

Customs

International

			Comments
1	What is the basis for legislation?	WTO valuation agreement (Article VII of GATT)	Article VII of the GATT was adopted in Annex 1A of the WTO Final Agreement.
2	When is customs value determined?	Upon export to the country of importation	See Article 1 paragraph 1.
3	What is the base commercial term for import valuation?	In general, Ex-works ("EXW"), Free-on-board ("FOB") or Cost Insurance Freight ("CIF")	Each member can determine the inclusion or exclusion of values to put the basis of import valuation. Article 8, paragraph 2.
4	What are the methods of customs valuation?	Transaction Value (TV)	These methods are hierarchical and must be followed in order. See General introductory commentary for hierarchy. TV is covered in Article 1
		TV of Identical	Defined in Article 2
		TV of Similar	Defined in Article 3
		Deductive	Defined in Article 5
		Computed	Defined in Article 6
		Fallback	Defined in Article 7
5	What are the additions to TV?	Selling commissions	Buying commissions are specifically removed from inclusion in TV. The definition of buying commissions is included in the Interpretive Notes to Article 8. Article 8 of the agreement provides a description of the additions.
		Royalties and license fees	Must be: 1) related to the goods being valued; 2) paid as a condition of sale; 3) not previously included in the price actually paid or payable. See Article 8 paragraph 1(c)
		Assists	Assists include materials, tools, dies, moulds, some designs provided from the purchaser to the vendor either free or at a reduced cost. See Article 8 paragraph 1(b)
		Packing	This includes containers that are one with the item and the cost of labour and materials for other packing. See Article 8 paragraph 1(a)
		Proceeds of subsequent resale	Must accrue directly or indirectly to the seller. See Article 8 paragraph 1(d)
6	What are the deductions to TV?	Post importation construction, erection, assembly, maintenance or technical assistance	Interpretive note to Article 1 paragraph 3, definition of the price actually paid or payable.
		Domestic inland freight	Interpretive note to Article 1 paragraph 3, definition of the price actually paid or payable.
		Duties and taxes of the country of import	Interpretive note to Article 1 paragraph 3, definition of the price actually paid or payable.
7	Are related parties allowed to use TV?	Yes	The tests for TV for related parties are defined under Article 1 paragraph 2.
8	Are rulings/decisions publicly available?	Yes	Some WTO decisions are publicly available. However, the WTO agreement does not require that members make rulings publicly available.

Legend

Green: In our view, legislation and policies are wholly consistent with international agreements

Amber: Based on the publicly available information, it is our view that some of the legislation or policies could be seen to be inconsistent with international agreements. We should work together to better understand the legislation and policies and provide clarity for importers.

Red: Based on the publicly available information, it is our view that this is an area where additional work is needed to enhance understanding. On the surface it is our view that this practice is inconsistent with international agreements.

