



WORLD CUSTOMS ORGANIZATION

PRACTICAL GUIDELINES FOR VALUATION CONTROL



RP

Revenue Package

JUNE 2015

TABLE OF CONTENTS

1. INTRODUCTION	4
2. VALUATION POLICY & LEGISLATION	6
A. WTO OBLIGATIONS AND LEGAL FRAMEWORK	6
B. ESTABLISHING NATIONAL/REGIONAL VALUATION POLICY	8
C. ENGAGEMENT WITH TECHNICAL COMMITTEE ON CUSTOMS VALUATION.....	8
3. MANAGING VALUATION RISK.....	10
A. RISK PROFILING.....	10
B. IMPORTANCE OF TRADE STATISTICS	10
C. IMPORTER PROFILES AND TRADE SEGMENTATION	11
D. DEVELOPMENT AND USE OF A VALUATION DATABASE AS A RISK ASSESSMENT TOOL.....	12
<i>Introduction.....</i>	12
<i>Understanding commercial pricing practices.....</i>	13
<i>Caveats and limitations to use of a valuation database.....</i>	15
<i>Sources of price data.....</i>	16
<i>Input and storage of data.....</i>	17
<i>Protection and availability of data.....</i>	18
<i>Use of price data as a risk management tool</i>	18
<i>Safeguards against misapplication of database</i>	19
<i>Other means of using price data for risk analysis purposes</i>	19
4. DEVELOPING AN EFFECTIVE VALUATION CONTROL PROGRAMME	21
A. PRE-CLEARANCE STAGE	21
<i>Advance rulings.....</i>	21
B. BALANCING FRONTIER AND POST-IMPORTATION CHECKS	24
C. PROCEDURE TO FOLLOW WHEN DOUBTS EXIST REGARDING THE TRUTH OR ACCURACY OF THE DECLARED VALUE: WTO DECISION 6.1	29
D. FACILITATION OF COMPLIANT TRADE/IMPROVING COMPLIANCE.....	32
<i>Promoting self-assessment; working with importers and brokers</i>	32
E. OPTIONS FOR EXCHANGE OF CUSTOMS VALUATION INFORMATION	32
5. KEY CHALLENGES.....	35
A. INFORMAL TRADE SECTOR.....	35
B. SECOND-HAND GOODS/USED MOTOR VEHICLES.....	38
C. PRE-SHIPMENT INSPECTION (PSI)	41
D. MULTINATIONAL ENTERPRISES: KEY VALUATION ISSUES	44
E. FIGHTING VALUATION FRAUD	46
6. SUMMARY	49
ANNEX I: VALUATION TOOLS AND INSTRUMENTS.....	51
ANNEX II: EXAMPLE OF USED VEHICLE DECLARATION FORM	58
ANNEX III: EXAMPLE OF SIMPLIFIED CUSTOMS DECLARATION.....	59
ANNEX IV: EXAMPLE OF LAW REGARDING CUSTOMS POWERS AND PENALTY MEASURES.....	60
ANNEX V: EXTRACT FROM THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION'S GUIDE TO THE EXCHANGE OF CUSTOMS VALUATION INFORMATION	61
ANNEX VI: REFERENCES AND ACKNOWLEDGEMENTS	63
ANNEX VII: ICC BACKGROUND NOTE ON COMMERCIAL PRICING PRACTICES.....	64

SUPPLEMENTARY DOCUMENTS

Valuation Control Programme - Case Studies

- Brazil
- India
- Mauritius

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1. INTRODUCTION

One of the biggest challenges facing many Customs administrations today is the control of declared Customs values and tackling suspected undervaluation.

Given that the majority of duty rates worldwide are ad valorem (i.e. based on a percentage of the value of the goods), accurate determination of Customs value is critical for ensuring governments are collecting all revenues that are legally due.

For the determination of Customs value, most countries apply the principles of the World Trade Organization (WTO) Customs Valuation Agreement¹ ("[the Agreement](#)"). This document is based on Article VII of GATT 1994. For WTO member countries, application of the Agreement is an obligation of membership.

The key principle of Article VII is that the Customs value of imported goods should be based on the actual value of the imported goods wherever possible, or, where this is not attainable, a value which is as close as possible to the actual value. This principle is the foundation of the valuation methodology as laid out in the Agreement.

Most countries acceded to the [WTO](#) between 1995 and 2000. However, over 10 to 15 years later, many of those countries continue to face problems and challenges in applying the Agreement in practice. The Commission for Africa Report (March 2005) stated: "*The WTO Agreement on Customs Valuation (including border Customs reform), although signed by many countries was never implemented in the spirit of the agreement. It is estimated to cost countries between USD 1.6 million and USD 16.2 million to implement.*"

At the time of accession, new WTO members have the option of requesting derogations from certain provisions in the Agreement (such as a five-year delay for developing countries to implement the Agreement and limited retention of minimum prices for key products). However, most countries have now used the derogations available to them, so this is no longer an option for them.

These problems and challenges have been highlighted in a series of regional workshops conducted by the WCO Secretariat in 2009 and 2010, in the context of the WCO's [Revenue Package](#) programme, which aims to assist Members in improving fair and efficient revenue collection.

These guidelines have been developed in response to Members' concerns expressed in the course of those workshops and other fora.

The challenges - which are not unique to developing countries - are primarily caused by a significant trading culture characterized by a high perceived incidence of fraud, cash-based transactions and poor, or non-existent, recordkeeping.

Under the Agreement, the prime method of valuation is the transaction value method which should be used "...to the greatest extent possible." (Advisory Opinion 1.1). The vast majority of international trade is based on a sale between a buyer and seller, leading to an exportation of goods to the country of importation. In such cases it should be possible to establish a transaction value under Articles 1 and 8 of the Agreement. A number of countries have reported that around 90 – 95% of all importations are valued on the basis of

¹ Formally known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994



a transaction value. Only in the small percentage of cases where no sale has taken place - or where the declared transaction value has been found to be unacceptable under Article 1 - will another valuation method need to be considered.

A key objective for Customs administrations, therefore, should be to develop an effective approach to controlling and verifying declared transaction values, whilst facilitating compliant trade.

Notes:

1. It is important that the practical steps proposed in these guidelines are considered and implemented in the context of ongoing Customs modernization and capacity building initiatives, such as the Columbus programme.
2. These guidelines are designed to supplement existing material. They do not seek to provide comprehensive technical advice on all valuation matters; such assistance can be obtained from the texts of the [WCO Valuation Compendium](#) and other material listed in [Annex I](#). Members may also consider submitting technical questions to the Technical Committee on Customs Valuation (TCCV), or request technical advice from the [WCO Secretariat, Valuation Sub-Directorate, Tariff and Trade Affairs Directorate](#).
3. Three case studies have been produced detailing the national valuation control programmes in Brazil, India and Mauritius in order to provide examples of current practices which may be considered by Members.

2. VALUATION POLICY & LEGISLATION

a. WTO obligations and legal framework

Accession to the WTO requires a country to adopt a package of measures and obligations. Among these obligations is the requirement to implement and apply the WTO Valuation Agreement for imported goods subject to ad valorem Customs duties. The WTO has over 150 [members](#). Additionally many non-WTO members choose to apply the Agreement, particularly those actively seeking WTO accession. So the vast majority of international trade is subject to the application of the Agreement for the valuation of imported goods.

The Agreement establishes a Committee on Customs Valuation (CCV) which meets around twice a year in Geneva and gives WTO members the opportunity to consult on matters relating to the administration of the Customs valuation system operated by any of its members.

Article 22 of the Agreement requires each WTO member to ensure its laws, regulations and administrative procedures are in conformity with the provisions of the Agreement and to advise the WTO of any subsequent relevant legislative changes.

In addition to the legislation required to give effect to the Agreement, it is essential that a legal base is created which equips Customs to conduct effective controls, both at the border and in the post-importation environment. More information can be found in the box below and the WCO Guidelines for Post-Clearance Audit (Volume 1).

Extract from TCCV response to WTO mandate.²

- *A supporting legislative framework that facilitates truthful and accurate value declarations*

21. Such a legislative compliance framework should (1) require importers to provide accurate and truthful Customs value declarations; (2) shift the onus for such declarations onto the importer, including importer self assessment obligations; and, (3) require the importer to maintain books, records and supporting documents and allow Customs to access them.

- *A comprehensive sanctions regime to address non-compliance and support voluntary compliance*

22. This should include (1) legislative penalty and enforcement provisions that deal with non-compliance based on the severity of non-compliance; (2) provisions to waive or reduce penalties where the importer brings mistakes or violations to the attention of Customs and voluntarily corrects them; and (3) provisions that discourage undervaluation, such as giving the government the right to purchase goods at the declared value or providing benefits to compliant importers (e.g., reduced inspections).

- *A legal framework that provides the right of appeal to the importer*

² Response by the TCCV to a mandate from the WTO in connection with Doha Ministerial Decision 8.3. Full response available in WTO Doc. G/VAL/54 and Annex D to TCCV Doc. VT0328E3. The Terms of Reference were set out in WTO Doc. G/VAL/51. Decision 8.3 underlines the importance of strengthening co-operation between Member Customs administrations in the prevention of Customs fraud. The TCCV's full response can be found in WTO Doc. G/VAL/54 and Annex D to TCCV Doc. VT0328E3 .

23. In line with Article 11 of the Valuation Agreement, an appeals mechanism which provides the right of appeal to the importer, including the final right of appeal to a judicial authority, will help to ensure transparency and fairness regarding the determination of the Customs value and fosters uniform and consistent valuation practices within the Customs administration.

