



Andrew Hickman  
Head of Transfer Pricing Unit  
OECD Centre for Tax Policy and Administration  
2, rue André Pascal  
75775 Paris  
France

Submitted by email: [TransferPricing@oecd.org](mailto:TransferPricing@oecd.org)

**Confederation of Swedish Enterprise - Comments on the OECD Public Discussion Draft entitled: "BEPS Action 10: Discussion Draft on the Transfer Pricing Aspects of Cross-Border Commodity Transactions" 16 December 2014 - 6 February 2015**

The Confederation of Swedish Enterprise is Sweden's largest business federation representing 49 member organizations and 60 000 member companies in Sweden, equivalent to more than 90 per cent of the private sector.

The Confederation of Swedish Enterprise is pleased to provide comments on the OECD Discussion Draft entitled "BEPS Action 10: Discussion Draft on the Transfer Pricing Aspects of Cross-Border Commodity Transactions" 16 December 2014 - 6 February 2015 (hereinafter referred to as the Draft).

The Confederation of Swedish Enterprise supports the work by OECD to ensure that transfer pricing outcomes are aligned with value creation. Developments of the OECD Transfer Pricing Guidelines (the Guidelines) in the area of commodity transaction are welcomed as it could give clarity and predictability to taxpayers and tax authorities and thereby reducing the risk of double taxation. Enhanced guidance in this regard will have a positive impact on the daily operations of MNEs involved in cross border commodity transactions and should be aimed at substituting locally implemented approaches in this area.

It is important that tax authorities understands the complexity related to commodity markets, including the different parties involved. Commodities can have very different characteristics and their markets can have significant differences as well. As a consequence the value chain in different MNEs dealing with commodities may vary significantly. In addition, MNEs are organized in different ways with different

production processes and so on. Therefore there is a need to further analyze flexible approaches that allows for all differences to be taken into consideration.

The use of quoted or publicly available prices, as a particular application of the Comparable Uncontrolled Price method, has been used for many years by MNEs when pricing commodity transactions with related parties. We support any initiative that would facilitate agreement and standardization of the sources of information that should be used for the application of this approach.

In relation to the deemed pricing date for commodity transactions, we believe that the terms adopted by the related parties should be the starting point. The Draft suggests that if the taxpayer can provide “reliable evidence” of the actual pricing date agreed between the associated parties, then tax administrations should take that date as reference. The Confederation of Swedish Enterprise requests additionally clarification as to the meaning of “reliable evidence”.

In agreement with BIAC we believe that where no reliable evidence is available of the terms adopted or where the date is inconsistent with other facts of the case, then tax administrations should have the burden of proof and should seek to gather the relevant facts in order to establish the pricing date that would be most appropriate from an arm’s length perspective. The deemed pricing date method should only be used as a last resort in cases where the tax payer has failed to provide any reliable evidence.

The differences between prices regulated through long-term contracts and prices agreed transaction by transaction should be acknowledged. Where the price is agreed on a transaction basis, the requirement to document each and every transaction for transfer pricing purposes is excessive. Therefore tax administrations should be ready to accept validation of prices at arm’s length through alternative approaches. Such an approach could be to use quoted prices supplemented with comparability adjustments, using sampling or selection of the most relevant transactions.

On behalf of the Confederation of Swedish Enterprise

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Krister Andersson  
Head of the Tax Policy Department