Australia		Level of International Compliance	Comments
1	Is the country a WTO signatory?	Yes	
2	What is the basis for legislation?	Customs Act 1901 (the Act)	Australia became a WTO signatory on 1 January 1995
3	When is customs value determined?	Upon import	Customs has the ability to redetermine the customs value. The valuation is determined on the last import sales transaction for import into Australia, which is consistent with the WTO. See section 154 for definition of import sales transaction.
4	Can customs value be amended?	Yes	For up to four years from the date of import.
5	What is the base commercial term for import valuation?	FOB, EXW, or at Border if shipping inland	Section 154 of the Act provides definitions which generally base customs value on FOB or EXW prices
6	What are the methods of customs valuation?	Transaction Value (TV)	These methods are hierarchical and must be followed in order. TV is included in section 161
		TV of Identical	See section 161A
		TV of Similar	See section 161B
		Deductive	See section 161C, 161D and 161E for the methods of deductive value.
		Computed	See section 161F
		Fallback	See section 161G
7	What are the additions to TV?	Selling commissions	Sections 154 and 161 of the Act provide basis for additions
		Royalties and license fees	Must be: 1) related to the goods being valued; 2) paid as a condition of sale; 3) not previously included in the price actually paid or payable. Sections 154 and 161 of the Act provide basis for additions.
		Assists	Sections 154 and 161 of the Act provide basis for additions.
		Packing	Sections 154 and 161 of the Act provide basis for additions.
		Proceeds of subsequent resale	Sections 154 and 161 of the Act provide basis for additions.
		Some foreign inland freight	Sections 154 and 161 of the Act provide basis for additions.
8	What are the deductions to TV?	Post importation construction, erection, assembly, maintenance or technical assistance	Sections 154 and 161 of the Act provide basis for deductions
		Some financing costs	Sections 154 and 161 of the Act provide basis for deductions
		Some administrative costs	Sections 154 and 161 of the Act provide basis for deductions
		Domestic inland freight	Sections 154 and 161 of the Act provide basis for deductions
		Australian duty	Sections 154 and 161 of the Act provide basis for deductions
		Overseas freight and insurance	This includes foreign inland freight and foreign inland insurance for full container loads and past the place of export.
9	Are related parties allowed to use TV?	Yes	Under section 161H importers can use TV for related party imports, but may be required to provide evidence that the relationship did not influence the price. It is important to note that the Practice Statement in relation to transfer pricing that was published by Australian Customs states that importers must proactively demonstrate that the relationship of the parties does not influence the price. This could be seen to be inconsistent with the WTO valuation agreement, which states that customs authorities may request information supporting the use of transaction value by related parties, but should not require it simply on the basis that the parties are related.
10	Do related parties have to report their relationship to the Customs Authority?	Yes	Importers must report their relationship to the supplier on the declaration lodged with the Customs Authority.
11	Can importers request advanced rulings for customs valuation?	Yes	Importers can apply for a valuation advice, which confirms the valuation for the next five years as well as four years retrospectively.
12	Are rulings/decisions publicly available?	No	Valuation advice decisions are only available to the applicant. However, Customs may decide to publish information relating to its determination in a Practice Statement, Manuals, Fact Sheets or Australian Customs Notices. Having rulings publicly available would help importers to manage trading practices without seeking additional input from Australian Customs.
13	Does Customs publish policy information in relation to customs valuation?	Yes	Policy information is available on the customs website. These include Manuals, Practice Statements, etc.
14	Can importers appeal valuation decisions of the Customs Authority?	Yes	Importers may also appeal to the Administrative Appeals Tribunal and the Federal Court.

Vietnam		Level of International Compliance	Comments
1	Is the country a WTO signatory? Yes		Vietnam became a WTO signatory on 11 January 2007
2	What is the basis for legislation? Law No. 45/2005/QH11 on Import Tax and Export Tax Customs Law No. 29/2001/QH10 Law No. 42/2005/QH11 Law No. 78/2006/QH11 Decree No. 77/2003/ND-CP Decree No. 40/ND-CP		
3	When is customs value determined? Upon import declaration		Section III of the Circular states that the time of customs valuation is the time the declarant registers a customs declaration and can be determined later by a customs office or customs officer.
4	Can customs value be amended? No		Customs law does not seem to permit post importation adjustments of customs value. However, it does note that there are instances where value may be later determined by a customs office or customs officer.
5	What is the base commercial term for import valuation? Generally, CIF		Part II Section VII. Adjustments of the Circular paragraphs g and h state that transportation and insurance to place of importation must be included in the TV if not already included.
6	What are the methods of customs valuation? Transaction Value (TV) TV of Identical TV of Similar Deductive Computed Inferential		These methods are hierarchical and must be followed in order. Part II Section I of the Circular covers TV.
			Part II Section II of the Circular covers TV of identical goods.
			Part II Section III of the Circular covers TV of similar goods.
			Part II Section IV of the Circular covers the deductive method.
			Part II Section V of the Circular covers the computed method.
7	What are the additions to TV? Selling commissions Royalties and license fees Assists Packing Proceeds of subsequent resale		Part II Section VI of the Circular covers the inferential (fallback) method.
			Part II Section VII paragraph 2 of the Circular covers additions to the transaction value.
			Royalties must be included in the customs value to the extent they are not already if they are: 1) related to the goods being valued; 2) paid as a condition of sale; 3) not previously included in the price actually paid or payable. See Part II Section VII paragraph 2 e.
			See Part II Section VII paragraph 2 d.
			See Part II Section VII paragraph 2 c.
8	What are the deductions to TV? Post importation construction, erection, assembly, maintenance or technical assistance Some financing costs Some administrative costs Domestic inland freight Vietnamese duty and other taxes included in the price Expenses borne by purchaser and related to the marketing of imported goods Some payable interests		See Part II Section VII paragraph 2 f.
			Part II Section VII paragraph 3 covers deductions that are available to the customs value. See Part II Section VII paragraph 3 a for deduction relating to post importation costs.
			See Part II Section VII paragraph 3 e
			See Part II Section VII paragraph 3 c and d
			See Part II Section VII paragraph 3 b
			See Part II Section VII paragraph 3 c and d
			See Part II Section VII paragraph 3 d
	See Part II Section VII paragraph 3 e		
9	Are related parties allowed to use TV? Yes		See Part II Section I paragraph 3 for how to address whether or not a relationship has influenced the price.
10	Can importers request advanced rulings for customs valuation? UNKNOWN		It is unclear if a ruling system is available in Vietnam. If importers can request advanced rulings they are more likely to be in compliance with the laws and regulations of a country. Therefore, it is a best practice to facilitate a ruling system. It is important to note that this system does not have to be made public.
11	Do related parties have to report their relationship to the Customs Authority? Yes		Under the TV method importers do have to report if goods are being imported from related parties. This is not inconsistent with the WTO principles and is required in many countries.
12	Are rulings/decisions publicly available? UNKNOWN		It is unclear if rulings are available. If available they do not need to be made public; however, a public ruling system provides greater transparency to importers.
13	Does Customs publish policy information in relation to customs valuation? Yes		Both Circulars and Decrees are published to provide guidance to companies on the implementation of Vietnam's law.
14	Can importers appeal valuation decisions of the Customs Authority? Yes		Appeals can be lodged in regards to administrative decisions relating to the dutiable value of goods in accordance with the Law on Complaints and Denunciations

