

A. Definition of "related parties" and examples of trade between related parties

21.3. **Definition of "related parties".** IMTS 2010 (para. 1.22) encourages countries to use the definition of related parties as given in article 15 (4) of the WTO Agreement on Customs Valuation (see box XXI.1), which provides provisions for the appropriate valuation of goods traded between related parties as the prices paid between related parties might be influenced by their relationship.^[2] Countries might diverge from this recommendation and use another definition of related parties such as the OECD benchmark definition for foreign investment (BD4).^[3] Countries should state in their metadata which definition is used.

Box XXI.1.

WTO definition of "related parties"

Article 15 (4) of the WTO Agreement on Customs Valuation

For the purposes of this Agreement, persons shall be deemed to be related only if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

21.4. **Examples of trade between related parties.** The most basic example of trade between related parties is trade between the parent corporation and its direct investment enterprise in another country. Such trade is frequently motivated by favourable production conditions in that country (e.g., lower costs of inputs or a favourable tax regime) or related to market access or to the distribution of the goods. However, trade between related parties is frequently part of much more complex global production and distribution processes which stretch over many countries. A special case is that of trade of goods for processing (see chap. XX), whereby goods are brought into a country for specific operations under a specific arrangement between the involved parties (they may or may not be related), and which may or may not include the change of ownership of the goods.

^[2] Long-term studies of inter-company pricing have shown that the relationship between parties can have an impact on the valuation of transactions. However, it might be more useful to have information on whether the trade is valued according to some transfer pricing agreement. As transfer pricing does not always follow the OECD guidelines, countries might have transfer pricing policies outside those guidelines.

^[3] See Organization for Economic Cooperation and Development: *OECD Benchmark Definition of Foreign Direct Investment: Fourth Edition 2008* (Paris, 2008). "Related parties" can also be defined according to the BPM6 (para. 6.12) and OECD benchmark definitions for foreign direct investment (BD4, paras. 11 and 31) as parent corporations and their direct investment enterprise (affiliates/branches). A direct investment enterprise is an incorporated or unincorporated enterprise in which a direct investor who is resident in another economy owns 10 per cent or more of the voting power (for an incorporated enterprise) or the equivalent (for an unincorporated enterprise). The WTO definition of related parties is in general seen as the most operational definition from the customs perspective.