[Annex IV](#) contains an example based on legislation applicable in Italy relating to commercial operators' responsibilities to provide valuation related data and associated penalties for non-compliance.

WTO Dispute Settlements

The [WTO Dispute Settlement](#) procedure provides a framework for a WTO member government to request consultations when they consider another member is violating a particular WTO agreement. The complaining member should submit a "request for consultations" identifying the agreement(s) it believes are being violated. A panel of experts is appointed to examine the facts and report accordingly. Two dispute cases concerning Customs valuation have been concluded which demonstrate the implications of not respecting the rules and methodology of the Agreement and it is recommended that members be aware of these cases:

Colombia – Indicative prices and restrictions on ports of entry ([DS366](#))

Background: On July 12, 2007, Panama requested consultations with Colombia on:

- (i) Use of indicative prices applicable to specific goods
- (ii) Restrictions on ports of entry for certain goods

Allegations: Panama alleged that:

- Colombia requires importers of specific goods to pay Customs duties & other duties and charges based on indicative prices, rather than on WTO Valuation methods.

Panel conclusions:

- Colombia acted inconsistently with the provisions of the Agreement which has nullified and impaired benefits which should accrue to Panama.
- It was recommended that Colombia bring its measures into conformity with the Agreement.

At the Dispute Settlement Body (DSB) meeting on June 19, 2009, Colombia informed the DSB of its intention to comply and that it needed a reasonable period of time to comply with the DSB recommendations. At the DSB meeting on February 18, 2010, Colombia said that it had undertaken measures to comply with the DSB recommendations and rulings well in advance of the expiration of the reasonable period of time.

Thailand – Customs and fiscal measures on cigarettes from the Philippines (DS371)

Background: On February 7, 2008, the Philippines requested consultations with Thailand concerning a number of fiscal and Customs measures affecting imports of cigarettes from the Philippines.

Allegations: The Philippines alleged that Thailand improperly rejected the transaction value, violating Art 1.1 and 1.2 (a) by failing to examine the circumstances of the related party transaction, and by failing to respect the sequential order of valuation methods

The Philippines further argued that Thai Customs had:

- applied the deductive method inconsistently with Articles 5 and 7 of the Agreement
- violated procedural obligations under Articles 10 (treatment of confidential information) and 16 (Customs to provide an explanation for the final determination of the Customs value)

In response, Thailand stated that:

- the burden of establishing that the relationship did not influence the price was on the importer
- they had acted consistently as the importer failed to provide sufficient information to prove that the relationship did not influence the price

Panel conclusions:

- Thai Customs explanation was insufficient to reject the importer's declared transaction value and to determine a different Customs value
- Thai Customs had not deducted all relevant expenses in accordance with Article 5 of the Agreement, and
- had not consulted the importer for any further relevant information, as required under Article 7.3 of the Agreement, and
- had failed to examine the circumstances of sale (Article 1.2 (a))

On August 11, 2011, Thailand informed the DSB that it intends to implement the recommendations and rulings of the DSB in a manner that respects its WTO obligations.

b. Establishing national/regional valuation policy

The Agreement sets out a clear framework and methodology for determination of Customs value. The texts of the TCCV supplement the Agreement and provide useful guidance on a number of technical issues. However, many valuation scenarios arise which are not directly answered in the Agreement itself or its supporting instruments and therefore require an interpretation of the relevant provisions. Administrations therefore should develop policy at the national or sub-regional level on the key issues which arise.

It is also important that arrangements are in place to communicate important decisions based on national policy and guidance to the appropriate staff, for example via a Customs' intranet.

c. Engagement with Technical Committee on Customs Valuation

The TCCV is established in the Agreement and is the body responsible for ensuring, at the technical level, uniformity in interpretation and application of the Agreement. Its responsibilities include, inter alia, the examination of specific technical problems arising in the day-to-day administration of Customs valuation and to provide information and advice on any matters concerning the valuation of imported goods for Customs purposes as may be requested by a WTO member. The TCCV also has an obligation to facilitate technical

assistance to members. The Committee, which meets twice a year in Brussels, reports its work to both the WTO Committee on Customs Valuation and the WCO Council. The WCO Secretariat manages the work of the TCCV, which includes the preparation of working documents, presenting reports and proposals, facilitating the course of the meeting and preparing a draft report.

All WTO member countries are entitled to be represented on the TCCV and participate in the sessions. WCO Members who are not members of the WTO may be represented at TCCV meetings as observers. Participation in the Committee can be highly beneficial to an administration as it gives the opportunity to pose technical questions, listen to arguments and contribute to discussions.

It is recommended that the section responsible for Customs valuation policy monitors current discussions by accessing current TCCV documents, made available via the WCO Members' website. Technical questions and comments may also be submitted to the TCCV for discussion. This will help an administration in the development of its own policy and help to ensure greater consistency in international practices. Members may contact the [WCO Secretariat, Valuation Sub-Directorate, Tariff and Trade Affairs Directorate](#) for assistance and advice regarding the TCCV and for general advice on technical valuation issues.

Section 5 d) [Multinational enterprises: key valuation issues](#), gives information on some of the key issues currently under discussion at the TCCV.

3. MANAGING VALUATION RISK

a. Risk profiling

A comprehensive and dynamic risk management system is the cornerstone to effective valuation control. Many factors may be taken into account when developing a risk programme.

For Customs valuation controls, and other Customs controls, the main focus of risk management should be the profiling of commercial operators, particularly importers.

A business's past compliance record is the key indicator to future risks.

Other factors are also important as mentioned below, however, ultimately, it is the importer and declarant who decide whether or not they will provide accurate and truthful information via a Customs declaration.

Customs should develop the confidence to conclude that certain operators pose a lower risk, based on a proven good compliance record. These operators warrant a lower level of interventions – namely, fewer documentary and physical checks at the frontier and post-importation. Customs can then direct their resources to the higher risk operators where there is a greater likelihood of discovering errors and possible fraud and underpaid revenue, which is more productive for an administration and helps facilitate the compliant trade.

A process of continued review of compliance levels is required to enable a reevaluation of risk where necessary.

WCO Risk Management Compendium

Further detailed information on risk management can be found in the [WCO Risk Management Compendium](#). Note in particular section 2.2 [Standardized Risk Assessments, Model Risk Indicators/Profiles](#) which contains risk indicators on revenue protection topics, including valuation.

b. Importance of trade statistics

A knowledge of national trade trends is essential for understanding and identifying potential revenue risk areas. An analysis of aggregate import statistics can provide a broad picture of trade levels indicating, for example, which goods are imported in the greatest volumes, the main countries of dispatch/origin and the major importers.

When coupled with information of the relevant duty rates for particular products, this can reveal the major sources of revenue and hence possible risk areas. Note that it is not the case that large trade volumes and high duty rates necessarily indicate high risk in their own right; a large duty payer may be highly compliant for example, but these are important criteria to take into account in determining whether it would be a good investment of Customs' resources to examine further.

Customs entry processing systems can be used as the prime source of trade statistics and can be searched by tariff heading, country of origin and importer name, within a particular date range.

c. Importer profiles and trade segmentation

It is strongly recommended that importer profiles are developed which record historic compliance records and other relevant data on the business in question. This should include details of previous irregularities, under-declarations, penalties imposed, etc., as well as information on trade volumes and nature of the business. Risk ratings can then be allocated to each importer accordingly.

An important consideration when managing risk is to bear in mind that it is not efficient for Customs to invest disproportionate resources in controlling smaller operations where the potential revenue at risk is low, even though the risk of irregularities may be high. It is often the case, for example, that a small number of operators are importing a large percentage of the trade.

Some administrations are developing the concept of trade segmentation as an important element of their risk programme. This is based on assessing the size of importers in terms of trade volume, by value, which helps to determine the possible revenue risk and optimum type of control. The following tables show information provided by the Zambian Revenue Authority which uses this approach.

TABLE 1

Importer Category	Annual Customs Value (Zambian Kwacha - billions)	% of total value	Number of companies	% of total number
Large	> 70	89.6%	322	1.6
Medium	> 10 < 70	6.8%	790	3.0
Small	< 10	3.6%	23,044	95.4

TABLE 2

Importer Category	Risk	Treatment Strategy
Large	<ol style="list-style-type: none"> 1. Systemic errors 2. Transfer pricing 	<ol style="list-style-type: none"> 1. Audit-based control 2. Customs to Business Partnership 3. Client education on identified weakness (informed compliance)
Medium	<ol style="list-style-type: none"> 1. Limited/poor systems and internal controls 2. Poor recordkeeping 3. No TPIN* 	<ol style="list-style-type: none"> 1. Audit-based control 2. Pre-entry risk-based control 3. Client education on identified weakness (informed compliance) 4. Agent focus and control 5. TPIN* registration
Small	<ol style="list-style-type: none"> 1. No fixed trading address/location 2. No TPIN* 3. Non-existence of internal controls 4. Poor recordkeeping 	<ol style="list-style-type: none"> 1. TPIN* registration 2. Pre-entry risk-based control 3. Client education (informed compliance) 4. Agent focus and control

*TPIN= Tax payer identification number

**CACP = Customs Accredited Clients Program (AEO)

Table 1 demonstrates that although small importers represent over 95% of all importers, they are responsible for only 3.6% of the value of all imports.

Table 2 describes the varying risks of large, medium and small traders and allocates appropriate treatment and controls, based on those risks.

