

**WCO/OECD Conference on Transfer Pricing and Customs Valuation
Brussels (Belgium), 3-4 may 2006**

Summary Remarks by Kunio Mikuriya, WCO Deputy Secretary General

<Opening remarks for concluding session>

Following yesterday's sessions on Transfer Pricing Methods on the one hand, and Customs Valuation on Related Party Transactions on the other, we have come to a better understanding of the two systems which have both similarities and differences. This morning we discussed the comparison of customs valuation and transfer pricing methods, as well as the desirability and feasibility of having converging standards on the two systems. There seems to have emerged two schools of thought on their future relationships: those who view convergence of rules as desirable and feasible; and those who are cautious with this approach.

Those who are in favor of convergence point out that a credibility question could arise if two sets of rules on value determination exist within one government. They hold that this situation results in greater compliance costs for business and greater enforcement costs for government. The proponents suggest that since the provisions on related party transactions in the WTO Agreement on Customs Valuation is relatively concise, compared to the more precise and comprehensive OECD Guidelines on Transfer Pricing, there might be a room for developing guidelines or explanatory/interpretative notes for their better application. They maintain that this approach does not imply the revision of the WTO Agreement, but is rather intended to facilitate and complement the proper implementation of the existing WTO rules. 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. They also suggest that inputs from the customs area would be beneficial for the future review of OECD guidelines.

Those who are cautious about convergence point out that the two systems are based on different principles regarding the valuation of imported goods: customs determines the

value of the goods based on information available at the time of importation with respect to individual transactions; transfer pricing determines the value of the goods based on information available at the year(s) end with respect to aggregated transactions. They argue that convergence could be more costly than leaving the current difference as they are. In this connection, concern was expressed about the implementation of capacity building on customs valuation in developing countries. Their advice is to focus more on dispute resolution mechanisms to solve the questions that might arise from divergence in the two systems. Both schools of thought would require a more thorough comparison between the two systems.

More fundamentally, behind the two schools of thought we can observe the tension between several elements required for designing systems including simplicity, fairness, and legal stability. In this connection, we had an interesting discussion regarding the level of compliance. In some countries the transaction value is used for the vast majority of cases while it is used to a lesser extent in others where a different commercial and compliance environment prevails. Moreover, business pointed out that behind a seemingly high rate of application of the transaction value, there is often dialogue and interaction between customs and business to arrive at a mutually acceptable transaction value.

This last session is a follow up from the previous session focused on “bridging the gap” between the two systems where we had a theoretical and philosophical debate. As practitioners we are going to cover convergence of rules and coordination of administrative practices of customs and tax authorities in our efforts to bridge the gap. First, a general question arises as to whether there are any circumstances where customs can accept a transfer price approved by tax authorities and vice versa. A more pragmatic question: can customs accept the measures prepared for transfer pricing purposes, such as Advance Pricing Agreement, end of period adjustment, and documentation? Joint audits and exchange of information would be other areas for potential coordination. We will hear experiences from experts and debate these topics further.

<Wrapping-up remarks>

Now we are coming to the end of the joint WCO/OECD Conference on Transfer Pricing and Customs Valuation. During the past two days, the conference focused mainly on

the issues of how convergent and divergent customs and transfer pricing requirements are in relation to cross-border transactions between related parties and associated enterprises, and how desirable and feasible would it be to have greater convergence of standards and more coordinated administrative approaches.

I hope all participants to this conference have gained a better understanding of what transfer pricing is in light of increased globalization, and how important it is for multinational enterprises and governments, in particular, tax and customs agencies. I also expect that the conference has enabled a better appreciation by participants of how tax and customs authorities treat transfer pricing in accordance with international standards, namely, the OECD Transfer Pricing Guidelines and the WTO Customs Valuation Agreement. I hope that light has been shed on the differences and similarities between the two sets of rules applied by tax and customs agencies to transfer pricing. Considerable debate has been held regarding the desirability and feasibility of having converging standards and coordinated administrative approaches.

I am sure that you will all agree that we have had very informative and useful discussions on the subject matter throughout the conference. I believe you are all impressed as much as I am with the very high quality of presentations and interventions. Thanks to this interactive exchange of views, diversified and balanced expertise was made available to the conference. This Conference has also displayed the importance for governments to work in close consultation with the business community in law enforcement, especially with respect to such complex issues as transfer pricing. The constructive perspectives provided by presenters from the business world have been no doubt of great value to both tax and customs administrations in getting to understand business practices and appreciating their concerns.

The conference, which has been jointly organised by the OECD and the WCO, has provided a unique opportunity for dialogue between tax and customs administrators which will hopefully lead to more dialogue and closer cooperation between them in the future.

Regarding the way forward, I have noted that the following recommendations have been put forward to the conference:

At national level, we need to encourage more dialogue between customs and tax

authorities, in close consultation with business, possibly 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 a more thorough comparison between the two sets of rules, the identification of areas for possible convergence of rules and coordinated approaches, including possible development of guidelines or explanatory notes, the degree of acceptability by one agency of a value determination of the other, Advance Pricing Agreements, joint audits, the consequences of a re-adjustment of the value made by one agency on another, the exchange of information, and cooperation between customs and tax agencies. As noted during the deliberations, we have to take into account regional variation for needs and strategies in developing possible guidelines and coordinated approaches. We also have to accept that this joint initiative would mean a long road ahead, because this course of action will involve the review of own processes and systems by customs, tax and business.

We appreciate the recommendations and will explore these issues further with the Members of our organisations and other stake holders on how best to pursue the recommendations.

To conclude, on behalf of the organisers of the conference, I should like to express my deep appreciation to the moderators, the presenters, the sponsors and exhibitors, as well as their organizations, for their valuable contributions to the conference. I also thank all participants for the keen interest shown in the conference and their very spirited participation in the open discussion sessions. Finally, my personal thanks are extended to the Secretariat staff of the OECD and the WCO for their joint efforts in organizing this Conference. We will continue this partnership involving all stakeholders.

Thank you for your attention.