Thailand		Level of International Compliance	Comments
1	Is the country a WTO signatory?	Yes	
2	What is the basis for legislation?	Customs Act BE 2469, 2543, 2483 Ministerial Regulations No. 132 (BE 2543) Liquor Act BE 2493	
3	When is customs value determined?	UNKNOWN	The Customs Act and Ministerial Regulations do not provide clear guidance on when the goods should be valued for the purposes of Thai Customs. However, Article 6 of the Ministerial Regulations state that they should be read in conjunction with Article VII of the GATT 1994, which implies that the valuation is based on the time of export.
4	Can customs value be amended?	No	Customs law does not seem to permit post importation adjustments of customs value. Lack of post importation adjustments implies that customs value may not reflect the price actually paid or payable.
5	What is the base commercial term for import valuation?	UNKNOWN	It is unclear from the Customs Act or Ministerial Regulations the basis of customs valuation. However, Article 6 of the Ministerial Regulations state that they should be read in conjunction with Article VII of the GATT 1994, which implies that the basis is generally either FOB or CIF.
6	What are the methods of customs valuation?	Transaction Value (TV)	Liquor Act allows for the Director-General of Customs to assess a "market price" for liquor. This is not consistent with the valuation hierarchy.
		TV of Identical	Article 3(2) of the Ministerial regulations covers TV of identical merchandise.
		TV of Similar	Article 3(3) of the Ministerial regulations covers TV of similar merchandise.
		Deductive	Article 3(4) of the Ministerial regulations covers the deductive value.
		Computed	Article 3(5) of the Ministerial regulations covers the computed value.
		Fallback	Article 3(6) of the Ministerial regulations covers the fall back method.
7	What are the additions to TV?	Selling commissions	See Chapter II Article 10 (1)
		Royalties and license fees	See Chapter II Article 9 (1). Clear guidance is not provided as to when royalties would be included in the transaction value. In addition, royalties that are related either directly or indirectly to the goods must be included in the transaction value. This practice is not consistent with the WTO view that royalties must specifically relate to the goods imported and to the condition in which the goods were imported before being included in the transaction value.
		Assists	See Chapter II Article 11
		Packing	See Chapter II Article 10 (3)
		Proceeds of subsequent resale	See Chapter II Article 9 (2).
		Insurance, transport, loading, unloading and handling charges to the port or place of importation.	See Chapter II Article 9 (3).
8	What are the deductions to TV?	Post importation construction, erection, assembly, maintenance or technical assistance	See Chapter II Article 12 (1).
		Domestic inland freight	See Chapter II Article 12 (2).
		Thai duty and other taxes included in the price	See Chapter II Article 12 (3).
9	Are related parties allowed to use TV?	Maybe	TV can be used where the buyer and seller are related, if it can be shown that the TV closely approximates the TV of in sales to unrelated parties of identical or similar goods, or the deductive or computed value of identical or similar goods. See Articles 14 and 15. However, the Royal Thai Customs Department website appears not to reflect the legislation. It merely states that related parties are not allowed to use TV. In addition, Article 4 of the Ministerial Regulations appears to imply that the relationship of parties will be presumed to have influenced the price.
10	Can importers request advanced rulings for customs valuation?	UNKNOWN	It is unclear if a ruling system is available in Thailand. If importers can request advanced rulings they are more likely to be in compliance with the laws and regulations of a country. Therefore, it is a best practice to facilitate a ruling system. It is important to note that this system does not have to be made public.
11	Do related parties have to report their relationship to the Customs Authority?	Yes	Under the TV method importers do have to report if goods are being imported from related parties. This is not inconsistent with the WTO principles and is required in many countries.
12	Are rulings/decisions publicly available?	UNKNOWN	It is unclear if rulings are available. If available they do not need to be made public; however, a public ruling system provides greater transparency to importers.
13	Does Customs publish policy information in relation to customs valuation?	No	Ministerial Regulations are available and there is information on the Thai Customs website. However, this information does not provide a lot of guidance to importers and in the case of the website includes information that appears contrary to the legislation.
14	Can importers appeal valuation decisions of the Customs Authority?	Yes	A valuation appeal process is available.

