Innovation of the customs value management process in imports between related parties

Inovação de processo de gestão do valor aduaneiro em importações entre partes relacionadas

Innovación en el proceso de gestión del valor en aduana de importaciones entre partes relacionadas

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ABSTRACT
This technological article presented a solution that considers a procedure of monitoring and controlling in the price, for a problem related to the Customs Valuation (CV) criterion in import operations between related parties, carried out by Siemens Energy (SE) Brasil Ltda, in order to structure an innovative control procedure in this customs criterion. The methodology used was the practical and applied work by Marcondes, Miguel, Franklin, and Perez (2017), in addition to qualitative research, with the use of the technique of interviews with Siemens Energy executives and a Brazilian Federal Revenue Office – RFB server. The proposed application of the solution deals with an incremental innovation in process, which considers a procedure focused on the governance and management of operational risks in the CV criterion in intercompany imports of SE. The complexity lies in the development of the solution proposal because it is a fully technical and decentralized issue.

Keywords: customs valuation, transfer price, innovation, import impact.
RESUMO
Este artigo tecnológico apresentou uma solução que considera um procedimento de monitoramento e controle no preço para um problema relacionado ao critério de Valoração Aduaneira (VA) nas operações de importação entre partes relacionadas, realizadas pela Siemens Energy (SE) Brasil Ltda, no intuito de estruturar um procedimento inovador de controle neste critério aduaneiro. A metodologia utilizada foi a de trabalhos práticos e aplicados de Marcondes, Miguel, Franklin e Perez (2017), além de pesquisa qualitativa, com o emprego da técnica de entrevistas com gestores da Siemens Energy e um servidor da Receita Federal do Brasil - RFB. A aplicação proposta de solução trata de uma inovação incremental em processo, que considera um procedimento com enfoque na gestão e gerenciamento dos riscos operacionais no critério de VA em importações intercompany da Siemens Energy. A complexidade reside no desenvolvimento da proposta de solução por tratar-se de assunto totalmente técnico e descentralizado.

Palavras-chave: valoração aduaneira, preços de transferência, inovação, impactos na importação.

RESUMEN
Este artículo tecnológico presentó una solución que considera un procedimiento de seguimiento y control de precios para un problema relacionado con el criterio de Valoración Aduanera (VA) en operaciones de importación entre partes relacionadas, realizado por Siemens Energy (SE) Brasil Ltda, con el objetivo de estructurar un procedimiento de control innovador en este critério aduanero. La metodología utilizada fue el trabajo práctico y aplicado de Marcondes, Miguel, Franklin y Pérez (2017), además de la investigación cualitativa, utilizando la técnica de la entrevista a gerentes de Siemens Energy y un servidor de la Hacienda Federal de Brasil - RFB. La aplicación de la solución propuesta trata de una innovación incremental en proceso, la cual considera un procedimiento enfocado en la gestión y gestión de riesgos operacionales en el criterio VA en importaciones intercompañías de Siemens Energy. La complejidad radica en el desarrollo de la propuesta de solución al ser un tema completamente técnico y descentralizado.

Palabras clave: valoración en aduana, los precios de transferencia, innovación, impactos de las importaciones.

1 INTRODUCTION
Global groups currently carry out the vast majority of their transactions between affiliated companies – i.e., intercompany (IT) transactions within the same firm or the same economic group. The present study focused on the IT of importation of tangible goods carried out by Siemens Energy Brasil Ltda (SE), the price formation in these
transactions, as well as the impacts from a perspective of the Customs Valuation (CV) criterion, based on the Customs Valuation Agreement (CVA) of the World Trade Organization (WTO).

Customs valuation deals with the economic value offered as a basis for import taxation, composed of the price plus adjustments (i.e., additions and exclusions). The relationship between the parties can influence the prices charged in these transactions, resulting in transfers of costs and profits between companies and countries; and impact on the amount of taxes collected both from a custom (import taxation) and tax (income tax) perspective, since global companies transfer profits within firms through foreign trade transactions. As they are companies of the same group, such transactions do not have circumstances related to a usual and formal negotiation to arrive at the agreed and practiced price, as if it were a free market environment, based on WTO principles including CVA.

Within a hierarchical governance structure, prices are formed by the use of Transfer Pricing (TP) methods, which are based on the "Arm's Length Principle" (ALP), as established by the Organization for Economic Co-operation and Development (OECD). TP methods are used to arrive at a market value in related-party (RP) transactions. Such prices are declared as an important portion of the respective customs value, which is the basis for calculating the taxes due on import operations in Brazil.

