

***Principle harmonization of methods to
fight the under-pricing fraud and the
preeminence of transaction value***

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The customs value of imported goods shall be, at principle, the transaction value



The price actually paid or payable for goods when sold for export to the customs territory of the Community, provided, among other conditions, that the buyer and the seller are not related, or, where the buyer and the seller are related, that the transaction value is “acceptable” for customs purposes.

Furthermore, where the customs value cannot be determined in this way, it is determined, for example, by the transaction value of identical or similar goods.

I) ART. VII GATT

II) Articles 29 and 30 REG. 2913/1992

III) Articles 40 - 43 REG. 450/2008

IV) Articles 61 – 64 Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE
COUNCIL laying down the Union
Customs Code (UCC)

What should be included and what should not be included in the customs value

In determining the customs value, under the articles 29 and 30, there shall also be added to that price some other amounts, incurred by the buyer and not included in the price paid or payable for the goods, such as...

ex Art. 32 of Reg. 2913/92

- Commission - excluding buying commissions - and brokerage
- Materials, components, parts and similar items used in the production of imported goods
- Royalties and license fees related to the goods

Provided that they are shown separately from the price actually paid or payable, shall not be included in the customs value elements such as...

ex Art. 33 of Reg. 2913/92



- Charges for the transport of goods after their arrival at the place of introduction into the customs territory
- Charges for the right to reproduce imported goods in the EU
- Import duties or other charges payable in the EU by reason of the importation or sale of the goods

Key points about the goods value in customs declaration and the AEO in UCC

Authorised economic operator

Compliant and trustworthy should be able to take maximum advantage of widespread use of simplification and, taking account of security and safety aspects, **benefit from reduced levels of customs control.**

The harmonized application of customs controls by the member States should be based upon a common risk management framework and an electronic system for its implementation.



In order to ensure a consistent and equal treatment of persons concerned by customs formalities and controls and to supplement the factors on the basis of which import or export duty and other measures are applied, the power to adopt delegated acts in accordance with Article 290 of Treaty should be delegated to the Commission:

- in respect of determining the conditions relating to customs representation and to decisions taken by the customs authorities, including those relating to AEO and binding tariff information;
- in respect of the determination of origin and customs value of goods.



Reg. EC n. 1073/1999

In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the EU, the OLAF exercises the powers of external and internal investigation

Inspections and checks in the Member States and, in accordance with the cooperation agreements in force, in third countries.

Immediate and unannounced access to any information held by the institutions, bodies, offices and agencies; oral information from members of the Institutions and bodies.

In December 2008, the European Parliament largely accepted European Commission proposals that would, among other improvements, increase exchange of information between OLAF and the EU institutions as well as with EU member States. OLAF has coordinated investigations into organized crime groups in major European cities such as **Rome, Paris and Budapest**. They discovered that these groups were evading hundreds of millions of Euro in customs duties and VAT by using fake and understated invoices, reducing the declared value of the goods at import to less than 10% of the real value.

The Under-Invoicing Circumstance



- Is used with importing goods from a foreign supplier.
- An arrangement is made whereby the supplier raises an invoice for the goods with a value much less than the agreed price.
- By artificially lowering the documented value of the goods, less import duty and VAT are payable.
- Fake documentation and a network of complaisant enterprises, exporters, brokers, agents, accountants, importers, carriers, etc., enable goods (usually clothing, textiles, footwear, food) to be imported into the EU at a declared customs value substantially below their actual value, often even below the world market price of the materials incorporated in them
- The under-invoicing causes a drastic reduction in the amount of taxes and duties due on the import and enables the importers to commit customs duties and VAT frauds.
- In most cases all or part of the profits of the fraud are channelled back to the country of origin of the goods and are used to finance other transactions.

Italian Customs Authorities

The most important result produced by the strengthening of inspections, in case of smuggling through under-invoicing, has been the **rise of the average values stated on imports per kilograms of merchandise**, particularly in the areas and countries where is frequent **the fraud risk**



As an example: clothing, shoes, bags imported from China that are precisely the traditional products of the **Made in Italy**



European Customs Authorities

In case of differences between payable duties and those paid on the basis of the declaration submitted
(e.g. Under-invoicing, recycling, counterfeiting, etc.)

**Increase of inspections
against tax evaders**









**Massive campaigns of reviews
of assessment (post-audit)**







- ✓ **Increase and stabilization of more payable duties**
- ✓ **More tax return in terms of duties and VAT definitively collected**



Some European examples of penalties in the event of false/incorrect declaration on customs value

<u>Country</u>		<u>Penalties</u>
Netherlands		Maximum fine of €7.800 or maximum of 6 months prison sentence. Malice: this can lead to a prison sentence of 6 years or a fine of €78.000.
Romania		Fines from €667 to €1.778. If the customs goods value is less than €4.500 (in case of excisable products) and less than €9.000 (other goods) → Smuggling: punished with imprisonment from 2 to 7 years and interdiction of certain rights.
Germany		Penalty up to €50.000 (the height of the penalty may be higher if the difference between the payable duties and those actually paid is wide apart).
Portugal		Fines from €75 to €5.750.
Sweden		20% of the shortage in customs duties or import VAT.
Slovenia		Legal Entity: fines from €2.000 to €125.000; Traders and self-employed: fines from €700 to €125.000; Natural Person: fines from €300 to €1.200.

