

CUSTOMS VALUATION IN AN ANTI-FRAUD PERSPECTIVE

What are the challenges to establish an efficient methodology?

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1.1 Reasonable doubt

✓ Why is the customs declaration questioned?

Euro 2004 – C-291/15 – the declared transaction value is considered to be unreasonably low in comparison with the statistical average

✓ OLAF obtains additional proofs, such as:

- Confirmation of the real values from the third country (e.g. China) and
- Check of transport costs (if appropriate), etc.

Therefore, to prove our cases, OLAF explores the possibility of **obtaining additional sources of evidence**, other than just using the tool/guide (AMT/Theseus).

1.2 Valuation rules

- **Identical goods** [Article 1 (4) of the UCC IA] means goods produced in **the same country** which are the same in all respects;
- **Similar goods** [Article 1 (14) of the UCC IA] means, goods produced in the same country, which, although not alike in all respects (...) are **commercially interchangeable**.
- The **deductive method** [Article 74 (2) (c) of the UCC and Article 142 UCC IA] assumes that the imported goods **have been sold in the customs territory** of the Union after importation to a person not related to the seller and, among other specific conditions, within 90 days of that importation.
- **Calculated method** [Article 142 UCC IA] – reference to the production cost



1.2 Valuation rules

Fall-back method

- A) Flexible application of the previous secondary methods (Article 144 (1) UCC IA)
- B) Use of other appropriate methods under Article 144 (2) UCC IA
 - List of requirements



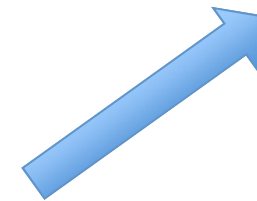
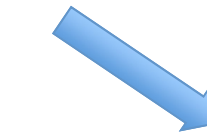
2.1 Challenges of the implementation at Member State level

Member States should not use automatically very low values as benchmark, therefore validating fraud



2.2 Interpretation of customs legislation - Issues

- 1) Very probable that the **lowest identified value in a data base is fraudulent or in the least erroneous**
- 2) The lowest identified value in a data base **is not fraudulent, but it is used as benchmark**
- 3) If the number of customs declarations available for a MS is very big, it is probable that the MS will have **more chances to find out a very low value to use as benchmark**



**VALIDATION
OF THE
FRAUD**



2.3 “Accepted values” as benchmark

The accepted declaration is included in the database of the Member State, but this does not mean that the value has been checked and approved by the customs authorities.

Therefore:

- The accepted declaration might have a wrong (or fraudulent) value.
- It would be inconsistent to use it automatically as a reliable benchmark.



2.4 C-187/21 Fawkes

This principle should be applicable:

Customs authorities may disregard customs declarations that cast the SAME reasonable doubts on the value declared.

How?

The effort requested to Member States to identify the benchmark should not be **unreasonable**.



2.5 Summary

Interpretation in light of the legal principles **equal treatment** of economic operators and prevention of **abuse of law**.

Evaluation of the **real economic value** of imported goods



3. Operational issues – Identifying the method (selecting the benchmark)

Feedback received by OLAF from Member States

- 1) There **is not a sufficient number of customs declarations**. Especially for Member States of small dimensions.
- 2) **Most of the customs declarations are suspected to be fraudulent.** MS should not choose the lowest value and validate the fraud.
- 3) There are **too many customs declarations**. MS should not choose the lowest value and validate the fraud.



3. Operational issues - disclosure of the AMT/Theseus methodology

Feedback received by OLAF from Member States

- 1) Request to OLAF to validate the use of AMT/Theseus: check that CN code, origin, etc.. was correct;
- 2) Full disclosure of methodology: data used are public (**COMEXT database**). The **statistical methodology** is in internet



4. Example of systemic fraud from OLAF's operational work

Most of the customs declarations are suspected to be fraudulent.

Should MS choose the lowest value and validate the fraud?

4. Case study presentation

- Importations of handbags - one specific customs code;
- In a central European Member State;
- Origin P. R. China;
- Customs duty: 9.7%
- Reassessment of the value can take place at clearance or post-clearance phase



4.1. Detection of the systemic fraud – Economic operators

- The table below lists the top 11 economic operators based on the total net weight imported in the Member State, during the two years under consideration;
- **These 11 operators cover more than 95 % of the total importations in the Member State under the two years considered by the investigation;**
- The European estimated fair price in the period concerned is around EUR 10/kg;
- In the course of the investigation, during OLAF on-the-spot checks, it was found that 5 operators were missing traders;
- Only operator No 10 is a well-established company with good reputation;
- The 10 operators highlighted in red imported goods at very low prices: **"Value per kg in Euro" is very low, normally 10/15% of the European estimated fair price.**

Net Weight in Kg	Statistical value in Euro	Economic operators	Value per kg in Euro	On the spot check
6,454,460	5,186,127	Operator 1	0.89	x
6,368,609	9,067,509	Operator 2	1.46	x
2,766,944	2,074,076	Operator 3	0.86	x
240,351	231,351	Operator 4	1.13	
188,269	277,978	Operator 5	1.59	
136,173	211,263	Operator 6	2.23	
129,421	127,680	Operator 7	1.04	
122,753	170,064	Operator 8	1.52	
78,777	185,345	Operator 9	3.26	x
72,704	418,881	Operator 10	6.21	
67,170	85,508	Operator 11	1.71	x

4.1. Analysis of the systemic fraud - AMT – General view Dec 2016-Nov 2018

- The EU average price is represented by the green line, equal to around EUR 10/Kg;
- Undervalued imports and outliers are represented by the dots. They are registered at a price that is around EUR 1/Kg.