The context of the global economy and international transactions, as well as the need for regulation, has placed the WTO and OECD as regulatory entities of the price element in these transactions, dealing with the same subject, but with different approaches and complexities that can impact the customs management of companies, since the customs valuation criterion is present as a requirement for qualification and maintenance of Authorized Economic Operators (AEO), such as the case of Siemens Energy.

The methodology used in the present study followed the guidelines established for practical and applied work (MARCONDES et al., 2017) and Business Problem Solving Vandenbosch (2003) and Aken et al. (2012). In the line of application of this methodology, the study has a descriptive nature, where the research was carried out qualitatively, using primary and secondary data. Such data were collected through
interviews with executives who hold management positions at Siemens Energy, as well as with employees of the Brazilian Federal Revenue Service.

On the other hand, the secondary data used were extracted from the literature, internet access, fiscal and tax rules in force in the Brazilian legal system, for fiscal control of imports. Thus, this technological article is structured as follows, by this introduction, the contextualization of the investigated reality, the diagnosis of the problem situation, the proposed solution, the intervention and the final considerations.

2 CONTEXT AND REALITY INVESTIGATED

This step will be used to discuss the customs scenario, the characterization of the company and the segment of operation.

The phenomenon of globalization and economic opening has resulted in the advance of multinational groups over various markets, continents and countries. These companies, in order to reduce transaction costs, have a hierarchical governance structure (COASE, 1993), where transactions are carried out within the firms between related companies whose circumstances for price formation do not consider a free negotiation (CHALOS; HAKA, 1990; JOVANOVICH, 2016).

When related companies deal directly with each other, their financial and business operations are not directly affected by external market forces as in independent transactions. Thus, companies tend to manipulate their prices and, consequently, their profits, to achieve more favorable scenarios in customs and tax terms, generating loss of revenue to governments and illegal transfer of profits. In addition, these transactions may, depending on the situation, distort the tax revenues of the jurisdictions involved (MARSILLA, 2011; JOVANOVICH, 2016).

Within such structures, decisions related to trade exchanges are made through administrative commands or fiats, which significantly reduces the transaction costs of firms and facilitates internal alignments (Silva, 2009). The term itself alludes to the divine and unconditioned order given at creation in the book of Genesis, which has a non-contingent characteristic (ALCHIAN; DEMSETZ, 1972).

Brazil has internalized the CVA, article VII of the General Agreement on Tariffs and Trade GATT/WTO, through Decree Law 37/66, Decree 1,355/94, Decree 6,759/09
and IN 2090/22. The basis for calculating the import tax is the customs value calculated in accordance with the provisions of Article VII of the General Agreement on Tariffs and Trade (GATT)." (DECREE LAW 37/66).

The Customs Value is the economic value that will serve as the basis for the taxes due on imports, whether Federal (import tax, tax on industrialized products – IPI, and social contributions to PIS and Cofins due on importation) or State (Tax on the circulation of goods and services – ICMS) and is formed by the price of imported goods, provided for in the respective commercial invoice, with the addition of the respective expenses related to international freight, insurance and expenses with the handling of the cargo until the arrival of the ship at the port of destination (DECREE 6.759/09), as well as the adjustments provided for in article 8 of the AVA.

The CVA embodies the standards for the analysis and formation of the customs value, with six valuation methods that must be applied in order (with the exception of the fourth and fifth methods). The AVA values the primacy of the Transaction Value, the first method of the agreement (IN 2090/22), with the other methods being substitutes. The Transaction Value (TV) is defined in the AVA as "the price paid or payable for the goods in an export sale to the importing country" (AVA, Art. 1).

The CVA mentions that the TV cannot be used in IT. In this situation, the price can be mischaracterized by the respective authority, if there is reasonable evidence that the relationship between the parties has influenced the price (IN 2090/22). The concept of customs value was established in order to incorporate the principle that the value of a commodity itself is a function of its sale price, where its determination contemplates variables that influenced the definition of its market price, for a sale under conditions of free competition.

The Brussels Value Declaration (DBV), the basis for the discussions surrounding the negotiation of the CVA, also considered a free competition approach to price formation (MARSILLA, 2002). In IT, prices are formed by the application of TP rules and methods, as established by the OECD. The OECD is made up of 38 member countries, including now Brazil for TP policy. The Organization was founded in 1961, succeeding the Organization for European Economic Cooperation (OECD, 2022).
The OECD aims to become an important source of political solutions and economic and social development in a globalized world and currently focuses on discussion for the standardization of tax, economic and social development rules applied to its members (OECD, 2022).