A number of administrations have set up teams devoted solely to the control of a specified group of large businesses (known as Large Business Teams or Units). This allows Customs to develop a deeper knowledge of those operators and enables risk to be evaluated more accurately and compliance to be improved more effectively. This concept has been extended further by some revenue authorities to facilitate the control of all tax and duty matters by one team.

d. Development and use of a valuation database as a risk assessment tool

Introduction

Many administrations have developed, or are considering the development, of a valuation database as a means to identify potential undervaluations of imported goods. This is a sensitive area and the development and application of a database must be carefully managed.

As a starting point, it is important to note that a valuation database is not an essential component of a valuation control programme for all administrations; many have developed programmes which rely predominantly on post-clearance controls. In the post-importation environment it is possible to conduct verifications based on an inspection of the importers'

books and records, documentation which is not available at the time of importation. The objective is to ensure that the importer is complying with Customs requirements and in particular that the Customs value as declared has been determined correctly in accordance with the Agreement. In most cases, this will be a transaction value based on the price actually paid or payable as defined in Article 1 of the Agreement, adjusted in accordance with Article 8. In respect of the price actually paid or payable, the question to be asked is whether the importer did indeed pay that price for that particular consignment; is it supported by the sales contract, as negotiated between the buyer and seller in that particular case? Is it supported by financial statements, bank transactions, etc.? In such circumstances, it is not essential to have knowledge of average or comparable prices for the goods being imported. As a general rule of thumb, the more that Customs can conduct effective post-clearance controls, the less necessity there is for a valuation database.

Having said this, it is recognized that a considerable amount of international trade, particularly in developing countries, is not well supported by reliable documentary evidence, in particular, the informal trade as described in Section 5 a), [Informal trade sector](#), where recordkeeping is poor or non-existent and transactions are often cash-based. In these cases, post-import controls will be ineffective and a valuation database can play a useful role, as a risk assessment tool, to identify cases where declared prices differ significantly from current prices for the same goods as those being imported. Other risk indicators, in particular importer profiling, should also be taken into account as referred to in Section 3: [Managing Valuation Risk](#).

The first point of reference for an administration considering development of a valuation database should be the TCCV's [Guidelines on the Development and Use of a National Valuation Database as a Risk Assessment Tool](#) which sets out the considerations to be taken into account when establishing and applying a valuation database.

Research has been undertaken by the WCO Secretariat into current examples of valuation databases maintained by Members and the following good practices are provided to supplement the TCCV Guidelines:

Understanding commercial pricing practices

One indicator in assessing the level of risk may be a significant variation between the declared Customs value of an imported good and prices for comparable goods. However, a fundamental consideration when using a valuation database is to bear in mind that there are many legitimate business reasons why prices for the same goods may vary. Note in particular this instrument of the TCCV:

Advisory Opinion 2.1 of the TCCV
Acceptability of a price below prevailing market prices for identical goods

- *The question has been asked whether a price lower than prevailing market prices for identical goods can be accepted for the purposes of Article 1 of the Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994*
- *The Committee considered this question and concluded that 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, subject of course to the provisions of Article 17 of the Agreement.*

So, a declared value which seems suspiciously low, based on a comparison to other prices, may still be genuine. These are some examples:

- Where parties are unrelated, a price is normally freely negotiated between buyer and seller, each trying to strike the best deal for them. The final contracted price will depend on the marketing conditions of the goods in question (e.g. supply and demand) and the negotiating skills of each party;
- Prices may be volatile for the product in question and subject to change within a short time frame so large price fluctuations may be normal;
- Unit prices are typically lower when larger quantities are purchased;
- New products may be sold at low prices for a limited period in order to attract customers or establish a market in a particular territory;
- Prices can go down over time for some products. This occurs for example in the consumer electronics industry; as the price of manufacturing components such as integrated circuits decreases and demand for a new product increases then the price to the consumer can be reduced, (e.g. laptops and DVD or Blu-Ray players);
- End-of-line/stock clearance goods may be sold at very low prices, for example, fashion lines which are no longer popular, outdated models of electrical equipment and food products which are approaching their sell-by date. The seller makes the decision to sell the goods at low prices, which may even be less than he paid for them or lower than the cost of production, as otherwise he may not be able to sell them at all (see information on Case Study 12.1 in the box below);
- Other forms of discount may be offered for a variety of reasons, such as payment by cash or payment by a specified deadline.
- Further examples have been provided by the International Chamber of Commerce which are reproduced in the [Annex VII](#) to this document.

Such business strategies are commonplace in the course of legitimate trade. It is highly important therefore that Customs do not have a rigid view of “acceptable” prices for particular products and bear in mind the many reasons why an apparent low price may be genuine.

Case Study 12.1: Application of Article 1 of the Valuation Agreement for goods sold for export at prices below their cost of production

Extract:

1. Importer A in Country B buys high-quality components to be consumed within its manufacturing processes from Exporter S in Country T. Exporter S is a subsidiary of a multinational conglomerate selling to a specific industrial sector. There is no relationship between buyer and seller. All negotiations were concluded by Exporter S advising Importer A that agreed price levels can only be maintained while current stocks last. Exporter S has no position within Country B and sees this sale as an opportunity to break into this market. Successful market penetration would have considerable long-term benefits for the company and would serve as a platform for the introduction of the more profitable related companies from within their group. Price levels were influenced by this opportunity.

2. Global economic circumstances have forced Exporter S to sell stock items at prices that are on average 30% below its cost of production in order to generate cash flow. The components ordered by Importer A fall into this category. However, because of the marketing opportunity Exporter S has agreed to sell at prices 40% below its cost of production.

(....)

8. the mere fact that the price in this case is below the seller's cost of production and does not return a profit to the seller, is not sufficient grounds for rejection of the transaction value.

Notwithstanding that, where an unusually low Customs value is identified which cannot be easily explained as a legitimate business strategy, it is reasonable for Customs to take this into account as one indicator of a possible underdeclared value and seek further proof or explanation from the importer. Article 17 of the Agreement states that: *"Nothing in this Agreement shall be construed as restricting or calling into question the rights of Customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for Customs valuation purposes."* In such cases, the procedures of WTO Decision 6.1 should be followed for conducting enquiries. See [4 c\)](#) below for further information and examples.

Caveats and limitations to use of a valuation database

Limited data and resources

As a general rule, data is more reliable and useful where larger statistical samples are available. Where only a few importations have been made of a particular product the average price is less reliable as a benchmark than when it is based on a larger sample.

It is also highly resource intensive to maintain a valuation database for all products in the Customs Tariff. As a more practical solution, it is recommended that the database contains prices for selected high-risk trade sectors only. The range of goods included in the database can be modified as risks change.

See Section 5 b), [Second-hand goods/Used motor vehicles](#), for information on development of a database for this trade sector.

An administration may also conduct time-limited exercises on selected risk areas. For example, textiles may be selected for targeting for a period of, say six months. During that time, price data is collected and analyzed solely on textiles. At the end of the exercise, another high-risk target may be chosen and the focus can switch to another trade sector.

Lack of adequate descriptions

A common challenge is the poor level of detail available to describe the goods on the Customs declaration. The declaration should provide adequate information to confirm the classification of the imported goods. Prices, however, vary considerably for goods within a particular classification depending on brand, package size, quality and country of manufacture. Brokers and importers should be educated in the importance of providing detailed descriptions, marks and models etc. in the Customs declaration.

The manner in which the same goods are described can also differ, including the specific words used and the order of the words. Search criteria should take this into account in determining whether the descriptions refer to the same goods or not. See further information below relating to Input and storage of data.

Should information regarding database values be made publically available?

There is a potential risk if importers become aware of Customs' database prices, for example if they are made publically available. Normally, a trigger is set in the Customs entry processing system which requires further examination where the declared value is more than a particular percentage below the database price. The risk is that if commercial operators are aware of the parameters, they will have the opportunity to declare an undervalued price which falls just above the low threshold price to avoid detection.

Example: The database unit price for Product A is 100 USD. Customs as a rule investigate cases where the declared value is 20% below this price (80 USD). An importer pays 130 USD per unit for an import of the goods in question. He is aware of Customs' parameters for examining these goods (i.e. where the declared value is less than 80 USD unit price) and so underdeclares the Customs value at 90 USD in the knowledge that Customs are unlikely to examine this consignment.

If Customs apply a rigid parameter for all goods or a particular trade sector (e.g. a consignment will be examined where the declared price is X% below a previously determined average price), it is also possible that importers may over time identify Customs' practices and again manipulate prices to avoid examination. This underlines the need for Customs to take into account a broader range of risk indicators and not focus solely on comparisons to a database price.

Sources of price data

The prime source of data for a valuation database should be previously accepted Customs declarations. Such information is normally readily available via Customs clearance systems which store historic data and should indicate whether a particular consignment was verified and what valuation method was used, etc.

Useful information can also be obtained via recognized websites and Internet subscription services which provide data on certain internationally-traded commodities, such as metals and minerals. Details of some of these sites are available on the website of the [Central Board of Excise and Customs, India](#).

Prices can be obtained from other sources, for example, price lists available on the Internet. However, strong caveats apply to the use of data from sources other than previously

accepted Customs declarations or from recognized international commodities websites. General prices found on the Internet at best only provide a very rough indication of international prices. Prices vary greatly depending on the country of export, manufacture or import, quantity purchased, market conditions, etc.

It is therefore important that the source of all price data is recorded and identifiable to ensure the integrity of the database.