Conclusions:

- The Member State is subject to a massive undervaluation fraud;
- Data contained in the national databases are affected by undervaluation.



4.2. Example of handling a suspicious customs declaration

- National authorities have **reasonable doubt**, so they select the customs declaration for reassessment

The selected customs declaration is highlighted in **pink in the next slide**.

Declared value = 0.72 Euro/kg

Issued on 18 December 2018

Net mass = 9.818 kg

- What should MS do to find a similar declaration?

Filtering criteria of customs declarations in the national database:

- 1) net mass between 8.000 and 12.000 kg
- 2) customs declarations between October 2018 and February 2019

- How the similar declaration should be selected if the possible choices are too few or too many? On the basis of which tool?

Based on the above filtering criteria, **there are 291 accepted customs declarations**. MS have the obligation to protect the financial interest of the EU budget and uphold the principles of the single market.

4.2. Difficulties for the national administration

- Reassessment of the declaration (highlighted in pink) declared value 0.72 Euro/kg
- Only **one** declaration in the database reflects the normal economic value of the goods (highlighted in orange) declared value 9.82 Euro/kg;
- 290 out of 291 declarations pre-filtered are declared for less than 3 Euro/kg – **if any of these declarations is used, the outcome will be the validation of the fraud**

Reference_ID number	DATE	TARIC	NET MAS	ORIGIN	Statistical value Euro	Statistical value/net mas	IMPORTER	EXPORTER	CONTAINER NUMBER
922050242018E07839	2018.12.17	4202221000	8,915	CN	13,613	1.53	Operator 1	Exporter 228	MAEU9184333
922050242018E07817	2018.12.17	4202221000	8,787	CN	18,654	2.12	Operator 2	Exporter 228	MSKU4548209
101000242018E11694	2018.12.18	4202221000	9,818	CN	7,045	0.72	Operator 2	Exporter 228	MAEU9191878
922050242018E07853	2018.12.18	4202221000	10,664	CN	29,658	2.78	Operator 15	Exporter 217	MAEU9201600
922050242018E07845	2018.12.18	4202221000	10,426	CN	18,520	1.78	Operator 2	Exporter 217	MSKU4532080
101280242018E31444	2018.12.18	4202221000	8,760	CN	18,195	2.08	Operator 9	Exporter 214	ECMU9807182
922050242018E07893	2018.12.19	4202221000	11,599	CN	15,045	1.30	Operator 2	Exporter 228	MSKU4671297
922050242018E07899	2018.12.19	4202221000	10,741	CN	16,145	1.50	Operator 1	Exporter 228	MSKU4626718
922050242018E07917	2018.12.20	4202221000	9,883	CN	15,483	1.57	Operator 17	Exporter 217	MSKU4659938
922050242018E07941	2018.12.20	4202221000	9,857	CN	13,015	1.32	Operator 2	Exporter 217	MSKU4739870
922050242018E07999	2018.12.27	4202221000	10,049	CN	98,690	9.82	Operator 31	Exporter 228	MIEU4501792
922050242018E08011	2018.12.28	4202221000	10,479	CN	17,555	1.68	Operator 2	Exporter 228	MSKU4738770
922050242018E08006	2018.12.28	4202221000	9,780	CN	16,820	1.72	Operator 3	Exporter 228	MSKU4709026
922050242019E00335	2019.01.10	4202221000	8,123	CN	14,765	1.82	Operator 2	Exporter 228	MSKU4595495
922050242019E00396	2019.01.11	4202221000	10,614	CN	19,384	1.83	Operator 1	Exporter 229	PONU3065253
922050242019E00388	2019.01.11	4202221000	10,504	CN	16,715	1.59	Operator 2	Exporter 229	MSKU4672122
922050242019E00384	2019.01.11	4202221000	10,434	CN	13,998	1.34	Operator 13	Exporter 228	MSKU4540548
922050242019E00382	2019.01.11	4202221000	8,481	CN	12,516	1.48	Operator 2	Exporter 228	MSKU4727858
922050242019E00427	2019.01.14	4202221000	10,962	CN	19,167	1.75	Operator 15	Exporter 228	MSKU4691375
922050242019E00430	2019.01.14	4202221000	9,788	CN	15,715	1.61	Operator 3	Exporter 228	MAEU9206406



4.3 Observations - This is a case of systemic fraud

- Around 95% of the total amount imported in the Member State is declared below the fair price;
- The national database reflects the fraudulently low values;
- The chances to select one of those declarations as benchmark are very high;
- If MS select one of those declarations it validates the fraud.



5. Examples of practical implementation at MS level

- ✓ When analysing data base, Member States **set up methodologies to exclude wrong values, errors or outliers.** Such values cannot be used as benchmark.
- ✓ Very often **MS use average prices** to avoid the risk of validating frauds.



6. Conclusion

- OLAF/JRC methodology
- MS methodologies
- This presentation illustrated a case of systemic and systematic undervaluation fraud:
 - ▶ Necessity to take into consideration **abuse of low and equal treatment.**