Transfer Pricing

International

			Comments
1	What is the basis for legislation / rule-making?	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations	Adherence to the arm's length principle is the overarching consideration for the OECD Guidelines.
2	What transfer methods are available?	Comparable Uncontrolled Price ("CUP")	Transaction based method relating to comparison with purchases from third parties
		Resale Price Method ("RPM")	Transaction based calculation based on resale price
		Cost Plus Method ("CPM")	Transaction based calculation based on costs plus a profit
		Transactional Net Margin Method ("TNMM")	Overall function and risk analysis of a company's margins with similar companies
		Transactional Profit Split Method ("PSM")	Overall function and risk analysis of a company's system profits and consideration of non-routine contributions to those profit streams.
3	Is there a strict hierarchy for the selection of a transfer pricing method?	No	The Guidelines do not establish a strict hierarchy, but instead demonstrate potential methods. However, the traditional transaction methods, notably the CUP, is recognised as the preferred method where CUP data is available.
4	Are there specific restrictions on the application of selected method(s)?	No	The Guidelines comment on the use of adjustments to render data more comparable to the tested transaction, so long as the adjustments only render the data more reliable in its application.
5	Are retrospective transfer pricing adjustments allowed?	N/A	
6	Are prospective adjustments allowed?	N/A	Amber: Based on the publicly available information, it is our view that some of the legislation or policies could be seen to be inconsistent with international agreements. We should work together to better understand the legislation and policies and provide clarity for importers.
7	What is the statute of limitations on assessment of transfer pricing adjustments?	N/A	
8	Can companies request an APA?	N/A	Red: Based on the publicly available information, it is our view that this is an area where additional work is needed to enhance understanding. On the surface it is our view that this practice is inconsistent with international agreements.

Legend

Green: In our view, legislation and policies are wholly consistent with international agreements

Amber: Based on the publicly available information, it is our view that some of the legislation or policies could be seen to be inconsistent with international agreements. We should work together to better understand the legislation and policies and provide clarity for importers.

Red: Based on the publicly available information, it is our view that this is an area where additional work is needed to enhance understanding. On the surface it is our view that this practice is inconsistent with international agreements.