Input and storage of data

The type of software and hardware used for a valuation database is a matter for each administration. The system should facilitate the extraction of key data from the Customs clearance database on a periodic basis. The more frequent the transfer of data takes place, the more up to date and relevant the database will be.

To ensure the quality of the data, some administrations - including Ecuador, Mauritius and Kenya - vet or “clean” data before it is inputted to the database. Values are not included where, for example, descriptions are inadequate. Manual checking or cleaning of data is resource intensive, so some administrations plan to introduce automated systems for this purpose including such functions as auto-spelling correction, a “tariff” dictionary and keyword combinations.

A set of key data elements can be extracted for each importation and transferred into the database. These elements may include, inter alia:

- Customs entry number
- Customs entry date
- Harmonized System code
- Description of goods including model, brand, size, etc.
- Country of origin
- Country of export
- Importer's name
- Importer registration number
- Supplier's name
- Quantity
- Unit quantity code
- Invoice price
- Currency
- Freight terms (e.g. FOB, CIF etc.)
- Declared Customs value
- Total duty paid
- Valuation method used
- Details of Customs controls at time of clearance

Some administrations, such as Ecuador and Mauritius, take photos of goods during physical examination, which are stored digitally along with the price data for the product in question, providing a further means of comparison.

Data retention

It is important that price data is stored or remains viewable by users for a limited period only. Older data has less relevance and usefulness as prices and products change.

Administrations should determine the time period after which data is no longer generally accessible, for example, three or six months. Data may still be retained and archived for referral by personnel responsible for management of the valuation database only.

Protection and availability of data

Where business-confidential information is stored in a database, relevant national provisions and legislation for protection of data and confidentiality should be taken into account. Article 10 of the Agreement requires that: *“all information which is by nature confidential or which is provided on a confidential basis for the purposes of Customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the persons or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.”*

Access to the database should be password-protected and restricted to Customs personnel who have responsibilities for valuation control. The majority of users should require read-only access. The ability to add, amend or delete data should be further restricted to a small number of personnel responsible for managing and updating the database. Specific instructions and guidelines should be made available to all users, clearly indicating the importance of protecting business-confidential information and reminding users that database prices cannot be applied directly as a substitute Customs value.

Use of price data as a risk management tool

Once a database is established and populated with data, the administration should develop a procedure for using it. Taking into account the risk selection criteria mentioned in Sections [3 a\)](#), [b\)](#) and [c\)](#) above, Customs may selectively compare certain declared prices with either individual prices of comparative goods contained in the database, or with average prices derived from a number of importations. Software can be used to establish standard or average deviations of price for a particular product. The use of averages is more reliable, in that an individual price may not be a representative price for the product in question whereas an average based on a number of consignments of the same product is more meaningful. The larger the trade levels, the more useful and more representative an average price is likely to be. India, for example, determines a current weekly weighted average for sensitive commodities. Declared prices which fall outside the standard deviation range, so called “outliers,” are flagged up for further enquiry.

What threshold levels should be established which will trigger an enquiry? Very large deviations from a comparative price have been identified in some countries which give a far stronger indication of the likelihood of fraud; in some cases prices 80-90% less than the current market price of the product have been declared. Smaller deviations are more likely to represent legitimate market fluctuations and scales of quantity.

Some administrations have set a fixed percentage which applies to all goods. In other words, wherever a declared value deviates more than a certain percentage below a database price or average price, an enquiry will be conducted. However, this is a rather rigid approach and does not take into account the fact that, in the course of normal trade, prices fluctuate to differing degrees, depending on the goods and importer etc. It is recommended that administrations determine on a goods or trade sector case basis what percentage deviation from the database price indicates a possible risk and warrants further enquiry and continually review and update this data.

The trigger may be activated automatically by, for example, setting an appropriate parameter in the Customs entry processing system. Comparisons may also be done manually although this is likely to be more time consuming.

Note: Customs should always give each importer an opportunity to provide further evidence in any case where reasonable doubts have been raised concerning the truth or accuracy of a declared Customs value. See Section 4 c), [Procedure to follow when doubts exist regarding the truth or accuracy of the declared value: WTO Decision 6.1.](#)

Where an importer fails to satisfy Customs doubts regarding the truth or accuracy of a particular declaration and, having followed the procedure laid down in [WTO Decision 6.1](#), it is then necessary to determine the Customs value under an alternative valuation method. As a general principle, prices in a valuation database are not to be used to directly determine the Customs value for imported goods. However, a value contained in a database which has been taken from a previously accepted Customs entry may be considered as the basis for determining a value under Articles 2 and 3 of the Agreement; i.e. the transaction value of identical or similar goods, where it has not been possible to establish a transaction value under Articles 1 and 8 and the criteria for Articles 2 or 3 have been met. Where this is not possible, other methods should be considered, respecting the hierarchy of the Agreement.

Safeguards against misapplication of database

It is essential that a monitoring mechanism is in place at management level to ensure there is no misapplication or improper use of the database by Customs officials.

All staff with access to the database should receive adequate instruction in how a database should - and should not - be used.

Written guidance should be provided to staff which clearly explains that:

- the valuation database should be used only as a risk assessment tool
- a price in a database cannot be automatically applied to replace a declared value where doubts exist. An appropriate enquiry procedure should be followed in such cases. See Section 4 c), [Procedure to follow when doubts exist regarding the truth or accuracy of the declared value: WTO Decision 6.1.](#)

Such guidance should be based on the TCCV [Guidelines on the Development and Use of a National Valuation Database as a Risk Assessment Tool](#) and the suggested best practices contained in these guidelines. Mauritius, for example, has developed internal guidelines which are very closely based on the TCCV Guidelines.

Management checks should be conducted at all Customs stations where a database is accessed and used to ensure the guidelines are being followed.

See also India and Mauritius case studies for detailed information on their valuation database systems.

Other means of using price data for risk analysis purposes

Some administrations have chosen not to maintain a valuation database or have found it to be unsuccessful for effective valuation control. They have followed alternative strategies involving price comparisons, for example, by establishing partnerships with business and obtaining and analyzing price data provided by local industries and other sources, such as

Chambers of Commerce, on finished product prices, raw materials, component and manufacturing costs. This can be a useful indicator of risk when the declared values of imported products appear less than average manufacturing and processing costs.

See Brazil case study for information on their partnerships with business.

This approach was the basis for an enquiry into group under-invoicing which was submitted by a Member to the TCCV and developed into Case Study 13.2: Section 4 c), [Procedure to follow when doubts exist regarding the truth or accuracy of the declared value: WTO Decision 6.1](#), for details.

Another technique successfully employed by some administrations is to calculate average prices per kilo or unit for key risk products such as textiles, shoes and other goods where recognized international commodity prices are not available. These statistics can be obtained from interrogations of archived Customs declarations. This enables trends to be monitored and an assessment made of likely risk. Comparisons can also be made between relevant figures at different points of entry which can be useful for management and risk control purposes. Where fraudulent importers are aware that limited Customs controls are conducted at a particular point of importation, it is possible that their goods will be deliberately routed through that point in the knowledge that significant undervaluations may not be detected or challenged. High-level statistical analysis can be very useful in identifying such trends. For example, an average price per kilo can be determined, based on declared values for Chapter 61 and Chapter 62 goods. Where trade volumes are significant and the average price is noticeably less at a particular port of entry, this may reveal the strategies of fraudulent importers and indicate a particular risk. If the possibility for regional cooperation exists, the same comparisons can be made between relative average declared prices between countries in the region.

Note that weights of consignments may also be manipulated to conceal undervaluation. This is easier to do for sea traffic due to the much lighter air-cargo loads.

The WCO Secretariat has recently conducted a trial based on an analysis of “mirror” trade statistics. This is based on a comparison of aggregate export data on certain goods from a particular country or territory (obtained from [UN Comtrade](#) data) with the relevant import statistics for those goods (derived from import Customs declarations) over a comparable period. The exercise has revealed very large discrepancies in some cases, namely that for certain products the aggregate value of exports greatly exceeds the aggregate declared values at import for those products, over the period examined. Such discrepancies may give a strong indication of widespread undervaluation. Further analysis can then be conducted in order to identify which importers are considered to pose the greatest risk. See [Annex VI](#).

Note: It is important to bear in mind the caveats mentioned above in relation to use of a valuation database; namely, that any price data which is obtained should only be used for risk assessment purposes.

4. DEVELOPING AN EFFECTIVE VALUATION CONTROL PROGRAMME

A comprehensive and effective valuation control programme will involve controls carried out at three key stages; pre-clearance, at the border and post-clearance. The objective should be to achieve a balanced control programme, based on these stages, which is appropriate for the country in question.

a. Pre-clearance stage

At the pre-clearance stage, advance information can be obtained on imminent cargo arrivals via shipping manifests and other sources. This data can be analyzed by risk analysis teams who can make preliminary targeting selections. Typically, however, limited information is available at that stage to enable detailed checks regarding valuation or classification of the imported goods.

Advance rulings

Background

The provision of advice and guidance to commercial operators, prior to the arrival of imported goods, is an important part of an effective Customs compliance programme. The trader gets the benefit of greater certainty regarding anticipated duty liability and it reduces the likelihood of Customs' interventions, leading to swifter clearance of goods. Customs also benefit from having advance knowledge of anticipated importations which is useful for risk management purposes.

Advice can be of a general nature or specific and be binding or non-binding. Advance rulings are normally binding on both the Customs authorities and on the person who gets the ruling.

