

# Risks of undervaluation in e-commerce

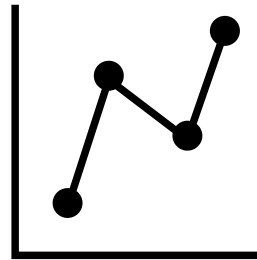
# Definition



## Definition

- **e-commerce** (*electronic commerce*) refers to electronic business transactions, whereby the purchase and sale of goods or services takes place via electronic connections (in particular the internet).
- Thanks to technical automation, purchase processes can be carried out almost without any delay
- A comprehensive exchange of information takes place between a customer and a provider in advance
- This includes both B2B and B2C constellations

# Numbers and statistics



## Numbers and statistics - Worldwide

- Revenue in the e-commerce market will amount to around EUR 3.4 trillion in 2022.
  - China and the USA are the countries with the highest sales in the field of e-commerce.
  - The area with the most sales is fashion
- According to the forecast, a market volume of EUR 4.5 trillion will be reached in 2025
  - This corresponds to an expected annual sales growth of 9.97%

Source: <https://de.statista.com>

## Numbers and statistics - Europe

- Revenue in the B2C e-commerce market in Europe amounted to EUR 757 billion in 2020.
- Before BREXIT, the UK was the EU Member State with the largest share of online shoppers. Germany was in second place.
- Ireland is the country with the largest share of total corporate e-commerce sales

Source: <https://de.statista.com>

## Numbers and statistics - Germany

- In Germany, gross sales of goods in e-commerce increased to EUR 99.1 billion in 2021 (19% growth compared to the previous year)

→ The corona pandemic has also contributed to an increase.

- Since the beginning of the pandemic, it has no longer been the case that e-commerce is mainly used by younger people. Buyers over the age of 50 are again responsible for at least half of all purchases on the Internet.

*Source: [www.bevh.de](http://www.bevh.de)*

# Customs regulations for e-commerce



## Customs regulations for e-commerce

- European customs law does not contain any direct specifications for handling e-commerce shipments.
- the normal customs regulations for cross-border goods traffic apply

# Risk of undervaluation



## Risk of undervaluation

- Normally, the buyer and seller must cooperate in a prohibited undervaluation
  - The seller creates an incorrect invoice with an insufficient value
  - The buyer uses the wrong invoice when declaring the customs value
- In the area of e-commerce, this cooperation is often not required. As a result, the risk of an undervaluation is significantly higher.

## Risk of undervaluation

- In e-commerce, DDP is the most common delivery condition (Incoterm)
  - Incoterm DDP: Delivered Duty Paid
  - This corresponds to the idea of a simple purchase without much effort for the buyer.
- In the B2C area, the Incoterm DDP is almost always used
- The criminal energy of the seller is therefore sufficient for undervaluation. It doesn't depend on the cooperation of the buyer.

## Risk of undervaluation

- The extremely high number of import shipments makes it difficult to identify those that are declared with too low customs values.
- In 2020, 79.9 million customs declarations for release for free circulation were registered in Germany. Source: Annual statistics of the Federal Ministry of Finance 2020
- Compared to 2018, the number of import declarations has increased. The value of the declared goods has decreased overall.  
→ This development can be attributed to the increase in the proportion of e-commerce shipments

## Risk of undervaluation

- The supply chains in the e-commerce business often consist of many small traders. Frequently changing business relationships are common in the e-commerce industry.
- Many companies only operate on the market for a short time. In the event of countermeasures by the customs authorities, the business is often continued under other legal companies.

# Risk of undervaluation

## Summary:

- The inhibition threshold for an illegal undervaluation seems to be lower in the area of e-commerce, since cooperation between two parties is often not required here. The decision to violate European customs law is usually made exclusively in the third country.
- The risk of detection is still very low due to the volume of import shipments and the large number of new consignors in third countries.

# Combating illegal undervaluation

Combat approaches using the  
example of the German customs  
administration





## Combating illegal undervaluation – from a German perspective

- In Germany, the Customs Criminological Office (Zollkriminalamt – ZKA) is responsible for risk analysis of the customs value.
  - This also includes the prevention of undervaluation in customs declarations.
- Risk profile (reference values) - Customs control based on average prices
  - The risk analysis center of the German customs administration (ZKA) determines average import prices for each product group (see Art. 46 UCC).
  - If there are significant deviations below, proof of payment will be requested.
  - These average prices have already been confirmed by German courts.

# Combating illegal undervaluation – from a German perspective

## Problematic with this approach:

- Until July 2021, no electronic customs declarations were submitted for many e-commerce shipments.
  - As a result, many of these shipments were not checked by the risk analysis.
  - This gap has now been closed by adapting the tax laws (import VAT) and abolishing the exemption limit (EUR 22).
  
- The determination of average prices doesn't work well for all goods.
  - In the "Textiles" sector, meaningful average prices (price per kilo) can be determined due to the high import volume.
  - An average price is often not meaningful for technical products due to the considerable qualitative differences (e.g. cars, watches, machine tools).

## Combating illegal undervaluation

- The German customs administration works together with the large logistics service providers to combat undervaluation.
  - Consignors who have been shown to have sent undervalued shipments will be blacklisted.
  - This makes future checks easier.
  - The logistics companies block such consignors for future shipments.

# Combating illegal undervaluation

## Problematic with this approach:

- There is a lack of clear legal basis for such cooperation between customs authorities and logistics service providers.
- There is no legal basis for import bans due to undervaluation. The customs law provides for an assessment of the individual case.
- The blacklist-approach acts like a covert import ban due to the civil refusal of a contract
- Since it isn't a matter of public law, the legal protection options for the consignors are also limited.



**There is still a lot to discuss....**

**Thank you for your attention!**