Due to the high concentration of transactions between RPs, countries need to be very concerned about containing price manipulation in intercompany transactions (OECD, 2022). As a result of these discussions, the OECD released a report in 1979 and, after several revisions, consolidated and published the OECD Guidelines in 1995 - OECD Model Tax Convention, which is used as an international standard to be used by its members, consolidating the discussions around the theme that focused on operations with PR, TP, with the Arm's Length Principle - ALP being the basic principle to sustain the market price without free negotiation Occur.

After Brazil's approach to the OECD, the country has changed its TP rules, publishing Law 14,596/2023, internalizing the OECD TP methods, as well as the ALP principle, which is also present in the CV (HILU NETO, 1999). This inclusion implies fiscal and tax impacts and the need to adapt management activities, including the customs value criterion. The work plan of the convergence project for the OECD included two phases of implementation, where it is possible to apply the respective laws and standards that govern the subject, as shown in Figure 1.
Any gray area and lack of harmonization between the overlapping concepts of TP and CV regarding the circumstances for price formation, a significant portion of the CV, may expose importers to risks of questioning by customs authorities, who need to guarantee jurisdictional revenue also on account of import taxation (MARSILLA, 2011). The absence of tax compliance in the CV can even become an impediment for companies to qualify or renew AEO accreditation and enjoy the benefits arising from this accreditation (IN RFB 2,154/23 and DECREE LAW 6,759/09).

When companies carry out import operations between RPs, they may be subject to greater risks of fiscal and tax questioning from both sides (i.e., both customs and tax) by inspection and tax authorities, since the influence on price may generate a greater need for analysis and monitoring of the prices practiced in IT (SALVA, 2016).

If it is reasonably evidenced that the relationship influenced the price, compared to a price realized in a sale transaction to an unrelated party, the Brazilian Federal Revenue Service may apply a substitutive CV method to correctly assess the declared price, thus being the importer subject to the application of customs/tax fines and penalties (IN 2090/22, DECREE-LAW 37/66 and DECREE 6.759/09).

In addition, as CV is a specific AEO compliance criterion, that companies must have risk management activities for. The accreditation of AEO companies is carried out...
by the RFB to reliable partners, generating competitive advantage through logistics efficiency based on good practices in foreign trade compliance and supply chain security, with processes and procedures aimed at monitoring of risks and impacts on foreign trade operations, including customs value in intercompany operations (PEREIRA II; FRANKLIN, 2019). The RFB also launched a recent public consultation to change the AEO compliance criteria, including emphasizing the criterion of the import calculation basis (CV) and pricing between related parties.

2.1 THE SERVICE AND THE COMPANY

Siemens Aktiengesellschaft (Siemens AG) is a German industrial group founded in 1847. The company is headquartered in Berlin, Germany, operates in several economic segments, has several business units and has more than 370,000 employees and industrial plants on several continents of the globe.

Strategically, in 2018, Siemens AG decided to create a global unit for the energy sector, from which Siemens Energy emerged. Siemens Energy is a global leader in power generation and distribution, and in the extraction, conversion and transportation of oil and gas. SE aims to build innovative power generation and transmission systems around the world, contributing to combating climate change by making sustainable, reliable, and affordable energy possible (SE, 2023).

Like the various groups with global operations, SE also performs IT (i.e., intercompany operations), including its subsidiaries located in Brazil (SE, 2023). The company operates mainly on three fronts: automation, digitalization and electrification, in the divisions of Industrial and Conduction Processes, Energy and Gas, Power Generation Services, Wind Forces and Renewables and Building Technologies, and with a global turnover of around EUR 57 billion (2020) (Siemens, 2020).

3 DIAGNOSIS OF THE PROBLEM SITUATION

At this stage of the report, the method and techniques for using the diagnosis will be indicated. Determining the research problem, considers the knowledge of the topic and what one wishes to research, for study (RICHARDSON, 2017). The closure of the diagnosis of the problem will take place through a joint analysis of primary and secondary
data, information collected in qualitative research through interviews and brainstorming as demonstrated in this topic.

3.1 DIAGNOSTIC PROCEDURES

In order to identify the effective causes of the respective problem related to import operations of SE goods and inputs, among RP, information was collected with research in primary sources, with the heads of the customs governance, as well as the tax areas. In addition, research was carried out on secondary sources (analysis of standards, literature and internet searches), as presented in the section related to the understanding of the problem.

