



# COMMENTARY 4.1

## - PRICE REVIEW CLAUSES

# BACKGROUND

- In commercial practice, some contracts may include a **price review clause**.
- This means the price is only provisionally fixed
- Final determination of the price payable is subject to certain factors which are set out in the provisions of the contract



# SCENARIO I

1. The goods are delivered some time after placing of the original order (e.g. plant and capital equipment made specially to order); the contract specifies that the final price will be determined on the basis of an agreed formula which recognizes increases or decreases of elements such as cost of labour, raw materials, overhead costs and other inputs incurred in the production of the goods.



## SCENARIO II

2. The quantity of goods ordered is manufactured and delivered over a period of time; given the same type of contract specifications described above, the final price of the first unit is different from that of the last unit and all other units, even though that each price was derived from the same formula specified in the original contract



## SCENARIO III

3. The goods are provisionally priced but, again in accordance with the provisions of the sales contract, final settlement is predicated on examination or analysis at the time of delivery (e.g. the acidity level of vegetable oils, the metal content of ores, or the clean content of wool).



# ANALYSIS I

- The price actually paid or payable is the total payment made or to be made by the buyer to the seller for the imported goods (Interpretative Note)
- So, in contracts containing a price review clause, the transaction value must be based on the **total final price** paid or payable in accordance with the contractual stipulations
- As the price actually payable can be established on the basis of data specified in the contract, these price review clauses should not be regarded as constituting a condition or consideration for which a value cannot be determined



## ANALYSIS II

- Where the price review clauses have already produced their full effect by the time of valuation, no problems arise since the price actually paid or payable is known
- The situation differs where price review clauses are linked to variables which come into play some time after the goods have been imported



# CONCLUSION

- As the Agreement recommends that, as far as possible, Customs value should be based on the transaction value, and given that [Article 13](#) provides for the possibility of delaying the final determination of Customs value, (even though it is not always possible to determine the price payable at the time of importation), price review clauses should not, of themselves, preclude valuation under [Article 1](#) of the Agreement.