Australia

		Level of International Compliance	Comments
1	Is the country an OECD member?	Yes	TR 97/20 states that ATO will follow the OECD Guidelines as closely as practicable.
2	What is the basis for legislation?	Division 13 Income Tax Assessment Act 1936. In addition, various taxation rulings and practice statements. Notably: TR 97/20 TR 98/11 TR 94/14	
3	What transfer pricing methods are available?	CUP	Transaction based method relating to comparison with purchases from third parties
		RPM	Transaction based calculation based on resale price
		CPM	Transaction based calculation based on costs plus a profit
		TNMM	Overall function and risk analysis of a company's margins with similar companies
		PSM	Overall function and risk analysis of a company's system profits and consideration of non-routine contributions to those profit streams.
4	Is there a strict hierarchy for the selection of a transfer pricing method?	No	The tax rulings do not establish a strict hierarchy, but instead demonstrate the application of potential methods and representative fact pattern applicable to each method. The CUP method provides the most direct comparison, although other methods may be more reliable in certain circumstances.
5	Are there specific restrictions on the application of selected method(s)?	No	Discussion and provision for adjustments to render data more comparable to the tested transaction, so long as the adjustments only render the data more reliable in its application.
6	Are retrospective transfer pricing adjustments allowed?	Yes	The expectation is that income tax filing reports income results that are consistent with the arm's length principle.
7	Are prospective adjustments allowed?	Yes	Companies can prospectively adjust prices to anticipate a level of profits that is consistent with the arm's length principle.
8	What is the statute of limitations on assessment of transfer pricing adjustments?	Unlimited	There is no specific time restriction for the assessment of transfer pricing adjustments. This may be limited through specific tax treaty provisions.
9	Can companies request an APA?	Yes	TR 95/23

Vietnam

		Level of International Compliance	Comments
1	Is the country an OECD member?	No	While not a member of the OECD, Transfer pricing rules follow the OECD Guidelines.
2	What is the basis for legislation?	Law No 14/2008 QH12 on Business Income Tax Decree No. 124/2008/ND-CP Law No 78/2006 QH11 Decree No. 85/2006/ND-CP Decree No. 118/2008/ND-CP Circular No. 66/2010/TT-BTC	
3	What valuation methods are available?	CUP	Transaction based method relating to comparison with purchases from third parties
		RPM	Transaction based calculation based on resale price
		CPM	Transaction based calculation based on costs plus a profit
		TNMM	Overall function and risk analysis of a company's margins with similar companies
		PSM	Overall function and risk analysis of a company's system profits and consideration of non-routine contributions to those profit streams.
4	Is there a strict hierarchy for the selection of a transfer pricing method?	No	The tax rulings do not establish a strict hierarchy, but instead demonstrate the application of potential methods and representative fact pattern applicable to each method.
5	Are there specific restrictions on the application of selected method(s)?	No	Discussion and provision for adjustments to render data more comparable to the tested transaction, so long as the adjustments only render the data more reliable in its application.
6	Are retrospective transfer pricing adjustments allowed?	Maybe	Vietnam's legislation does not directly discuss the ability to enact retroactive transfer pricing adjustments.
7	Are prospective adjustments allowed?	Yes	Companies may be subject to a revaluation from the taxation authority if a comparison of internal data deems the adjustment to be inaccurate.
8	What is the statute of limitations on assessment of transfer pricing adjustments?	Unlimited	The period for potential tax examination that results in a transfer pricing assessment is technically unlimited under the Tax Administration Law.
9	Can companies request an APA?	Maybe	No formal rules exist in relation to APAs in Vietnam.

Thailand			Level of International Compliance	Comments
1	Is the country an OECD member?	No		Thailand is not an OECD member; however, transfer pricing rules follow the OECD Guidelines.
2	What is the basis for legislation?	Departmental Instruction No. Paw. 113/2545		Note: This is not law, but is a policy statement.
3	What valuation methods are available?	CUP		Transaction based method relating to comparison with purchases from third parties
		RPM		Transaction based calculation based on resale price
		CPM		Transaction based calculation based on costs plus a profit
		Other internationally recognised methods		This is not defined. However, the implication is that other methods recognised in the OECD Guidelines would be available. That is, TNMM and PSM.
3	Is there a strict hierarchy for the selection of a transfer pricing method?	No		Whilst there is no strict hierarchy, clause 3(4) states that other internationally accepted methods may be applied where the CUP, RPM and CPM cannot be applied. This implies a hierarchy over the traditional transaction methods over the transactional profit methods.
4	Are there specific restrictions on the application of selected method(s)?	Yes		See above.
5	Are retrospective transfer pricing adjustments allowed?	Maybe		Thailand does not allow retrospective transfer pricing adjustments if the compensation received is higher than the market price or the expenses paid are lower than the market price. Adjustments made without clear and proper arrangements could be disallowed and, in the worst case, may be viewed by the taxation authority as expenses.
6	Are prospective adjustments allowed?	Yes		Companies may be subject to a revaluation from the taxation authority if a comparison of internal data deems the adjustment to be inaccurate.
7	What is the statute of limitations on assessment of transfer pricing adjustments?	5 years		5 year period measured from date of tax filing due date or from the date tax return actually filed if after the due date.
8	Can companies request an APA?	Yes		Guidance was issued in April of 2010 relating to APA, only bilateral are allowed and only for future years.