To this end, a semi-structured script was used as a collection tool, with a specific focus on operations between RP, customs risks and potential existing control activities. The semi-structured screenplay, in Mason's (1996) view, is partially flexible, since the structure of the screenplay is well defined. In the present study, its conduct was at the discretion of the interviewer, depending on the way the interview was conducted.

For data collection, the interview technique was used, which, according to Cervo and Bervian (2004), aims to identify data and information from the interviewees through an interrogation. The interview allows you to collect data that is not provided in certain people's records and sources, using them both for the study of facts, as well as for cases or opinions. The individuals interviewed hold strategic positions in the company, as well as in the government, with "A" being a Customs Head, "B" a Tax Head and "C" an RFB employee.

The interviews were conducted by telephone or remotely through the Microsoft Teams™ platform, based on a semi-structured interview script with strategic questions regarding import operations with tangible goods between RP, the relationship between the rules and methods of TP-OECD and CV Methods, as well as risks and impacts to the business, and applied to the Group's Heads. The qualitative data collected with the semi-structured script in this primary source of research were consolidated into syntheses of the essence of the contents.
3.1.1 Análise-síntese das entrevistas

The interviewees (A, B and C) understood that the respective relationship between the parties can influence the price charged in export operations from abroad, i.e., an import to Brazil, due to the respective linkage. According to the interviews, Interviewee A, revealed:

The relationship between the parties can influence the price due to the fact that in large projects, it may be necessary to have a discount and price change to win a bid. There is a change, there is a flexibilization of the price to meet some specific demand.

In the same vein, interviewee B mentioned that there is an influence, due to the link between the parties, which can impact the price:

You always have this balance, head office vs. branch and that can undoubtedly have a pressure to accept in very pure language, so it can influence in this sense and in theory it already comes out under a free market umbrella.

Interviewee C also weighed in on this, commenting that:

Of course, I understand that it can have an impact. Even the agreement provides this and allows customs to question if there is any doubt that the relationship has influenced the price, as well as allowing an answer from the importer, in trying to prove that that doubt does not exist...

From the interviews, it can also be extracted that although most of the operations are carried out between companies of the same group, the CV criterion is less controlled than other customs compliance criteria on importation, such as taxation and tariff classification. SE does not have a specific methodology that contemplates a process and procedure for controlling and analyzing the price practiced in transactions between RP, as well as the risks and impacts on the CV criterion.

There is also the difficulty in interpreting the rules and implementing practices of control and monitoring of prices in these transactions, because the interaction of the rules is not very clear and, both importing companies, as is the case of SE; as well as the Brazilian Federal Revenue Service itself, need to have better visibility and understanding of the OECD's TP methods on the issue of customs value, as exposed by interviewee B:
From my experience, in general, of course, there is always some auditor who can have this view, but as a general rule, I understand that no, I have heard about customs valuation, but never embarking on the issue of transfer price, it is as if the RFB does not associate these issues. From a customs valuation perspective, the RFB is fiscalist. The RFB does not think on an integrated basis in this regard, but they should. And now that Brazil is joining the OECD, there still needs to be a rapprochement. But the legislation has to change to facilitate this integration and reduce segmentation.

Due to the complexity of the subject, this difficulty is also observed within the RFB itself, as exposed by interviewee C:

"that the majority of civil servants are not aware of the methods and factors of OECD TP and its possible application for customs valuation purposes”.

The interviewees also understand that there is a risk of tax fines, administrative fines, price arbitrage, impacts on the business (credibility, delays), if the linkage influences the price practiced and declared as customs value, since the price practiced is part of the calculation basis of the taxes due on the importation of products brought to Brazil by the SE.

In diagnosing the problem, associations between causes and respective effects were also considered, thus allowing an analysis of these interactions. In this sense, from the perspective of the RFB, respondent C stated that:

As for the risks, you may be exposed to an audit, with the collection of adjustment of the customs value, a notice of infraction with the collection of tax differences. It is a risk, which the importer decides to take. Strictly speaking, it would only be subject to a fine of 75% - the difference in taxes. Now, if you consider that that calculation basis was rigged – then you apply a 100% fine – it will depend on the audit and the analysis of the inspector. It's very personal, because the inspector is auditing and framing. Sometimes the inspector throws 75%, but considers some aggravating factor, then increases another 75%, depending on the case also qualifies and adds another 75%. Sometimes the fine is as high as 225%.

