



## PRACTICE STATEMENT

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**Title:** Valuation - Transfer Pricing Policy

**Purpose:** To ensure industry understands Customs and Border Protection's valuation legislative requirements and relevant transfer pricing policies.

**Owner:** National Director Cargo and Trade

**Category:** Border

**Sub-Category:** Industry Support

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### Summary of Main Points

Australian Customs and Border Protection Service (Customs and Border Protection) Practice Statements are endorsed policy that all Customs and Border Protection employees must follow. This Practice Statement outlines:

- Customs and Border Protection legislative requirements for transfer pricing
- Customs and Border Protection policies in relation to transfer pricing
- Procedural guidelines for an applicant when seeking a transfer pricing valuation advice (VA), and
- Suggested document requirements to support a transfer pricing valuation application.

**The electronic version published on the Practice Statement Framework SharePoint site, accessible through the Intranet, is the current Practice Statement**

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# Introduction Statement

The purpose of this Practice Statement is to provide guidance for Customs and Border Protection staff and industry stakeholders, in respect of transfer pricing policies, including procedural and documentary requirements for transfer pricing valuation advice.

## *Background*

Transfer pricing generally refers to the setting, analysis and adjustment of prices of goods sold and services provided between related parties of multi-national companies. This normally applies to transactions between companies and their subsidiaries or affiliates in other countries.

In the context of this practice statement, transfer pricing refers to an agreement between related companies of multi-national enterprises to set the price of goods sold between the entities. These agreements may also allow the prices of imported goods to be adjusted at a later stage after the goods have been imported.

In the context of taxation, Australia's transfer pricing rules seek to ensure that the appropriate return for the contribution made by Australian operations is taxable in Australia for the benefit of the community. This taxation is based on a return to the Australian entity which reflects the economic activity attributable to Australia, calculated in accordance with the internationally accepted arm's length principle.

## Scope

Customs and Border Protection is committed to transparent policy procedures for the laws it administers.

The valuation provisions enshrined in the *Customs Act 1901* are highly technical. To assist importers on Customs valuation matters, a VA service is provided by Customs and Border Protection through its National Trade Advice Centre in Melbourne.

This Practice Statement addresses the policy, procedures and requisite documentation for Customs and Border Protection to assess a transfer pricing valuation advice application under Customs valuation legislation.

This Practice Statement does not apply to excise-equivalent goods and goods subject to duty-offset arrangements.

## Policy Statement

### 1. Policy

1.1.1. The purpose of a Customs and Border Protection transfer pricing VA is for Customs and Border Protection to determine:

- A customs valuation method as outlined in section 159 of the *Customs Act 1901* that is applicable to the imported goods. The customs valuation methods are as follows:
  - the transaction value method
  - the identical goods value method
  - the similar goods value method
  - the computed value method
  - the deductive (contemporary sales) value method
  - the deductive (later sales) value method
  - the deductive (derived goods sales) value method, or
  - the fall-back value method.

- Whether the proposed adjustment in value meets customs valuation requirements, and
- If not, the quantum of adjustment that meets customs valuation requirements.

1.1.2. Identification of imported goods:

- An applicant for a transfer pricing VA must identify the imported goods affected by the transfer pricing transactions that the applicant is seeking.
- Other business lines (for example, services, loans, manufacturing) will not be considered by Customs and Border Protection in the VA application.

For example:

Applicants may accumulate profit from other business lines in addition to their distribution of imported goods. There may be circumstances where they also provide a domestic maintenance and repair service, help-desk and training service or finance loans. Transfer pricing applicants that combine these business lines for taxation purposes would need to demonstrate what proportion of the relevant transfer pricing adjustment relates to their imported goods.

- Having regard to the proposed adjustment range in the application, the VA will determine the range of adjustments to customs value, either upwards or downwards, that meets Customs and Border Protection's valuation requirements. Subsequently, when making an adjustment to the customs value of imported goods, the adjustment to each import declaration line must be within the range advised in the VA.

