

# Developments at the World Customs Organization Technical Committee on Customs Valuation 2021–2022 regarding royalties

*Leonardo Macedo*

## Abstract

---

The World Customs Organization (WCO) Technical Committee on Customs Valuation (TCCV) has the responsibility to examine specific cases arising from problems when applying the World Trade Organization (WTO) Customs Valuation Agreement (CVA). During the 50th, 51st, 52nd and 53rd TCCV sessions, three cases reached consensus and were published as instruments: Advisory Opinions 4.18, 4.19 and 24.1. All three address difficulties WTO members face when dealing with royalties as compulsory adjustments. Compulsory services adjustments are probably the most relevant example of the complexity of the WTO CVA.

---

**Keywords:** customs valuation, royalties, World Trade Organization, tariffs, international trade

---

## 1. Introduction

The World Customs Organization's (WCO) Technical Committee on Customs Valuation (TCCV) has the responsibility to examine specific cases arising from problems encountered by members when applying the World Trade Organization (WTO) Customs Valuation Agreement (CVA). The intention is that the TCCV prepares instruments to achieve uniformity in the interpretation and application of the CVA at the technical level. Once a specific case reaches consensus, instruments, such as Advisory Opinions, Commentaries, Explanatory Notes, Case Studies or Studies, are issued.

For a TCCV instrument to be made publicly available, it must be reported to the WCO Council and the WTO Committee on Customs Valuation (CCV). The reporting procedure is not fixed but depends only on the schedule of meetings for each of the international organisations in Brussels and Geneva. Once an instrument fulfils the reports in both organisations, it is then published in the Customs Valuation Compendium that is available for sale or subscription through the WCO.

During the 50th, 51st, 52nd and 53rd TCCV sessions, three cases reached consensus and were published as instruments: Advisory Opinions 4.18, 4.19 and 24.1. These three TCCV instruments were reported and approved at the WCO Council in June 2022. This article briefly describes each of these instruments as an update on the latest customs valuation developments.

## 2. WCO TCCV customs valuation instruments, 2021–2022

Before briefly commenting on the new instruments, it is crucial to mention that all three address difficulties WTO members face when dealing with royalties as compulsory adjustments. WCO TCCV Advisory Opinions 4.18, 4.19 and 24.1 (WCO, 2022) address royalties according to WTO CVA Article 8.1(c) as follows ‘royalties and licence fees related to the goods being valued...’ (WTO, 1999).

WTO CVA Article 8.1(c) reveals great complexity as it demands the control of intangibles and services. Royalties present many different situations, as can be seen from the approved instruments.

### 2.1. Advisory Opinion 4.18 – Royalties and licence fees under Article 8.1(c) of the Agreement (Royalty – Income tax) (adopted at the 52nd Session of the TCCV)

Advisory Opinion 4.18 addresses a case of royalties from a licence agreement between an importer and exporter. In brief, the importer agrees to pay a five percent rate for royalties from the imported patented goods. The royalties are calculated based on the sales of the patented goods in the market of the country of importation. The importer also agrees to pay the ‘non-resident income tax’ on the exporter’s behalf when transferring the royalties abroad. In summary, the importer agrees to pay the royalties to the exporter plus the ‘non-resident income tax’ to the tax authorities on behalf of the exporter. On these terms the patent owner receives a five per cent net royalty payment for the licence.

As for the tax authority’s legislation, the ‘non-resident income tax’ requires the royalties to be added to the taxable basis. The formula is thus:

$$\text{net royalty}/(1 - \text{income tax rate } \%) \times \text{income tax rate } \%$$

The consequence when applying the formula is that the amount based on the effective rate is higher than when considering the applied rate.

The issue brought before the TCCV was whether the total amount of ‘non-resident income tax’ forms part of the customs value for the imported goods under Article 8.1(c).

The TCCV concluded that the total amount of ‘non-resident income tax’ forms part of the licensor’s gross royalty income, considered an indirect payment and should thus be added to the price actually paid or payable per Article 8.1(c) of the WTO CVA.

### 2.2. Advisory Opinion 4.19 – Royalties and licence fees under Article 8.1(c) of the Agreement (adopted at the 53rd Session of the TCCV)

Advisory Opinion 4.19 addresses a case of royalties and licence fees connected to the importation of a soft drink concentrate. The imported concentrate is diluted in water, packed and sold in the domestic market for consumers. The importer agreed to pay a 15 per cent rate for royalties based on the drink sale price. The case stated that all conditions of Article 8.1(c) of the WTO CVA were met.

The first issue before the TCCV was whether the royalties were related to the imported goods. The second issue was calculating the royalties to be added to the price paid or payable for the imported soft drink concentrate.

The TCCV concluded that the total royalty payment amount is a condition of sale. A primary consideration was that there was no patented process to dilute the concentrate nor any other reason for the royalty payment, except for the importation of the concentrate. As such, it should be added as a whole amount to the price actually paid or payable. The TCCV based its conclusion on Advisory Opinions 4.4 and 4.6.

### **2.3. Advisory Opinion 24.1 – Valuation treatment of imported goods bearing the buyer’s own trademark (adopted at the 52nd Session of the TCCV)**

Advisory Opinion 24.1 discussed a case where the imported goods bear the buyer’s trademark. There were no royalties or licence fees to be paid, and the TCCV referred to different prices for the imported goods when bearing or not bearing the trademark.

The TCCV concluded that the difference in price between goods bearing or not bearing the trademark was no reason to reject the transaction value method. Article 1 should be applied, and there was no base for Article 8.1(c) adjustments.

## **Conclusion**

The fact that all three new WCO TCCV instruments deal with royalties is no surprise. The entire topic of compulsory services adjustments is probably the most relevant example of the complexity of the WTO CVA. Services are difficult to identify in an international trade transaction and are also challenging to calculate in relation to the goods being valued.

The payments for such services are usually separated from the invoice. Customs authorities must have the capacity to cross-check the information from different government agencies, including central banks and intellectual property agencies, to find out whether companies with imported goods pay royalties or licence fees. Once these companies are identified, it is necessary to conduct audits on a case-by-case basis to check whether the royalties are related to the imported goods. The process is highly time-consuming and requires a team of trained professionals.

A relevant point when discussing royalties as compulsory adjustments is the need for objective and quantifiable data. Among other things, a clear understanding of how the royalties are calculated is necessary. If that is not possible, the WTO CVA requires tax and customs authorities to use other customs valuation methods.

Finally, a question to reflect on is whether the royalty information available on transfer pricing studies and databases might one day be used as a starting point for the compulsory adjustments.

## **References**

World Trade Organization. (1999). *The legal texts: the results of the Uruguay round of multilateral trade negotiations*. Cambridge University Press.

World Customs Organization. (2022). *Customs Valuation Compendium*. [http://www.wcoomd.org/en/topics/valuation/instruments-and-tools/val\\_customs\\_compendium.aspx](http://www.wcoomd.org/en/topics/valuation/instruments-and-tools/val_customs_compendium.aspx)

**Leonardo Macedo**



Dr Macedo is a Tax and Customs Officer. He is currently working in Buenos Aires as the Brazil Tax and Customs Attaché. He was a WCO Technical Officer (2010–2013) at the Tariffs and Trade Affairs Directorate and has performed several technical assistance missions for the WCO and WTO. He is a WCO Accredited Expert in customs diagnostics, customs valuation and trade facilitation. On the academic side, he has a PhD in international trade law from Maastricht University and is a lecturer on customs topics for several universities and institutes.  
ORCID iD: 0000-0002-2274-2369.