The three interviewees consider it important and necessary to have a structured process that focuses on the management and control of the VA criterion, regarding the formation of the price in transactions between PRs, which also encompasses the OECD TP issue.
To this end, a session was held to generate ideas, known as brainstorming. This method makes it easier for an organization to be able to appropriately introduce new technologies into products, processes, and the changes needed by organizations (HIDALGO; ALBORS, 2008).

Brainstorming considers increasing the quantity and quality of ideas generated by members of a group. According to Rietzschel et al. (2007), it is considered efficient for the generation of creative ideas, where participants can express all the opinions they can think of, for the solution of problems, being encouraged to do so.

3.1.2 Consolidated analysis of interviews and brainstorming

The results of the respective surveys, interviews and brainstorming reveal that customs operations are related to and under the supervision of different stakeholders, internally within the SE. In this specific case, the respective CV criterion brings a need for attention to these executives, as they generate an impact on finances both from a customs and tax perspective, especially in IT. In addition, both customs valuation (CVA-WTO) and transfer pricing (OECD) deal with the issue of the price charged in transactions between RPs, however, despite dealing with the same subject, and seeking the ALP, there is a gap of interpretation, both for managers and for government regulatory and inspection bodies, for example the RFB.

In IT, prices are formed based on the respective OECD TP methods, and Brazil has already adhered to this regulation, which now makes it more urgent to equalize and bring together stakeholders, standards and map the impacts on CV, aiming at a reasonable eventual resolution. Brazil has fully internalized the CVA and amendments (DECREE 1.355/94).

However, by internalizing the CVA in the scope of rules and in the Brazilian legal system, the customs authority suggests that the circumstances of the commercial operation in a sale between companies of the same economic group should also be supported by commercial correspondence and the complete description of the negotiation process for determination of the price of the goods in view of the economic circumstances of the international market (IN 2090/22), when the fact is that a free negotiation,
compared to independent operations, does not effectively occur in commercial transactions between RP's, within a vertical structure.

This fact may expose Brazilian importers to risks of questioning the prices practiced in IT, as well as financial impacts on their operations, resulting from delays, fines, penalties.

In addition, the interconnection of the rules suggests an eventual improvement of process and controls in the formation of price and customs value in operations between RP, which can generate an improvement in management processes in customs operations, improvement of controls, opening spaces for innovative solutions with a focus on the formation of intercompany prices, and their composition of the customs value.

Along these lines, the following questions contribute to the existence of the problem:

1. Complex rules.
2. Shared management.
3. Prohibition of VT when the relationship influences the price - IT Operations.
4. ALP present in both approaches.
5. Reasonableness.

4 PROPOSED SOLUTION TO THE PROBLEM

In this stage, the proposed solution will be detailed, based on the diagnosis of the present work, as previously topicied, reveals the existence of a problem in the import operations carried out by the SE in Brazil, with regard to the formation of the price practiced in intercompany operations and its impacts from a VA perspective.

The current context considers a "seesaw effect" (Figure 2), due to the GAP and tension between the norms, methods and bodies, namely: OECD TP and the WTO CVA, which deal with the theme of price formation in foreign trade operations, have similarities in terms of methods, but generate tensions regarding the influence of the relationship between the companies in the formation of transactional prices in these operations.
The effect of the relationship between the parties, and its impact on the transactional price (TV), is at the center of the discussion, which from a customs perspective may raise questions, if the respective TP does not maintain, from a CV perspective, that the relationship did not influence the price paid or paid in the international sale, which may generate impacts on the SE's business, as well as other importers.

The OECD is responsible for regulating the application of TPs, which must be applied to multinational companies, in their operations with services and goods carried out between PRs. The OECD TP methods direct the formation of prices practiced in controlled operations, under support and to comply with the ALP, where the price practiced in transactions with related parties must be a fair market price – i.e. approaching a price practiced in a free market, where the transaction is not controlled, but without,
however, it must be supported by free negotiation (which does not occur in hierarchical structures). The OECD has implemented five TP methods.

The application of the methods for the formation of the TP depends, as a general rule, on the access to realistic and consistent data for the purpose of comparisons. The CVA itself provides that when the relationship between the parties influences the price charged, the TV cannot be used - i.e. the ALP is also present in the agreement.

