

Undervaluation in customs law of the EU

An anti-fraud perspective

General approach

- **European Common Customs Evaluation (ECCE)
2nd meeting, 31 March 2022 in Rotterdam**

OLAF – Unit B1 – Customs, trade and tobacco anti-fraud strategy

Intervention

- 1) Strengths and weaknesses of customs valuation rules
- 2) What is undervaluation?
- 3) Challenging the declared customs value
- 4) Role of OLAF

1. Strengths and weaknesses of customs valuation rules

International rules

- Predictability vs. flexibility?

Not product-specific

Based on commercial documents

- No specific certificate or statement, no registration number, no customs formalities before export or import...
- Limited constraints/burden vs. risks for control

2. What is undervaluation?

Fraud related to value is multi-faceted:

Minimising the taxable amount

- Declaring an undervalued price to get a reduced customs value
- Not declaring/under-declaring costs that have to be included in the customs value
- Wrongly declaring/Overdeclaring costs that are deducted to calculate the customs value

Manipulating the value to get a more favourable treatment

- Cheating on threshold to benefit from zero taxation
e.g. 150 € threshold for low value consignment
- Declaring an overvalued price to avoid additional duties

Other combined fraud:

Abuse of CP42, abuse of transit?
IPR/security?
Default of payment/liability?

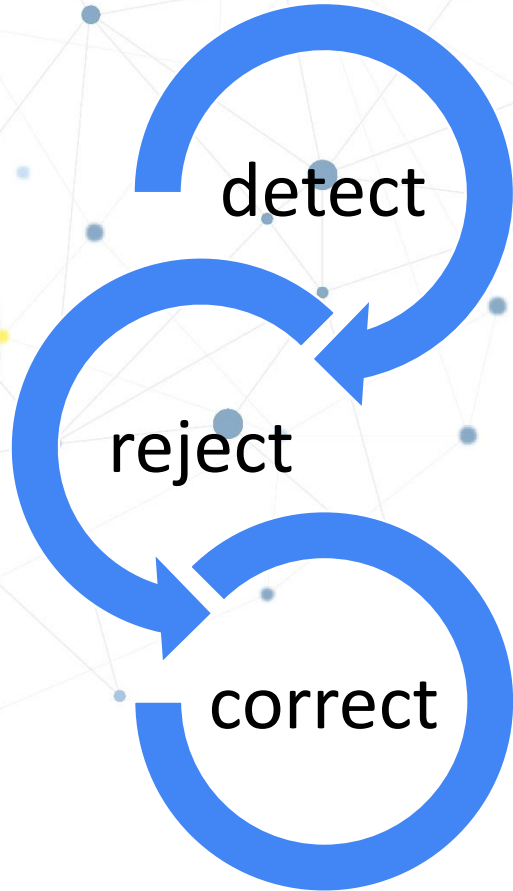
3. Challenging the declared customs value (1/2)

Customs value is a key element of the customs declaration with direct financial consequences but few customs « safeguards » compared to classification or origin

- **Combine customs and trade/financial aspects**
 - **Issue of access to data**
 - **Time-consuming**

Specific concerns as regards e-commerce:
high number of transactions, low values, natural persons (B2C),
data availability and quality...

3. Challenging the declared customs value (2/2)



Risk analysis
Random checks
Operations
Pre-clearance/Post-clearance

Reason to reject
Burden of the proof
Right of defense
CJEU *EURO 2004*

Back to customs valuation rules, including fall back method
(data available)
Right of defense
Final economic operator liable

Various situations:

Importer disappears / missing trader
No reliable documents are provided/found
Importer challenges customs authorities' findings

4. Role of OLAF

OLAF-JRC method to detect possible undervalued import:
Automated Monitoring Tool (AMT)

Knowledge sharing:
AM communication, meetings with Member States

Operational support and cooperation:
Joint Customs Operations (JCO)
See ARGUS (2009), SNAKE (2014) and OCTOPUS (2016)

Investigations



THANK YOU!