The concept of advance rulings is well established in many countries, primarily in regard to determination of tariff classification and entitlement to preferential origin. Tariff classification rulings are the most common; based on information provided by the importer, Customs can examine relevant trade literature and a sample of the goods and determine the appropriate classification. In some cases, advice from an independent industry specialist may be required. Ultimately, a decision can be made which can be expressed and defined in terms of the relevant Harmonized System code number and will apply to all consignments of the same product, made to the same specifications, etc.

Less common to date is the provision of advance rulings for Customs valuation purposes; this is possibly because the concept is less easy to define and economic operators and Customs administrations may not have recognized the benefits. Unlike rulings for tariff classification, which cover goods whose characteristics are durable and usually stable over time, a Customs value, even for the same goods, will vary from one consignment to the next, due to changes in the nature of the transactions. Also, there can be many different elements to consider when determining the Customs value (e.g. Article 8 adjustments such as selling commissions and royalties) which may exist for certain transactions but not for others, even when the same goods are traded between the same parties. Nevertheless, discussions concerning the benefits and desirability of providing advance rulings for valuation purposes have taken place in a number of fora. Furthermore, unlike the Harmonized System

Convention, the WTO Valuation Agreement does not contain General Rules for the interpretation of that Agreement.

The Revised Kyoto Convention also makes reference to the provision of rulings and decisions by Customs; extract as follows:

Revised Kyoto Convention: Ch. 9 - Information, Decisions and Rulings Supplied by the Customs

C. DECISIONS AND RULINGS

9.8. Standard

At the written request of the person concerned, the Customs shall notify their decision in writing within a period specified in national legislation. Where the decision is adverse to the person concerned, the reasons shall be given and the right of appeal advised.

9.9. Standard

The Customs shall issue binding rulings at the request of the interested person, provided that the Customs have all the information they deem necessary.

As a practical approach, it is possible to consider the provision of a ruling or advice on specific aspects of a Customs value, which will often meet the needs of the commercial operator. In other words, the ruling will not confirm the actual Customs value of a particular consignment but will indicate the treatment to apply on a certain element of the Customs value. A few examples are given below:

- Is a particular royalty or license fee, paid in association with an importation, includable in the Customs value under Article 8.1 (c) of the Agreement?
- Is a commission paid to an agent or broker deemed to be a buying or selling commission under Article 8.1 (a)?
- In a situation where multiple sales have taken place, which transaction is considered to meet the criteria of Article 1.1 for the imported goods?
- In a situation where buyer and seller are related within the meaning of Article 15 of the Agreement, has the price been influenced by the relationship?
- Where a transaction value cannot be applied (e.g. in the absence of a sale), which alternative method is appropriate to use?

Each of these examples can be significant in determination of the importer's duty liability and hence important for financial planning purposes. Based on Customs' decision, the trader will then have the certainty that, as long as the information provided is correct and up to date, Customs will treat that element of the Customs value in the manner stated in the advice.

Based on the practices of a number of administrations who have developed systems for providing advance valuation rulings, the following guidance is given:

General recommended procedures

- An advance ruling is normally given in the form of a written statement issued by Customs that interprets and applies Customs laws and regulations to a specific set of facts about a prospective transaction
- Rulings are more effective if they are binding on both Customs and the importer

- Customs should examine all relevant information provided (see below) and request more if not sufficient. A response can then be given as appropriate; for example, based on the information provided, the element in question is/is not considered as part of the Customs value under the relevant provision in national legislation. The advice should make clear that the ruling will be invalid if any relevant particular changes
- In some cases Customs may seek advice from experts, if such expertise is required
- In order for a ruling to remain valid, the applicant should give notice of a change in status of transactions on which a ruling has been obtained (e.g. a variation to the terms and conditions of sale etc.). On request, Customs may then review and update or renew the ruling as necessary
- The applicant should attach a copy of the ruling to applicable entry documents (or quote an appropriate reference if submitting electronically)
- An advance ruling is given on the assumption that the information provided is accurate and complete. Customs may verify the facts of an actual transaction at the time of importation to ensure they are the same as those on which the decision was based
- The Customs administration should advise that they may modify or revoke rulings that are found to be in error or no longer valid in accordance with the official position of the Customs administration
- Reasonable time frames should be established for Customs to respond to requests for rulings, and the length of time those rulings will remain valid (unless otherwise amended or revoked)
- A legal basis or administrative arrangement should be established governing the request and issuance of rulings, including the right to an appeal or a review of the ruling, based on national practices
- The issue of rulings may be centralized or decentralized, however some Members have found that a centralized system is more effective and provides more consistent outcomes
- Regardless of whether rulings are issued centrally or regionally, all rulings should be applicable throughout the Customs territory and be made available to all Customs offices responsible for valuation controls. It is recommended that a searchable database of rulings is developed for this purpose and management controls be established
- Subject to national decision, rulings may be published on the Customs website for easy reference by the importing public, duly respecting confidentiality considerations and deleting reference to specific parties of the transaction
- Typically, no fees are charged for providing rulings

Suggested information to be provided when requesting a Customs value ruling

A complete statement of all relevant facts relating to the transaction(s), including:

- Background facts such as names, addresses and other identifying information of all interested parties
- Description of the nature of the transaction(s), (contract, terms of sale, etc.)
- Any relationship between the parties
- Specific information, depending on the issue in question. For example, if the issue is whether the commission paid by the buyer is a buying or selling commission (or whether an agency relationship exists), all details and documentation pertaining to the roles of the parties and the payment of the commission would need to be submitted. If the issue concerns a royalty payment potentially includable under Article 8.1 (c), the license agreement and sales contract should be presented along with other relevant information

- If the question or questions presented in the ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document(s) should be submitted with the request
- Any other information relevant to determination of the value under the Agreement

Additional information

- A statement that there are, to the best of the importer's knowledge, no issues concerning the transaction(s) for which a ruling is sought pending before any Customs offices or ports of entry or before any court
- Whether advice has been previously sought from Customs concerning the transaction(s) for which a ruling is sought, and if so, then from whom and what advice was given, if any
- The applicant may also state their own opinion or position in the ruling request, which may be taken into account

A standard application form may be devised to assist applicants in providing all relevant data. In the absence of pertinent facts or information, the applicant should be advised accordingly and be given a reasonable time frame to supply such data.

See also :

Technical Guidelines on Advance Rulings For Classification, Origin and Valuation

This document has been prepared to align and combine the various texts currently available which provide advice in relation to issuing advance rulings on classification, origin and valuation. In particular, this was done in the light of the WTO Trade Facilitation Agreement (TFA) which provides in Article 3 a requirement to provide advance rulings in respect of classification and origin and also encourages WTO members to provide rulings for Customs valuation.

b. Balancing frontier and post-importation checks

Traditionally, Customs controls have been conducted at the frontier; Customs declarations are lodged by agents/brokers and Customs decide whether to conduct documentary checks and/or physical examinations before releasing the goods.

Documentary and physical checks should be conducted on the basis of targeted risk-profiling. Physical examinations can be useful where goods descriptions on the Customs entry are vague or incomplete but otherwise have limited use for Customs valuation purposes.

At the time of clearance, Customs have a limited amount of documentary information available to them: typically an invoice, bill of lading and ship's manifest. Effective valuation controls require access to an importer's books and records which are not available at the time of clearance. Documentation relating to other payments which may be includable in the Customs value, such as agency and royalty agreements, is also unlikely to be available. Furthermore, Customs' contact at the clearance point is normally with the broker/clearing agent who is acting on behalf of the importer. An agent should be well-versed in Customs procedures and be able to provide the minimum documentary requirements to support a Customs declaration. However, further detailed enquiries concerning Customs valuation will inevitably only be answerable by the importer. A further consideration is that time is limited to conduct such checks when goods are awaiting Customs clearance.

These limitations do not exist in the post-importation environment, which is why PCA is the optimum mode of valuation control, wherever feasible.

PCA also enables Customs to examine the backgrounds to multiple consignments simultaneously, which is more cost-effective than examining individual consignments.

Detailed information on implementing and conducting PCA can be found in the WCO Guidelines for Post Clearance Audit.

It is recognized, however, that PCA is not effective in all cases, particularly in respect of the informal trade sector. See Section 5 a), [*Informal trade sector*](#).