The CVA was also internalized and disciplined in Brazil, in accordance with IN 2090/22. Unlike the CVA, in the application of OECD TP methods, there is no need for hierarchy between such methods, and companies can choose the method that brings the best benefit from an income tax perspective and with a focus on the business. Table 1 provides a comparison of the respective OECD and AVA methods:

<table>
<thead>
<tr>
<th>OCDE* Method</th>
<th>AVA Method</th>
<th>Reasonable Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>CUP</td>
<td>Comparable uncontrolled Prices</td>
<td>Transaction Value (TV)</td>
</tr>
<tr>
<td>RPM</td>
<td>Resale Price</td>
<td>Identical Goods Value</td>
</tr>
<tr>
<td>CCMLC</td>
<td>Cost plus Margin</td>
<td>Similar Goods Value</td>
</tr>
<tr>
<td>CPM</td>
<td>Comparable Margins</td>
<td>Computed Value</td>
</tr>
<tr>
<td>PSM</td>
<td>Profit Split Method</td>
<td>Deducted Value</td>
</tr>
</tbody>
</table>

Table 1. OECD and LMS methods

Source: Prepared by the authors.

The first article of the CVA, more specifically in the second paragraph and its interpretative notes, cites approaches to assess whether in this case the respective relationship influenced the price charged. The existence of a relationship between the parties per se will not be sufficient to consider the transaction value as unacceptable. To do so, the circumstances of the sale must be examined and the transaction value will be acceptable, as long as the respective relationship has not influenced the price.

In this case, an examination will be considered to assess whether the price has been established in a manner consistent with market practices, compared to non-controlled prices and for independent companies, where it allows the recovery of the respective costs, plus a margin usual in these operations. (CVA Article 1, paragraph 2). In this line, the CVA considers that the TV will be acceptable, when the importer
demonstrates that the value attributed as a price, becomes very close, and at the same time (CVA Article 1, paragraph 2) to:

1. The Transaction Value of identical or similar goods, for unrelated buyers, in the same country.
2. Customs value of identical or similar goods, considering the provisions of the 4th method (computed value).
3. Customs value of identical or similar goods, considering the provisions of the 5th method (Deducted value).

Although the CVA does not clarify in a more objective way, how to consider when "a value becomes very close", under the terms of article 1, paragraph 2 of the AVA, in Brazil, the customs legislation, specifically in Decree 6.759/09, mentions that a variation of up to 10% in relation to the price is not considered an infraction.

This fact is important because it can be taken as an element to structure a methodology and control procedure in the respective solution proposal. In addition to Brazil, other signatories of the CVA/WTO also consider limits for the same purpose (DECREE 6.759/09; DELOITTE, 2018). In order to reduce this tension, the WCO, a WTO body, published in 2018 a guide for CV that also considers aspects of TP, updated in 2020, entitled "Guide to Customs Valuation and Transfer Price".

The document was prepared to assist both public servers of customs and managers of private sector companies, containing normative opinions, case studies, comments, on the subject developed by the "Technical Committee on Customs Valuation TCCV" (WCO - Guide to Customs Valuation and Transfer Price, 2020).

This document emphasizes that the respective TP methods, as well as the studies related to these methods, can be considered as elements to counter-argue a doubt and eventual questions to the importer, made by the customs authority and inspection entity, from a CV perspective, and the transactional TP methods would be preferably considered for this end. (WTO-WCO Guide to Customs Valuation and Transfer Price, 2018).

The WCO is working together with the OECD and the World Bank to bring closer communication and exchange of information between customs and tax authorities, in terms of transactions between related parties. (WTO-WCO Guide to Customs Valuation and Transfer Price, 2018). It is not the intention of the respective agreement to analyze
the circumstances of sales in transactions between related parties in all cases, but only when there is a reasonable doubt as to the acceptability of the price charged in these transactions.

And in this case, the respective TP studies used to arrive at the price charged can also be considered, on a case-by-case basis, as one of the sources of information, for the purpose of supporting the price charged between RP’s from an CV perspective. (WTO-WCO Guide to Customs Valuation and Transfer Price, 2018 - TCCV Comment 23.1).

In these cases, the respective customs authority, in order to verify the acceptability and influence on prices, considers the existence of purchasable prices of similar products of the same type or class, but made in independent operations, or even if the respective price charged is sufficient to cover the respective costs plus a profit margin in its composition on a comparable basis. (WTO-WCO Guide to Customs Valuation and Transfer Price, 2018 – TCCV Case Study 10.1).

The respective guide also considers approaches and analyses made by the TCCV, in the use of OECD TP methods other than transactional ones, but those based on margins and for the purpose of analyzing the respective acceptability of prices from an CV perspective. (WTO-WCO Guide to Customs Valuation and Transfer Price, 2018 – TCCV Case Study 14.1 and 14.2).