For example:

If it is determined by Customs and Border Protection that the price for the imported goods may vary from 2% to 5% of the import price, the intention is that any subsequent adjustment to the original price could not exceed this range for each import declaration line.

1.1.3. Transfer Pricing Study/Advance Pricing Arrangement:

- A transfer pricing study refers to the activity normally undertaken by the multi-national enterprise whereby it examines the pricing of controlled transactions within the company group.
- By applying and documenting various accounting and economic testing methods, a transfer pricing study aims to verify whether the group's transactions are at arm's length for tax purposes. Where a transfer pricing study includes information such as values for imported goods, the study should generally form part of the VA application.
- Before any adjustment can be made to the customs value, there must be an actual transfer of funds related to the transaction that flows into or out of Australia. Customs and Border Protection will not accept adjustments to Customs value when the transfer pricing arrangements between related parties are merely notional adjustments.
- In determining "price" pursuant to section 154 of the *Customs Act 1901*, Customs and Border Protection requires, in part, that "...the payment is made in money or by letter of credit, negotiable instrument or otherwise...". Customs and Border Protection will not accept adjustments in customs value based on a book or journal entry, where no amount is *actually* paid or received for the goods. Furthermore, general transactions such as market support payments, foreign exchange variation

compensation, risk compensation, may not be prices paid or payable for the imported goods.

- Customs and Border Protection recognises that in some instances, an applicant for a transfer pricing VA may also negotiate an Advance Pricing Arrangement (APA) with the Australian Taxation Office (ATO). The applicant must produce the APA and any documents that supported the APA to substantiate the VA application.
- A transfer pricing VA applicant must be a body corporate subject to a written transfer pricing arrangement.

## 1.2. Supporting documentation

1.2.1. Consistent with the transfer pricing policy, the application for a transfer pricing VA must include:

- An overview of the business
- The organisation structure (including all related parties engaged in transactions potentially relevant to transfer pricing), for example, an organisation chart showing the head office and its domestic subsidiaries, foreign subsidiaries, joint venture partnerships, controlled plants – manufacturing and/or processing, and other significant holdings (25% or more)
- The supply chain for the imported goods (a description of the transactions that result in the goods being imported into Australia and identification of all parties involved, for example, order trail, sourcing/manufacturing by overseas related party, exportation of goods etc.)
- Inter-company agreements, policies or guidelines relating to the supply and transfer price of the imported goods (for example, the distribution agreement, cost contribution agreement, royalty and licence agreements, sale and purchase agreement between the exporting company and the importing company in relation to the goods covered by the import declarations in question that allows the price adjustment post-importation of the goods)
- A general identification of controlled inter-company transactions relating to the supply and transfer price of the imported goods
- A description (or financial system example) of the transfer pricing methodology, data and analysis used in the application
- An explanation of why other Customs valuation methods in the hierarchy, preceding the selected valuation method, were inapplicable. (Please note: Customs and Border Protection's valuation methodologies are not analogous to the Berry Ratio or OECD methodologies)
- A description of any government initiatives and interventions in the country of export known by the applicant to have directly affected the price of the goods in the import transactions in question. For example, price controls, interest rate controls, controls over the payment or royalties, subsidies to particular sectors, exchange control or exchange rate policy, etc., that have affected the price of the goods in the transactions in question
- Amount of proposed adjustment to the value of the imported goods, where known
- An *Excel* spreadsheet (both in hard copy and electronically) that sets out:

