OECD transfer pricing methodology based on arm's length principle
- WTO Valuation Agreement : for related party transactions examine for price influence
- In both cases, objective is to find 'un-influenced' price

Why is TP an issue for Customs?

Customs objective:

... to verify whether a price has been influenced in a related-party transaction

Options:

1. Test values (difficult to use)
2. Examine '*circumstances surrounding the sale*', e.g. look at :
 - *Normal pricing practices of the industry ..*
 - *Recovery of all costs plus a representative profit ..*

Key questions:

1. Is information contained in a transfer price study useful to Customs when examining a related party transaction? If so, how?
2. What impact do transfer pricing adjustments have on the Customs value?

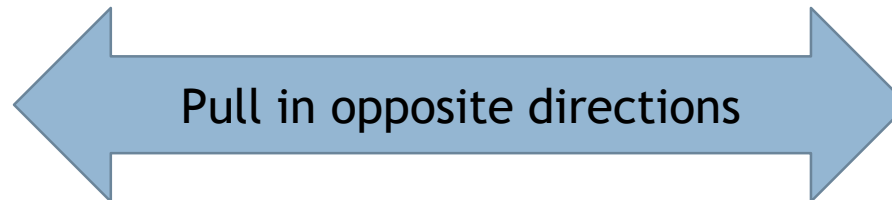
Competing tensions

Customs administration objective

Ensuring all appropriate elements are included in the Customs value and is not understated

Direct Tax authority objective

Ensuring the transfer price does not include inappropriate elements and is not overstated



Trade objective

Lower Customs value desirable = lower duty liability

Trade objective

Higher transfer price desirable = lower taxable profit

Difficult to compare

Customs Valuation

- Goods only
- Transaction based
- Confirmed at point of customs clearance
- Different definition of relationship

Transfer Pricing

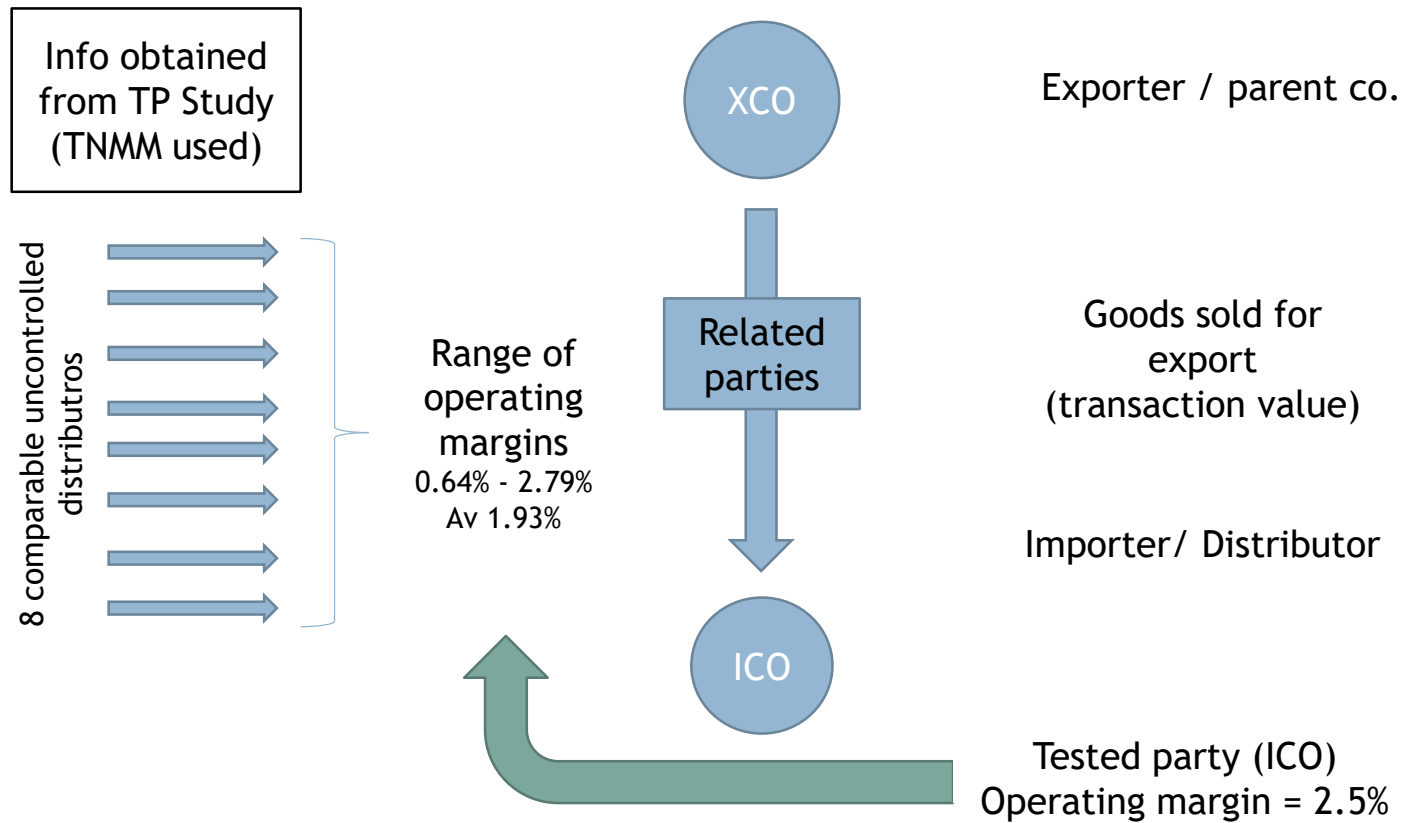
- Goods, services & property
- Based on aggregates/annual
- Confirmed retrospectively (some years after event)

TCCV 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

- ...the use of a transfer pricing study as a possible basis for examining the circumstances of the sale should be considered on a case by case basis
- ... any relevant information and documents provided by an importer may be utilized for examining the circumstances of the sale
- A transfer pricing study could be one source of such information

TCCV Case Study 14.1 : Use of information from a TP study



THANK YOU



WORLD CUSTOMS ORGANIZATION

