



Undervaluation

mr. J.J. Birkhoff





UNDERVALUATION IN CUSTOMS LAW OF THE EU

Topics:

- I. The Technical Committee on Customs Valuation of the WCO (TCCV)
- II. The Customs Expert Group Valuation of the EU (CEG/VAL)



WCO



I. The Technical Committee on Customs Valuation of the WCO (TCCV)



WCO

The Mandate of the TCCV is laid down in the WTO Customs Valuation Agreement (Annex II of the WTO Customs Valuation Agreement).

The TCCV shall inter alia ensure, at a technical level, uniformity in interpretation and application of the CVA.



WCO

Meets twice a year at the headquarters of the WCO

Members and international organizations (status of observer)

Decisions by consensus, although there is a voting procedure

In some cases, instruments are issued based on questions raised by members



WCO

Instruments could be:

- 1) Advisory Opinions
- 2) Commentaries
- 3) Explanatory Notes
- 4) Case Studies
- 5) Studies



WCO

- Not legally binding
- Helpful guidance to Customs administrations and importers
- Leading to a more consistent interpretation of the Agreement



WCO

On a regular basis

- Theme Meetings focusing on a specific issue
- There has been a theme meeting on the issue

UNDERVALUATION:

- a major challenge for many customs administrations



WCO

Sub topics during that theme meeting:

- Practical use of risk management data to combat undervaluation
- Tackling under/over-invoicing: establishing an effective control strategy
- The challenges of the informal sector



WCO

Advisory Opinion 2.1.

Price lower than prevailing market prices for identical goods (undervaluation?)

Technical Committee: the mere fact that a price is lower than prevailing market prices for identical goods is no cause to be rejected for the purpose of article 1 Agreement (Article 70 UCC)



WCO

Advisory Opinion 10.1

Treatment of fraudulent documents

Technical Committee: an administration cannot rely on fraudulent documentation, invalidation of the Customs value would be a matter for national (=Union) legislation.

See article 140 UCCIA



WCO

Advisory Opinion 19.1

Burden of proof in the course of determination of the Customs value on the importer

- Expect full cooperation of importers in enquiries concerning the truth or accuracy, but rights depend on national laws and regulations



WCO

Dumping is not the same as undervaluation

See **Commentary 3.1**:

“valuation procedures should not be used to combat dumping”

(general introductory commentary to the Valuation Agreement)

So treatment for valuation of dumped goods is the same as that applied to goods imported at a price below prevailing market prices for identical goods



WCO

Practical example:

Valuation of imported goods purchased in “flash sales” (Discussed in the TCCV)

Facts:

Flash sales are promotional sales offered in the short term and at highly discounted prices to attract potential purchasers. Flash sales can be conducted on the traditional market or through e-commerce.



WCO

Issue:

In this case can we speak of 'undervaluation' if such goods are bought and declared for free circulation?

In other words:

Could a highly discounted price be accepted as basis for customs valuation under Article 1 (transaction value method) and if so:

Could the discounted price be used to determine the transaction value of identical or similar goods



WCO

Answer:

View of TCCV

General

- Value of the imported goods “should be based on simple and equitable criteria consistent with commercial practices;”
- The Agreement continues to be **the only international legal framework** for Customs valuation;
- Its provisions must be applied in respect of imported goods purchased both on the traditional market and through e-commerce;
- Basis for the transaction value is the price actually paid or payable for the imported goods.



WCO

- The discounted price for imported goods purchased during a flash sale is accepted as the basis for Customs valuation;
- The mere fact that a price is lower than prevailing market prices for identical goods should not cause it to be rejected for the purposes of Article 1;
- Accordingly, the Customs value of goods purchased during a flash sale is the transaction value of the goods in question, provided the conditions of application laid down in Article 1 are met.

See **Advisory Opinion 23.1**



EU (CEG/VAL)



II. The Customs Expert Group Valuation of the EU (CEG/VAL)



EU (CEG/VAL)

Customs Expert Group/Valuation

Based on:

- REGULATION (EU) No 952/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 October 2013 establishing the Union Customs Code
- COMMISSION REGULATION (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council on the detailed provisions of certain provisions of the Union Customs Code
- COMMISSION REGULATION (EU) 2015/2447 of 24 November 2015 laying down detailed rules for the implementation of certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council establishing the Union Customs Code.



EU (CEG/VAL)

- The CEG/VAL shall ensure, at a technical level, uniformity in interpretation and application of the UCC, UCCIA and UCCDA.
- Legally not binding, but important for the uniform interpretation!



EU (CEG/VAL)

- The challenge for the European Union: to ensure the uniform application of the legislation by all customs administrations
- Two major tools are made available to administrations and companies to ensure the harmonized application of European rules on customs valuation:
 - The six-monthly meetings of the Customs Expert Group - Valuation (Commission and Member States)
 - “Compendium of customs valuation texts” – 2021



EU (CEG/VAL)

- Compendium is the result of considerations in the CEG-VAL
- Output:
 - Commentaries
 - Guidance how to apply a specific provision
 - Conclusions
 - Results of examination of particular practical cases



EU (CEG/VAL)

Other activities in the CEG-VAL

- Project Groups on specific topics
 - Preparing possibilities for Binding Valuation Information (BVI) in the UCC
 - Reviewing and updating guidelines regarding combat undervaluation



EU (CEG/VAL)

Goals:

- Uniformity in:
 - Application of the secondary methods (in relation to the use of databases)
 - Information and documents concerning the declared value
 - Verification of the declared customs value (burden of proof)



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Conclusions:

1. Undervaluation is a worldwide phenomenon
2. Tool to combat undervaluation is (besides risk management) the CVA
3. Due to different situations regarding undervaluation there is not a “one size fits all” solution



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Thanks for your attention.