- The tariff item and description of the imported goods subject to transfer pricing;
  - The specific identification of affected import declarations;
  - The original details at line level of each import declaration affected, including the initial Customs value, amounts of customs duty and Goods and Services tax (GST) paid for these goods;
  - The amended data for each affected line; and
  - The percentage of the net adjustment for customs duty, luxury car tax or GST where applicable.
- If the applicant is proposing the transaction value method for valuation of the imported goods the applicant should also provide information that shows that the relationship between the purchaser and the vendor of the goods has not influenced the price of the goods. If the fall-back transaction value method is proposed to be used, the applicant should provide information regarding any research undertaken of comparable transaction values for identical or similar goods imported by independent enterprises in comparable transactions and supporting documentary evidence (Please note: Customs and Border Protection will undertake indicative research of its own to guide its transfer pricing VA decision)
  - Evidence of the price adjustments (not notional adjustments)
  - Any relevant documentation the applicant considers would assist Customs and Border Protection in making a decision on a transfer pricing issue (for example, ATO APA, ATO tax ruling, ATO risk survey or Transfer Pricing Study).

### 1.3. Transaction Value Method

- 1.3.1. The transaction value method requires the transaction to be at arm's length, that is, the transaction is market driven rather than relationship driven. When an importation involves a transaction between related parties, the question of whether the relationship has affected the price must be considered.
- 1.3.2. When there are related party dealings, Customs and Border Protection will ask two questions:
- Are the parties related in terms of the legislation? and
  - Has that relationship affected the price paid for the goods?
- 1.3.3. In a sale between related parties, the transaction value shall be accepted if the applicant can demonstrate that:
- Based on circumstances surrounding the sale, the relationship between the related parties has not influenced the price (more information regarding circumstances surrounding the sale is provided below).

OR

- The adjusted value closely approximates the transaction value in sales to unrelated parties of identical or similar goods for export to the same country of importation about the same time as imported goods; or deductive value of identical or similar goods sold in a contemporary sale (section 161C of the *Customs Act 1901*); or computed unit price of identical or similar goods that were imported into Australia about the same time as the imported goods (section 161F of the *Customs Act 1901*). If the above requirements are not met, the transaction value will not be accepted by Customs and Border Protection and the applicant would have to consider using other alternative valuation methods set out in section 159 of the *Customs Act 1901*.

#### 1.3.4. Circumstances surrounding the sale:

- To satisfy Customs and Border Protection that the relationship between the related parties has not influenced the price of the goods based on the circumstances surrounding the sale, the importer may present information to show that:
  - the price of the goods had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller normally settles prices for sales to buyers who are not related to the seller;
  - the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realised over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind; or
  - any other information to show that the price reflects the market price of the imported goods between unrelated parties subject to the same conditions of sales, for example, quantity, level of sales, times of sales.

### 1.4. Related documentation

#### 1.4.1. If presented with an application for a transfer pricing VA, Customs and Border Protection will have regard to the following:

- The applicant's valuation history and previous VA applications between Customs and Border Protection and the applicant;
- The outcomes of any transfer pricing study that has been examined by the ATO or subject of a prudential audit;
- The nature and identification of the goods considered in the transfer pricing study;
- The documentation supporting the transfer pricing study; and
- The explanation as to how the transfer pricing study is directly connected to the imported goods subject of the transfer pricing VA and how it can be used to demonstrate that the transfer price of the goods meets the Customs valuation requirements.

**Note:** Transfer pricing studies may provide useful contextual information and in this regard, may assist Customs and Border Protection in the consideration of a given VA application. However, the degree and nature of the usefulness may vary from one case to another and cannot be generalised.

### 1.5. Transfer Pricing VA validity and conditions

#### 1.5.1. Validity:

- A transfer pricing VA applies prospectively from the date that it is issued in respect of any relevant adjustments to the customs value or a re-determination of the customs value.
- A transfer pricing VA issued to an applicant is valid in all Australian ports for five (5) years from the date of the issue unless revoked.