There are pros and cons for both border and post-import controls. The following table was collated from Members' views expressed at a number of WCO events and workshops:

STAGES OF VALUATION CONTROL: ADVANTAGES AND DISADVANTAGES

PRE-CLEARANCE		TIME OF CLEARANCE		POST-CLEARANCE	
Advantages	Comment	Advantages	Comment	Advantages	Comment
<ul style="list-style-type: none"> - Advance consignment information - Opportunity to give advance rulings and advice 	<ul style="list-style-type: none"> - Enables early risk assessment prior to importation - Increases certainty for importer; reduces subsequent work for Customs 	<ul style="list-style-type: none"> - Ability to physically inspect goods - Ability to question agent - Easier to control informal trade sector - Immediate collection of underdeclared duty - Agents/importers more likely to cooperate if goods not yet cleared by Customs 	<ul style="list-style-type: none"> - Physical examination not a priority valuation control but can be useful for checking marks, descriptions, etc. - Also a disadvantage as agents typically hold limited information - Importers who do not have established premises or accounting records and deal in cash should be controlled at the border using a risk management approach - Useful for revenue flow but additional revenue can be identified via post-clearance controls - <i>Note:</i> Customs shouldn't use retention of goods as a lever for cooperation. Clearance against security (Article 13) should be offered, except in cases of fraud. 	<ul style="list-style-type: none"> - Access to supporting documents, accounting records, bank statements, etc. to verify declared Customs value - Ability to question importer face to face - Adequate time to conduct thorough examination of trader's business - Ability to visit importer's premises - Facilitates faster clearance at time of importation - Opportunity to educate & improve importer's understanding of legal requirements 	<ul style="list-style-type: none"> - <i>Crucial for effective valuation controls</i> - <i>Opportunity to understand importers' business and observe operations in progress</i> - <i>Enhances trade facilitation</i> - <i>Improves voluntary compliance</i>
Disadvantages	Comment	Disadvantages	Comment	Disadvantages	Comment
<ul style="list-style-type: none"> - Limited data may be available 	<ul style="list-style-type: none"> - Not a major disadvantage as information will be available when full declaration is made 	<ul style="list-style-type: none"> - Lack of supporting evidence to verify price actually paid or payable - Lack of information concerning potential adjustments under Article 8 (<i>e.g. commissions royalties, assists</i>) - Lack of time for thorough checks - No direct contact with importer - Risk of delays to clearance of goods 	<ul style="list-style-type: none"> - These points illustrate the advantages of post-import controls - Clearing agent cannot answer all questions on importer's behalf - Barrier to trade facilitation 	<ul style="list-style-type: none"> - Goods may not be available for physical inspection - Importers may initially not be cooperative - Can be costly to resource (<i>e.g. travel costs</i>) - Not effective for all traders (<i>e.g. supporting documents and accounting records may not be available, no means to pay additional duties</i>) 	<ul style="list-style-type: none"> - Not essential for effective valuation controls - Importers typically learn to understand benefits, <i>e.g. fewer interventions at the border</i> - Effective PCA should recoup these costs, over time - Customs should decide where PCA not appropriate for certain traders, in particular informal trade

Use of a valuation declaration form

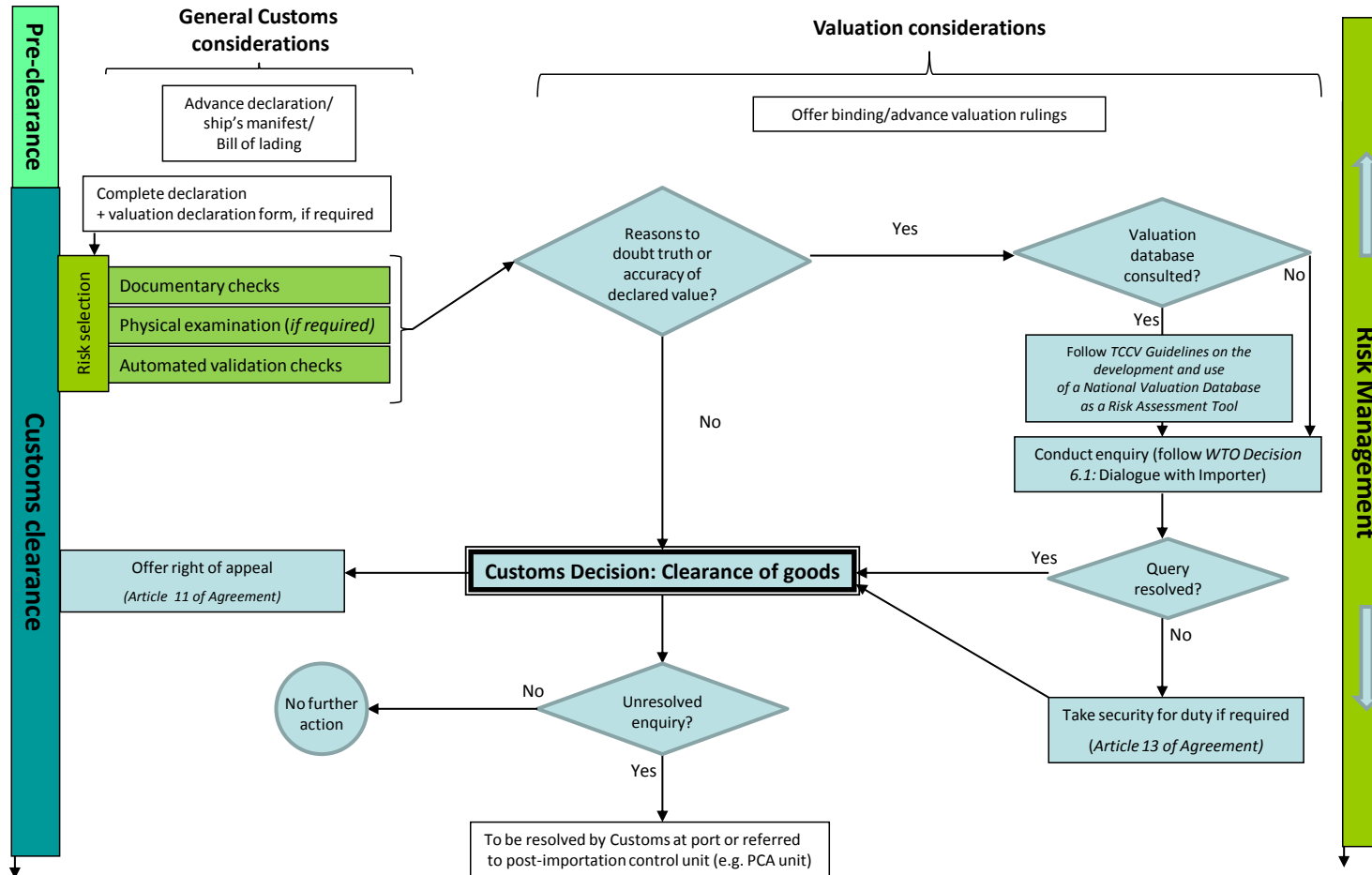
Many Customs administrations require a valuation declaration form to be submitted together with a Customs entry. This form provides detailed information on the declared value for a particular shipment. There is no international standard format although typically these forms ask a series of questions relevant to the Customs value, such as whether buyer and seller are related, whether additional charges such as commissions have been paid, freight terms, etc. This form can be a useful means of gathering information on declared Customs values to inform the risk programme and acts as a discipline for the broker and importer who are directed to consider these questions. The commercial operator cannot claim to be unaware of the key considerations for determining the Customs value if he has completed and signed the form.

More information on the format and use of this form can be found in the [Customs Valuation Control Handbook](#).

The valuation declaration form can be useful not only at the frontier but also in connection with post-import controls. Some administrations do not require a valuation declaration form to be submitted automatically for each importation but reserve the right to require the form to be completed in selected cases, for example during PCA enquiries. This approach reduces the burden on business.

The following flow chart describes the key considerations when conducting valuation controls pre-clearance or at the time of clearance.

Flow chart of Customs valuation controls pre-clearance and at time of clearance



c. Procedure to follow when doubts exist regarding the truth or accuracy of the declared value: WTO Decision 6.1

Articles 16 and 17 of the Agreement provide a balance between the rights and obligations of Customs and the importer:

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the Customs administration of the country of importation as to how the Customs value of the importer's goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of Customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for Customs valuation purposes.

[WTO Decision 6.1](#) was developed during the Uruguay Round to provide further guidance on the application of these articles in cases where Customs have legitimate doubts regarding the truth or accuracy of a declared value.

Where, using a risk-based approach, Customs have such doubts and decide to challenge a declared value, the procedures set out in Decision 6.1 should be followed in every case.

Extracts from WTO Decision 6.1

- When a declaration has been presented and where the Customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the Customs administration **may** ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8.
- If, after receiving further information, or in the absence of a response, the Customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that the Customs value of the imported goods cannot be determined under the provisions of Article 1.
- Before taking a final decision, the Customs administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond.
- When a final decision is made, the Customs administration shall communicate to the importer in writing its decision and the grounds therefor.

Recommended procedures:

1. Customs may communicate their doubts via :
 - A written enquiry to the importer. It is recommended that a standard letter or form is developed which can be adapted for each particular case
 - For enquiries at the time of clearance, an electronic message may be sent via the Customs clearance system to the agent or importer
2. These enquiries should clearly convey Customs' reasons for the doubts and specify what evidence or documentation is being requested from the declarant to support the declared value.
3. A reasonable time frame should be given for the importer to respond. This time frame should be indicated in the correspondence.
4. The communication should indicate the importer's legal responsibilities to produce relevant documentation and the consequences of not providing an adequate response (e.g. possible penalties, etc.).
5. Where, having followed the procedures outlined in Decision 6.1 as detailed above, a decision is made that Article 1 cannot be used to determine the Customs value; the methodology set out in the Agreement should be followed. Namely, the application of Article 2 (transaction value of identical goods) should then be considered as the next possible basis for Customs value, followed by Article 3, etc.
6. As required under Article 11 of the Agreement, an importer should always be given the right of appeal against a decision of Customs regarding Customs value, without penalty.
7. As required under Article 13 of the Agreement, where it becomes necessary to delay the final determination of such Customs value (i.e. in cases of reasonable doubt), an importer should be given the opportunity to withdraw his goods from Customs on provision of sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of Customs duties for which the goods may be liable.
8. See Section 5 a), [*Informal trade sector*](#), for a suggested "fast track" procedure for certain informal trade operators.

Note: Although a difference between the declared value and a price recorded in a valuation database may have been one factor in assessing a potential risk, there is no obligation on the importer to explain why such a difference exists. The importer is required only to provide evidence which confirms the Customs value declared for the consignment in question and enables Customs to verify correct application of the Agreement. If Customs are satisfied that the evidence presented is consistent with the declaration, any noted discrepancy with comparative prices is immaterial.

