

Opening speech by Mr Richard Hecklinger, Deputy Secretary-General of the OECD
(summary)

Mr Hecklinger welcomed the participants who had come from all over the world to attend this conference. He pointed out that this was the first joint WCO – OECD event and thanked the WCO for this initiative and for all the hard work they had done preparing for the conference, adding how pleased he was to see both organisations work together.

Mr Hecklinger gave a brief overview of the OECD and in particular of the work of its Committee on Fiscal Affairs. He emphasised that this conference perfectly fitted within the objectives of the OECD to promote international trade and remove barriers to investment. Moreover, he emphasised how important it is for the OECD to reach beyond its members and have a constructive policy dialogue with non-OECD Economies and with business, especially in the tax area.

Mr Hecklinger regarded this conference as a unique opportunity to stimulate dialogue between people who may not always speak enough to each other: customs and tax officials and he expressed his wishes that the conference would make it possible for each participant to better understand the concepts used by the others, and the concerns of the others.

The price of cross-border transactions is the starting point for assessing customs duties and for determining profits arising to each party involved and therefore the allocation of tax bases among countries. Transactions between related parties or associated enterprises are not subject to the same market forces as transactions between independent actors. As a consequence there is a potential for manipulation, through under or over pricing, of the customs duties basis and revenue allocation.

The issue is significant given approximately one third of world trade is said to consist in transactions between related parties within multinational enterprises.

Customs valuation and transfer pricing rules set standards for determining the “arm’s length” or “fair” value of those transactions. But the customs valuation rules, that are included in the WTO Agreement, are not the same as the ones contained in the OECD 1995 Transfer Pricing Guidelines. In fact the WTO rules are closer to the 1979 OECD Transfer Pricing Guidelines which were fundamentally revised in 1995. Mr Hecklinger therefore invited the participants to the conference to consider whether and to what extent both sets of rules should converge and if so towards what standard.

He then added that the lack of coordinated approaches between customs and transfer pricing was increasingly a concern for the business community especially due to double compliance costs. This is true for many industry sectors such as the automotive industry and the pharmaceutical industry, but also for other industries with significant cross-border flows of physical goods. Having two different sets of rules also raises credibility issues where two arms of the same Ministry come up with different answers to the same question (“what is the arm’s length / fair value for a transaction?”). Besides greater compliance costs for multinational enterprises which must follow two sets of rules, this also implies greater enforcement costs for governments which must develop and maintain two types of expertise (e.g. have customs specialists and transfer pricing experts audit the same transactions).

Some countries have merged Revenue and Customs administrations (Belgium, Denmark, Ireland, Luxembourg, Mexico, Netherlands, Spain, United Kingdom), some did it in the past and then split again

(Canada). Some (e.g. in Australia, Canada) have tried coordinated approaches through Advance Pricing Arrangements (whereby a multinational taxpayer can seek approval for the pricing of its future transactions), but this did not work well.

The sticking point seemed to be that customs and revenue authorities within a same country often have conflicting interests. On a given import transaction, customs officers' natural inclination is to try to increase the value declared by their residents in order to collect more duties, while revenue authorities' natural inclination would be to decrease the value declared by their residents in order to limit the tax deductible amount. Or to put it in another way, within a multinational enterprise the customs specialist might want to declare as low as possible an import value, while the tax manager might be interested in higher transfer prices if they can generate greater deductions.

Beside the room for greater cooperation at domestic level between customs and revenue authorities (some recent country experiences will be reported during the conference), Mr Hecklinger invited participants to discuss the possibilities for more international cooperation, for instance by developing exchanges of information between customs authorities at international level, or between tax and customs authorities.

Mr Hecklinger concluded his speech saying he expected the conference would be highly informative, would raise awareness of participants of the issues involved and improve mutual understanding, and would make it possible to start identifying possible ways forward. During these two days panellists would discuss technical issues concerning valuation rules, practical issues encountered by business, administrative approaches, domestic and international opportunities. There was ample time on the agenda for questions and answers sessions and this should be a very interactive discussion.