#### 1.5.2. Customs and Border Protection may revoke or amend a transfer pricing VA within five (5) years, where particular circumstances warrant. Such circumstances include:

- Where an amendment is made to the legislation which has relevance to the advice

- Where incorrect information was provided to Customs and Border Protection or relevant information was withheld from Customs and Border Protection
  - Where circumstances set out in the transfer pricing VA application have changed
  - Where Customs and Border Protection changes its views (this may occur as a result of legal precedent), and
  - Where Customs and Border Protection has issued conflicting advices.
- 1.5.3. If Customs and Border Protection subsequently identifies a false or misleading statement or an omission in the application for transfer pricing VA, an administrative penalty may be imposed in accordance with the *Customs Act 1901*.

If the circumstances set out in the transfer pricing VA application have changed (for example, the transaction value in sales between unrelated parties of identical or similar goods in comparable transactions have changed or an applicant undertakes another annual transfer pricing study), the status of the VA should be discussed with the National Trade Advice Centre. The change in circumstances or the annual transfer pricing study may necessitate the revocation of the existing VA and the issuance of a new transfer pricing VA to account for those changes.

1.5.4. Document retention:

- Under the *Customs Act 1901*, an owner of goods imported into Australia is required to keep copies of all relevant commercial documents in their possession for a period of five (5) years from the date of importation.

## 1.6. Amending the customs value

1.6.1. Payment of additional duty:

- Where a transfer pricing VA has been issued and an adjustment results in the Customs value increasing, the proportionate amount of additional duty owed must be paid against the imported goods.

1.6.2. Refund of duty:

- Where a transfer pricing VA has been issued and an adjustment results in the Customs value decreasing, the importer must amend the appropriate import declaration, to be entitled to a refund of duty. A refund application must be lodged within four (4) years from the date the goods entered home consumption.

1.6.3. In keeping with both Customs and Tax legislation, if the initial declaration was lodged electronically the importer must lodge the refund application by amending the original import declaration electronically. The importer must quote the appropriate refund reason code and complete the change reason description field.

1.6.4. Please refer to [Practice Statement No. PS2008/19 Refund of Customs Import Duty](#) for further information regarding refunds of duty.

1.6.5. No duty payable:

- If there is no duty payable, importers should still apply for a transfer pricing VA and retroactively amend their import declarations.



## 1.7. Indirect Tax and GST Deferral Scheme

- 1.7.1. The ATO requires all customs value, duty and indirect tax adjustments to be processed electronically through the Customs and Border Protection Integrated Cargo System (ICS), as these adjustments will lead to subsequent adjustment to the GST.
- 1.7.2. While it is understood most of the relevant adjustments will acquit through the transaction and reporting cycle, the ATO still requires such amendments to be properly accounted for in the ICS.

## 2. Related Instructions and Guidelines

- TAPIN User Manual and TAPIN Broker Manual
- Valuation Instruction and Guideline
- Valuation Advice Instruction and Guideline
- INS Guidelines
- This Practice Statement replaces Australian Customs Notices 2002/30, 2001/73 and 1997/36.

## 3. Related Policies and References

- *Customs Act 1901*
- *Customs Regulations 1926*

## 4. Consultation

### 4.1. Internal Consultation

- 4.1.1. The following internal stakeholders have been consulted in the development of this Practice Statement:
  - Legal Services Branch
  - Compliance Assurance Branch
  - Trade Policy Branch

### 4.2. External Consultation

- 4.2.1. The following external stakeholders have been consulted in the development of this Practice Statement:

#### **Government stakeholders:**

- The Department of the Treasury
- The Australian Taxation Office
- The Department of Foreign Affairs and Trade

#### **Industry stakeholders:**

The Practice Statement was placed on the Customs and Border Protection website for public comments and feedback was received from a number of stakeholders, including:

- The Law Council of Australia

- CBFCA
- Other relevant industry stakeholders

## 5. Endorsement

<b>Endorsed on</b>	28 March 2013		
<b>By</b>	Raelene Vivian National Director Cargo and Trade		

## 6. Approval

<b>Approved on</b>	2 April 2013		
<b>By</b>	Marion Grant DCEO Border Management		
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