In addition, as previously mentioned, after the completion of the respective rounds of discussion, and the transition plan to the OECD in connection to TP, Brazil published rules already contemplating a joint approach (i.e. IN 2090/22 and Law 14.596/23). In accordance with the above, the structuring of the respective procedure for the optimization of the SE’s customs operation, and control of the CV criterion in imports between related parties, must, therefore, consider a methodology that brings an innovative control process, covering the following pillars:

1. TP studies and information can be considered as important factors and elements to sustain that the relationship did not influence the Transaction Value but should be analyzed on a case-by-case basis.
2. The OECD TP transactional methods have greater adherence for this purpose, with the CUP being the ideal for comparison purposes.
3. A variation of up to 10% may be an additional parameter to support the reasonableness in the application of article 1 of the AVA (since this fluctuation is not considered an infraction by Brazilian customs legislation).

This approach considers structuring a procedure that has considerable strategic weight, and can be used both by the SE, as well as by other importers, in a continuous monitoring of this customs criterion, such as control routines and internal improvements, as well as in response to any questioning by the respective customs authority, during customs clearance, or even possible customs diligence for the decennial period.

It is important to prepare a proposal for a solution that brings an element of differentiation and innovation to address the perception of potential impacts and the main objective of structuring a procedure that can improve the customs operation of the SE. To this end, however, it is necessary to develop an efficient strategy for the proposed solution of the problem, as well as the expected results and defined objectives.

5 INTERVENTION AND RESULTS OBTAINED

This stage is intended for the presentation of the intervention carried out and the results resulting from this intervention.

During the intervention, the intervention resulted in negotiations, as well as the reception of the stimulus and response of the people directly affected by the proposed changes in the work and in the solution of the identified problem.

This phase of the study considered the existence of a problem, whose proposed solution would result in the improvement of tax, customs compliance, increase of practices in the customs operation and treatment and reduction of risk in the CV criterion, but on the other hand exposed the existence of a governance failure within the SE, due to the technical complexity of the issues, or even due to the fact that there are conflicting issues of interrelationship in operations and between different stakeholders.

However, it can be seen that both in the intervention phase points were identified and the result of the implementation of the innovation contained in the solution proposal, to enable the generation of value and the increase of efficiency in customs management, is dependent on the development of the control process in view of the risks related to the price declared as customs value in the IT’s of the SE.
In addition, it is also necessary to train resources that navigate the two main areas: customs and tax, and that will contribute to the improvement of the environment and development of the Company's business. The study to date has evolved in a very positive way within the SE since as the Company is a recent legal entity (created in 2020), not much resistance has yet been noticed and the company itself is forming its own culture. In addition, the reality of convergence of standards in Brazil applied to global trade, and the fact that TPs are declared as customs value in these operations, demonstrate an immediate need for control and management of this criterion (CV).

This fact demands immediate actions to improve the company's business environment, including an increase in customs operations that can benefit not only SE, but also other companies that operate this type of transaction in foreign trade. The technical complexity of the topics requires a high level of knowledge and training of resources in distinct but related areas, which suggests the need for training of employees and managers of the SE.

The training should bring clarity to the understanding of the problem, the existence of risks related to the CV criterion in intercompany operations, pointing to a methodology that is a guiding thread for an innovative procedure of control and monitoring practices, adhering to the legislation, as a proposed solution and that, if not executed, affects the Company's customs compliance.

The facts were important and of great relevance in overcoming the difficulties related to a quick cooperation agreement and clashes to impose limits related to ego, areas of action and search for results, due to the current context and because it is necessary to act in a practical way internally, as is being suggested.

The understanding of the problem and the development of this solution also resulted in improved visibility with other stakeholders and shareholders, increased technical capacity differentiated from resources both for the SE and for the market and for society in general, also taking into account the needs at stake.

The strategy of the change consisted of highlighting the backbone of the respective solution adopted (as provided for in item 4) for the development of the innovative solution proposal, which was based on identifying the target audience, threats, strengths,
weaknesses, as well as actions necessary for its implementation, analysis and mitigation of risks, in order to meet the expected results.

The engagement of all those involved in what is related to the execution of the strategy to take advantage of the proposed solution and treatment of the identified problem, as well as the execution of the planning of the necessary changes foreseen in the strategy, was fundamental in the development of the project.

At this point, it is important to emphasize the clarity of the stages when applying the scientific methodology proposed for this work, especially during the research phases that enabled a consistent diagnosis of the problem, enabling the perception of a latent and innovative solution proposal.