Two TCCV instruments provide useful examples of the application of Decision 6.1:

Case Study 13.1 - Application of Decision 6.1 of the Committee on Customs Valuation

Summary

This instrument of the TCCV is based on an enquiry which was conducted by Customs primarily on the basis that the declared Customs values of a particular importer were significantly lower than those of a number of other importers of the same goods, based on unit price.

A written enquiry was sent to the importer explaining the reasons for doubting the truth of the declared transaction value, requesting further evidence. In response, the importer advised, inter alia, that there was no contract of sale and that the sale was settled by telephone.

Customs then conducted an audit and established that the goods had been resold at a unit price 30 times the declared unit price at import. The accounting records were neither in order nor up to date and could not substantiate the amount paid for the imported goods. Customs granted a reasonable period to enable the importer to update its accounting records. However, no fresh evidence was provided.

The instrument concludes that the Customs administration properly followed the procedures of Decision 6.1 and determined that the Customs value could not be determined under Article 1.

Case Study 13.2 - Application of Decision 6.1 of the Committee on Customs Valuation

Summary

This instrument provides a useful summary of a methodical approach to the investigation of a case where doubts arise based on knowledge of raw material prices in comparison to the price of an imported product manufactured from those raw materials. The case involved the import of spiral nails and a complaint which alleged that the declared price per kilo of the imported nails, by a number of importers, was substantially less than the international market price per kilo of steel wire rod (required to produce the nails). The case was investigated by Customs who followed an enquiry process which adhered to the procedures outlined in WTO Decision 6.1. After being given several opportunities, via meetings and correspondence, to demonstrate that their declared values represented the transaction value, the importers involved failed to provide any evidence of payments for the goods. Customs therefore deemed that the Customs value could not be determined on the basis of the declared transaction value.

The instrument endorses the decision of Customs taken in this particular case.

d. Facilitation of compliant trade/improving compliance

Promoting self-assessment; working with importers and brokers

Most importers employ clearing agents/brokers to complete and submit an import Customs declaration on their behalf. As such, the agent depends on the importer to provide all necessary information to complete the declaration, which includes the Customs value. For this reason, it is highly recommended that Customs provide clear guidance and information to assist both importers and declarants in this process, including legal requirements and technical advice, regarding determination of the Customs value. It is in the interests of both Customs and business that levels of compliance are as high as possible; both parties have responsibilities to achieve this aim.

Typically, Customs most regular contact with business is via the Customs agents or brokers based at the ports and land border clearance points. Some administrations require brokers to register and fulfill certain requirements before they can operate. This helps to introduce a higher standard and allows for the possibility of a registration or license to be revoked if irregularities occur and standards fall below an acceptable level.

At the frontier, it is reasonable and practical that the brokers are the prime point of contact when Customs raise an enquiry on a Customs declaration, on a day-to-day basis; they should have a good knowledge of Customs' requirements and prerequisites for lodging a Customs entry. Some administrations have introduced successful registration schemes which a broker must join before being eligible to operate.

Where an administration has limited PCA functions it may be the case that Customs' direct contact with importers is limited. It is recommended, however, that Customs administrations cultivate open channels of communication and partnerships with importers, brokers and trade associations. This can be achieved by establishing enquiry points, public websites and via awareness-raising programmes and seminars.

Providing importers with appropriate valuation information and guidelines as well as advising on internal controls is essential to assuring long-term voluntary compliance. This should be coupled with incentives such as reduced interventions and faster clearance as a reward for voluntary compliance. However, there will always be importers who will consistently resort to non-compliant behaviour. Therefore, an escalatory penalty regime is required to encourage behaviour towards voluntary compliance over time. To this end, Customs should maintain a record of contraventions and applied penalties to ensure the system is applied consistently.

e. Options for exchange of Customs valuation information

[WTO Decision 6.1](#), which deals with cases where Customs administrations have reasons to doubt the truth or accuracy of the declared value, states: "2. *It is entirely appropriate in applying the Agreement for one member to assist another member on mutually agreed terms.*"

Where an administration has been unsuccessful in verifying declared Customs values on the basis of information held by the importer, and doubts remain regarding their truth or accuracy, consideration may be given to requesting information from the Customs Administration of the exporting country. However, there are a number of limitations and procedures to be taken into account before taking this course of action which should be viewed as a last resort.

The key reference document in this regard is the [Guide to the Exchange of Customs valuation information](#) which has set out a number of considerations to be taken into account. These guidelines were developed by the TCCV in response to request from the WTO in the context of Ministerial Decision 8.3 of the Doha Ministerial Trade Round.

The guide was developed to facilitate the exchange of valuation information among Customs administrations. It consists of (1) a checklist regarding valuation verification actions to be taken by the Customs administration in the importing country before requesting information from the Customs administration in the exporting country, and (2) a set of recommended procedures, applicable to the Customs administrations of both the importing and exporting countries, for the exchange of valuation information.

The guide encourages administrations to conduct verification of declared values as far as possible in the country of importation, as follows: *“Before requesting information from the Customs administration of the exporting country, the requesting administration should ensure that, to the extent possible, all appropriate verification procedures in the importing country have been undertaken.”* The guide provides a checklist of actions to be taken by Customs before requesting such information and sets out recommended procedures for the exchange of valuation information which is reproduced in [Annex V](#).

What relevant information may be available in the exporting country?

The WCO Data Model sets out an international standard for data elements which may be included in a Customs declaration document. This can be useful as a basis for a common language for information requests.

It should be borne in mind that “an export value” has no internationally recognized definition and cannot be interpreted as representing the Customs value for that consignment when imported. Their significance to the exporting country is normally only for statistical purposes. Export values on Customs declarations are therefore of limited interest in verifying import values. Note however the possibility that export values may be artificially inflated as a mechanism for VAT-refund export subsidy fraud.

The most useful data related to Customs value available in the country of export is likely to be the invoice price. Where a fraudulent invoice has been presented to Customs in the country of importation, the genuine invoice may be available to Customs in the country of exportation. Although the invoice does not necessarily represent the price actually paid or payable for the imported goods under Article 1 of the Agreement, it can be used as a reliable benchmark in that the correct Customs value is unlikely to be less than the invoice price. Information may also be available regarding freight terms; namely whether the invoice is on a CIF or FOB basis and the invoice currency.

Other elements of a transaction value are more unlikely to feature in information available in the country of export, particularly adjustments under Article 8 such as royalties, commissions or assists.

Establishing a basis for exchange of Customs valuation information

Normally, a formal basis for exchanging information needs to be in place such as a mutual assistance agreement (MAA) or memorandum of understanding (MOU), at a bilateral or regional level.

Some administrations have started development of cross-border electronic data exchange systems on a bilateral level. To date, the regular exchange of valuation data is not commonplace. The topic has also been under discussion in the context of the WCO's Globally Networked Customs programme (GNC).

The WCO Secretariat maintains a list of contact points in Member administrations regarding exchange of Customs valuation information. This list is available on the [WCO Members' website](#). The list also contains national contact points for general Customs valuation matters.

5. KEY CHALLENGES

a. Informal trade sector

A common issue frequently identified as a major challenge to effective valuation controls is the informal trade sector. Informal trade operates at different levels; from small, “one-man” businesses trading at a local level across borders to larger, networked operations trading in several countries. For the purposes of these guidelines, informal trade is taken to mean those importers with the following key characteristics:

- Predominantly cash-based transactions
- Poorly maintained or non-existent accounting records
- Traders not registered for Customs (or other tax) purposes
- No permanent trading premises/difficult to locate.
- Higher proportion of smaller packages
- Greater risk of fraud and difficulty in proving fraud

Although the term “informal trade” is not completely synonymous with fraud, the risk of fraud is clearly higher. Nevertheless, it is incumbent on Customs to positively encourage, and give opportunity to, all commercial operators to formalize their procedures and improve compliance, supported by incremental penalties for non-compliance. This can be incentivized by such schemes as A.E.O. (Authorized Economic Operator). Hence, informal traders should be made aware of the advantages to their business if they comply with Customs requirements; e.g. shorter clearance times at the border and access to simplified procedure arrangements. This message should be promoted through publicity and the offer of assistance and guidance.

An OECD study³ in 2008 examined this topic from a number of viewpoints, including looking at ways to encourage informal traders to comply and to appreciate the benefits of becoming part of the formal trade sector.

It is acknowledged, however, that in many countries informal trade is accepted as part of the social, cultural and economic fabric and is likely to continue. Customs therefore require the tools to tackle such operators. It is clear that PCA is less effective for dealing with much of the informal trade so border control has an important part to play. Note that the OECD study states: *“In the case of informal trade flows, post-clearance audit is hardly applicable.”*

As mentioned in Section [3 c\)](#), an important feature of managing risk is the philosophy that Customs should not invest disproportionate resources in controlling small operations where the potential revenue at risk is small, even though the risk of irregularities is high. In a number of countries, particularly those with several land boundaries, numerous “one-man” businesses trade daily across national boundaries and deal in low-value consignments. It should be considered therefore, based on risk analysis principles, whether the revenue at risk justifies the use of Customs’ resources to investigate in each case. The objective should be to ensure resources are targeted towards the examination of risks where more significant amounts of duty are at stake. See Table in Section [3 c\)](#) for example of importer category analysis.

³ See OECD paper TD/TC/WP(2008)13/REV1

In some cases, these smaller importers are working as part of a larger operation. Several operators working together may be undertaking frequent trips to neighboring countries and moving small consignments at a time, but when added together the consignment values may be significant (so called “ant” importers). Information on such strategies should be incorporated into risk profiles to assist with targeting initiatives.