Excise

International			Legend
		Comments	
1	What is the basis for legislation?	WTO Article III (National Treatment) Relates to the equal tax treatment of domestically produced and imported products.	Green: In our view, legislation and policies are wholly consistent with international agreements
2	What is the method of taxation?	Ad valorem Tax rate expressed as a percentage of the value of the product.	
		Specific Tax An alcohol tax rate expressed on the quantity of alcohol (usually calculated on a per litre of pure alcohol (LPA) basis)	Amber: Based on the publicly available information, it is our view that some of the legislation or policies could be seen to be inconsistent with international agreements. We should work together to better understand the legislation and policies and provide clarity for importers.
		Unitary A variation on specific tax, but the tax is expressed in terms of a fixed amount for a given quantity of product irrespective of alcohol strength	
3	Can any method be selected?	To meet WTO obligations the method must not provide less favourable treatment to foreign suppliers than it does to domestic ones Yes	Red: Based on the publicly available information, it is our view that this is an area where additional work is needed to enhance understanding. On the surface it is our view that this practice is inconsistent with international agreements.

Australia

		Level of International Compliance	Comments
1	What is the basis for legislation?	Excise Act 1901 Excise Tariff Act 1921	
2	What is the method of taxation?	Specific Ad Valorem	On beer and spirits. On wine only and equally applied to domestic and foreign wine
3	Are adjustments allowed?	Yes	Adjustments to the value of beer and spirits do not affect their excise value. However, adjustments to the value of wines may have a flow-on effect onto the Wine Equalisation Tax ("WET") payable, as the WET is based on the last wholesale price of the wine.
4	What is the taxing point?	Wine: the last wholesale transaction. Beer and spirits: when they enter for home consumption.	

Vietnam

		Level of International Compliance	Comments
1	What is the basis for legislation? Law on Special Sales Tax No. 27/2008/QH12 Decree on Special Sales Tax No. 26/2009/ND/CP Circular No. 62/2009/TT/TBC		The Law is the primary document. Then the Decree then the Circular.
2	What is the method of taxation? Ad Valorem		Given that the method of taxation for imported alcohol products is also ad valorem, there is no conflict with Article III of the GATT.
3	Are adjustments allowed? UNKNOWN		Adjustments to the value of imported goods would have a flow on effect to the value of goods for excise. The Law on Special Sales Tax Article 8.1(d) seems to indicate that if it can be demonstrated that there is a change in the special sales taxable price that a refund may be available by determination of the taxation authority.
4	What is the taxing point? At the point of time when turnover is generated in respect of goods		Point in time when ownership of or use right to the goods is transferred to the purchaser, irrespective of whether or not money has been received. Note: the calculation is on the price excluding VAT.

Thailand

		Level of International Compliance	Comments
1	What is the basis for legislation? Tobacco Act B.E. 2509 (1966) Playing Card Act B.E 2486 (1943) Excise Tax Act (No. 2) B.E. 2534 (1987) Excise Tariff Code Act B.E. 2527		
2	What is the method of taxation? Ad Valorem or Specific		Whichever valuation method results in the greater tax is applied. In practice, the specific rate is only applied to domestic product.
3	Are adjustments allowed? UNKNOWN		Adjustments to the value of imported goods would have a flow on effect to the value of goods for excise. The Director General can establish a "market price" for the goods which indicates that adjustments can be made from the perspective of the Thai government.
4	What is the taxing point? Domestic goods: Ex factory selling price or that deemed by the Director General Imported goods: CIF price plus import duties, special fee and other taxes, but excluding VAT or the price determined as the market price by the Director General of Customs.		Importers may be subject to greater taxes as the higher of specific or ad valorem is applied and the ad valorem is applied on a significant base.