Some European examples of penalties in the event of false/incorrect declaration on customs value

<u>Country</u>		<u>Penalties</u>
UK		Up to £ 1.000 per contravention for less significant irregularities; Up to £ 2.500 per contravention for more significant irregularities.
Czech Republic		Up to CZK 4.000.000 depending on the violation listed in the Customs Act (e.g. submission of false or amended document).
Croatia		Range from HRK 3.000 (€400) to HRK 1,000,000 (€133.333) [for companies] or HRK 1.000 (€133) to HRK 100.000 (€13.333) [for individuals and responsible persons within a company].
Italy		<p>Administrative penalty from Euro 103 to Euro 516.</p> <p>When the payable duties, after the assessment, are higher than those calculated on the basis of the declaration submitted it is levied an administrative penalty up to Euro 30.000 or up to ten times the amount of customs duties due.</p> <p>The submission of false/incorrect customs declaration involves a “False ideological in public act” and, as a criminal offence, is prosecutable by criminal law.</p>



U.S.A.

In the United States, US Customs and Border Protection (CBP) uses a number of mechanisms to defend against under-pricing frauds – CBP considers undervaluation a serious crime.

- Customs Audits called “**Focused Assessments**”: these audits include valuation and look at a company’s internal control environment supplemented with a detailed analysis of payments, books and records, accounting journals and all supporting business documentation.
- Intense Customs Audits called “**Quick Response Audits**”: these audits would target one particular area of concern such as undervaluation. Customs auditors would intensely review an importers books and records looking for evidence of undervaluation.
- **Commodity Specialists and Centers of Excellences**: US Customs has grouped the specialists that review entry details by product category. Accordingly, such specialists are trained and experienced on what an item should be imported at; they have the ability to “desk audit” an import declaration and ask for additional information. If they have concerns, they can make an upward value assessment; they can recommend a audit or they can refer the importer to the Office of Immigration and Customs Enforcement.
- **Office of Immigration and Customs Enforcement (ICE)** is a law enforcement agency that will investigate and assess criminal charges against individuals and companies for under-pricing frauds.

US CBP is very active in providing guidance to the import community on when Transaction Value is and is not appropriate. Further, CBP issues tens of rulings on this issue and publishes them via their Cross system. A very hot topic is arm’s length pricing for intercompany transactions.




Japan

Valuation



The main error relates to the calculation of the taxable value in the case of relief/exemption from duty.

A stylized map of Japan in a light beige color, positioned behind the text boxes.

Under Customs Law, importers are required to keep various records(e.g. accounting books and ledgers) and import permission for 7 years, and related supporting documents (e.g. contracts, invoices, P/O's, certificates of origin etc) for 5 years. As part of a customs audit, Japan Customs can ask to review these documents.

In the results of the 2011 post import audits, the key issues highlighted were the **omission of elements of the customs value** which were not shown on the invoice, the valuation of raw materials provided free or at reduced cost, and unreported differences between the provisional invoice price and the confirmed invoice price.

Tax evasion



Some schemes, mentioned in the June 2013 **Trade Digest** publication, were created as an invoice showing a lower price (to conceal the actual price), document forgeries in order to meet the conditions for re-import reliefs such as re-importation after processing abroad, and disguising the importer through the use of paper companies.



China

General Administration of Customs (GAC)

Order [2006] No. 148 published on 28 March 2006.



GAC is the government authority in charge of enforcing China's import and export laws, including import valuation.

➤ Related Party Transactions



Article 8, paragraph 4 GAC Order: “There shall be no special relation between the buyer and the seller, unless the special relation will not affect the transaction value according to Article 17 of these Measures.”

In checking the accuracy of related party prices, GAC may, within the purview of **Article 47 of the GAC Order**, review **commercial documents, written materials and electric data that show the relationship between the buyer and seller and the transaction activities as the contracts, invoices, accounts, certificates of foreign exchange settlement and payment, bills, business letters and audio-video products related to the import and export goods.**

Article 48 of the GAC Order: “When GAC raises a price query regarding a related-party transaction, it will issue a “Notice of Customs of the People's Republic of China on the Challenge of Price.” Within five working days of its receipt, the importer should submit a written explanation letter and provide evidence to prove that the invoice price or contract price approximates the price of the same or a similar product sold to a third party buyer that has been accepted by GAC. During this period, GAC will detain the imported goods whose transaction value is considered unreasonable, or request that the importer pay a guarantee deposit. If the importer cannot provide any explanation or the contents of the explanation letter submitted are deemed insufficient by Customs, Customs will determine a new import price based on valuation methods stipulated in relevant laws and regulations, which will sometimes result in **higher duty and import tax liabilities.**”

In the past, the linkage between Transfer Pricing and Customs was generally regarded as a gray area which was discussed and deliberated with the audit division of Customs. However, these kinds of cases are now being transferred under the Anti-smuggling bureau (ASB) which is authorized to impose penalties on importers. This indicates that **Customs is becoming more aggressive in pursuing valuation challenges between related parties.**

✦ NEW POTENTIAL ISSUES ✦

1) Is a license fee not duly reported in the customs declaration a case of underpricing?

EU Law

- Royalties [Art. 32, par.1, lett. c), EEC Reg. 2913/92]
- Assists [Art. 32, par.1, lett. b), EEC Reg. 2913/92]

WTO Countries

**ART. 8 OF THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE VII
OF THE GATT**

2) What about Transfer Pricing Adjustments?

- Incomplete Declaration [Art. 253, EEC Reg. 2454/93]
- Ruling [Art. 6, EEC Reg. 2913/92]

- WCO Commentary 23.1 (Technical Committee on Customs Valuation)
- ICC POLICY STATEMENT (Doc. No.180/103-6-521, February 2012)

THANK YOU

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