This clarity enabled the respective engagement including in the readiness, availability of time and participation in the action plan and activities to mitigate potential risks, to maximize the benefits of the proposed solution, where the assignments of activities at various hierarchical levels consider the understanding of the strategy for capturing value.

In addition, the understanding of the need to provide the company's capabilities necessary for the execution of the strategy of the solution proposal were promptly understood and authorized. The strategy developed also calls for the need for recurrence of training, lectures, with the purpose of generating long-term sustenance, since the proposed solution seeks to enable the SE to energize society, through the generation and capture of value, for the improvement of business on a recurring basis.

The proposed solution reduces the GAP and gray area in the VA criterion in import transactions carried out between related parties, a subject that is guided by two different legislations, but which deal with the same subject, and which may even be enhanced due to Brazil’s entry into the OECD with regard to TP rules. To this end, more efficient control and monitoring activities are necessary from a management perspective, both for the SE as well as for other companies that carry out operations of this nature.

The respective solution proposal, elaborated in this work, was discussed and demonstrated to the respective TAX and Customs Heads of the SE, through a virtual meeting held by the Microsoft Teams © platform and received with great enthusiasm by these Stakeholders, meeting the respective perception captured during the diagnostic
interviews, even because the SE is a company qualified as an AEO, which requires constant improvement of risk management practices in customs operations.

The proposed solution aims at the development of controls and monitoring activities that objectively contribute to the generation of a more effective customs management, providing positive impacts by achieving the proposed results.

Other qualitative research instruments may also be considered to capture respective improvements that allow a constant restructuring of monitoring practices, including interview scripts with the participation of SE Companies in other countries, signatories of the WTO-CVA rules, in search of new concepts, metrics, activities that enable a constant support and renewal of the methodology, for greater efficiency in control for risk management in the CV criterion, refinement of the solution and replication of the same by the Energy group in the medium term (2 to 3 years).

6 CONCLUSION

This work enabled significant personal learning and skills development to identify opportunities and problems and result them in business. The result of the work involved the development and application of a proposal for an innovative solution in process and incremental, to address the respective problem identified in the import operations between RP, in the CV criterion, carried out by the SE. In addition, the need to implement controls is necessary because, in addition to generating value to SE's business, the company is also accredited as an AEO.

The methodology proposed, applied and used as a basis for the development of this work, based on Marcondes et al. (2017) methodology, made it possible to develop a common thread that facilitates the work in a practical way, bringing elements for the elaboration of research for a correct diagnosis of the problem, as well as addressing the need for strategies to efficiently achieve the proposed solution, carrying out the necessary changes in order to achieve the expected results in an innovative way and with value capture.

In the case of this study, the challenge began by addressing a complex and dense issue that concerns the formation of prices in import operations between PR, and in hierarchical organizational structures, a topic with high technical complexity and
decentralized (i.e., with the involvement of different stakeholders – Tax and Customs Compliance).

Despite dealing with a common theme (i.e. price formation), the approaches coming from different perspectives (e.g. Tax and Customs) exerted opposite forces, when influencing the relationship on the price practiced, generating an interpretation GAP, "seesaw effect" and resulting in a management GAP, in the customs value criterion, with significant impacts on the business. In addition to the challenges to be overcome involving technical training with regard to the development of methodology, procedures, activities and controls, the present work also focuses on how to train managers to analyze the internal and external environment, capture the necessary changes and outline strategies to achieve the objectives.

A very important factor is the communication, engagement and prior alignment with the respective shareholders and their capture in the generation of value for all actors involved, which involves a perception from the diagnosis, to the respective formatting of the proposal, for the solution of the problem.

The impacts of the respective solution proposal result in corporate changes that are considered to benefit both the SE and other importers that have the same hierarchical structure and carry out intercompany operations, by increasing controls and reducing negative impacts and measuring risks in the CV criterion.

It also brings elements for necessary approaches that were not previously considered or captured by the respective managers, increase the rationalization of management activities, the debate of ideas, maturation of discussions, including the positioning of RFB servers, regarding concepts, clarity of standards, applicability and reciprocity of understanding in relevant IT from a fiscal, tax, financial and economic perspectives.

Finally, it is recommended to the respective readers the application of the methodology for business identification and development, as it has been shown to be efficient and clear in its stages, considering mainly the phases of understanding and diagnosis and its phases of data collection, research, understanding of the problem, as well as in the definition and development of the respective solution proposal, as they mainly demand availability of the respective managers, shareholders, in the identification
of key elements in the creation and capture of value, benefits generated, consolidation of benefits and development of strategy for efficiency in business development.
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