The key questions to pose can be summarized as follows:

- *To what extent does the informal trade sector pose a significant risk?* This will vary from country to country. Where it forms only a small percentage of a country’s imports then it should not feature as a high risk when conducting risk management programmes. Statistics concerning the levels of informal trade at the national level are therefore important in assessing the resources to be invested in tackling this sector. It is acknowledged however, that by its very nature, the value of informal trade is difficult to assess accurately.

How can informal traders be encouraged to formalise their procedures? Consider compulsory registration of all importers and the introduction of simplified declarations for low-value consignments (e.g. COMESA; see [Annex III](#)). Low-value thresholds can also be introduced, below which no duty is required. The OECD study proposed this measure and also suggested offering technical assistance and quality support services to formal traders and building greater trust between the private sector and border agencies. This can remove a large administrative burden from Customs without impacting significantly on revenue returns and also encourage informal traders by making it easier to comply with Customs requirements.

In some countries, the informal trade sector has established one or more trade associations. It is recommended that Customs establish a dialogue with these associations; they provide opportunities to open up communication channels with the informal trade sector and offer assistance to improve understanding of Customs’ requirements and promote compliance.

- *How should valuation enquiries be conducted for the informal trade sector?* For all operators with established premises and internal accounting systems, whether or not considered to be part of the informal trade sector, PCA should still be considered as the optimum approach. Legal provisions should be in place requiring retention and production on request of relevant accounting records and supporting documents. Where such records have not been adequately maintained suitable penalties should be imposed (see example based on Italian legislation at [Annex IV](#)). Customs should actively consider for which importers post-import controls are feasible and assess the degree of risk posed in the case of each importer. For example, what is the likelihood of recovering unpaid revenue via post-importation controls where underdeclarations are discovered? If low, then border controls are preferable as they are more likely to be effective.
- *How can border controls be conducted on the informal trade sector which adhere to the principles of WTO Decision 6.1 (Cases where there are reasons to doubt the truth or accuracy of a declared Customs value)?* A fast track application of

Decision 6.1 can be considered for enquiries conducted at the time of clearance on smaller informal operators where PCA is not an option because:

- there are no formal business premises
- no reliable accounting records, and,
- release against security is not practical as the importer is unlikely to have the financial means to provide such security or be easy to contact after release of goods.

It is important that in every case where Customs have doubts, those doubts are communicated to the importer or agent. This can be conveyed electronically via the Customs clearance system or by written communication; a simple, clear form or letter can be devised for this purpose, indicating the reason for Customs' doubts and what further evidence is sought. In the absence of evidence which adequately supports the declared transaction value, within an agreed timeframe, then consideration should be given to determining Customs value under an alternative valuation method. A national valuation database, maintained in accordance with the recommendations contained in these guidelines, can be of use in this respect. It is important that all Customs officials are aware this procedure should not be short-circuited, in contravention of Article 16 of the Agreement.⁴

- *Can tax authorities help through sharing information with Customs?* It is likely that the same individuals and businesses pose a risk for national tax purposes, including income tax, corporation tax and VAT. Useful information may be limited as these operators may well be "off the radar" for tax purposes also. Nevertheless, liaison with relevant tax departments can be beneficial and help to develop a coordinated approach and share information in order to identify irregularities. For example, importers who routinely undervalue imported goods for Customs valuation purposes typically sell through the black market in the country of importation to avoid direct taxation on large profit margins. Given that profit taxes will be lower where expenditure is greater (which includes the cost of imported goods), there are competing tensions for businesses. On one hand, the incentive is to minimize import prices in order to reduce Customs duty. On the other hand, there is the contrary interest for companies to maximize the cost of imports in order to reduce the taxable profit margin. This situation could vary, depending on national internal tax rates and Customs duty rates. This practice has been more commonly observed in small to medium-sized businesses, operating in the informal sector. Some countries have introduced a single tax and Customs identifier code for all business entities.

Useful background on informal trade is available in a document prepared by the WCO Secretariat for the 11th Session of the Integrity Sub-Committee ([HI0047E1a](#)). It addresses the issue of the informal trade sector and its links to integrity issues.

⁴ Article 16

Upon written request, the importer shall have the right to an explanation in writing from the Customs administration of the country of importation as to how the Customs value of the importer's goods was determined.

b. Second-hand goods/Used motor vehicles

The valuation treatment of second-hand goods is commonly raised by many administrations as a major challenge. This is primarily due to a lack of reliable supporting evidence provided by the importer. The issue is closely linked to the topic of informal trade ([Section 5 a](#)) as this sector is often involved in the trading of second-hand goods.

It is important to note that the Agreement makes no distinction between new and second-hand goods. In other words, the prime method – transaction value – should be used wherever possible, based on the price actually paid or payable for the goods in question. So, an invoice or receipt produced in support of a declared value for used goods should not be dismissed as the basis for the Customs value. The appropriate procedures should be followed, in accordance with the Agreement and c. Procedure to follow when doubts exist regarding the truth or accuracy of the declared value: WTO Decision 6.1.

A valuation database is not likely to be of use as a risk assessment tool for general second-hand goods as qualities, age and condition can vary so widely and hence comparison values can be very difficult or impossible to locate. (An exception is for second-hand motor vehicles; see below).

Therefore other techniques are necessary in circumstances where it is not possible to determine a transaction value (following the procedures of WTO Decision 6.1). In these cases it is unlikely that valuation based on the transaction value of identical or similar goods (Articles 2 and 3) can be applied; it would be necessary to locate consignments of second-hand goods which fulfill the criteria of Articles 2 or 3; i.e. an identical or similar degree of use, age, wear-and-tear, etc. It may be possible to apply the deductive method (Article 5) where the imported goods are resold on the domestic market and a unit price at the point of resale can be identified. It will clearly not be possible to use the computed value method (Article 6), as production costs would not be relevant to imports of the same goods in a used condition. So, commonly, Article 7 (fallback method) is used where it was not possible to establish the transaction value under Article 1.

A Customs value established under the fallback method (Article 7) may be based on an annual depreciation rate. Where a price for the goods in question as new can be ascertained, an appropriate percentage deduction can be made depending on the expected lifespan on the goods and their current age. For example, if the expected useful life of a product is 10 years and the product is four years old, 40% could be deducted from the value as new to determine a Customs value under Article 7. For products such as used clothes and shoes, it may be possible to ascertain appropriate values by weight; (e.g. price per kilo), which could be applied, duly respecting the criteria of Article 7.

It should be underlined that the good practices of a risk management strategy are important to apply in this area, as in any other area of Customs control. By definition, the values of used goods – and hence the potential revenue – will be less than for new items so consideration should be given to the potential revenue at stake before commencing an enquiry, to ensure a cost-effective approach.

Used motor vehicles

Study 1.1 of the TCCV provides useful guidance on determining the value of used motor vehicles (not including special purpose vehicles, classic or vintage cars). The study recognizes that in principle, the approach for determining the Customs value of used motor vehicles is no different from the treatment for other imported goods. In other words, Article 1 should first be considered and only when a transaction value cannot be determined should the alternative methods be considered. It is acknowledged, however, that practical problems arise within this trade sector which merit special attention. In particular, formal invoices are often not issued for purchases by private individuals; instead, a simple receipt or handwritten bill may be provided, or the sale may have been confirmed by verbal agreement.

The study examines two situations: 1) where a vehicle is imported directly after being purchased and has not been used prior to exportation, and 2) where the vehicle is imported after additional use following purchase and prior to exportation.

1) In the first case, the price actually paid or payable should be used as the basis for the Customs value if it meets the criteria of Article 1. It is only where the provisions of Article 1 cannot be applied that the Customs value is determined using an alternative method.

2) The main question to consider in the second case is whether, at the time of importation, the vehicle can be considered to be in the same state as it was when sold. If not, (i.e. the condition has deteriorated), then the price originally paid cannot be considered to represent the actual value of the car in the condition as imported. Hence, there is no price actually paid or payable under Article 1 so an alternative method must be considered.

For both scenarios, the study then examines the possible application of alternative methods and recognizes that Articles 2, 3, 5 and 6 are typically difficult to apply:

Articles 2 and 3 (transaction value of identical or similar goods). In these cases, it is necessary to identify imported vehicles where the Customs value was determined using Article 1. It is unlikely that a vehicle, exported at or about the same time, with the same degree of use and deterioration, could be located where a transaction value was accepted, which is necessary to establish a value under Articles 2 or 3.

Article 5 (deductive method). This would only be possible where the used motor vehicle is resold by the importer after importation. This is more likely to occur with commercial importations than with a purchase by a private individual, and may be possible to apply in some cases.

Article 6 (computed method). This method cannot be considered for used motor vehicles, as the relevant data would not be available to Customs. In any event, the manufacturing costs and overheads associated with the imported vehicle would relate only to the vehicle when new. As the vehicle is no longer new, those costs will not be relevant.

In view of these factors, it is often the case that Article 7 (fallback method) is used as the basis for determining the Customs value of used motor vehicles, as described for general used goods mentioned above.

The study lists several options that can be considered when determining the Customs value under Article 7:

- The value can be based on the price paid for previously imported new vehicles of the same make and model, less an amount (%) for depreciation. A suggested format for this would be to establish a percentage deduction from the price paid in relation to the time since the date of purchase; e.g. x% for less than 6 months, y% for 6 to 12 months, z% for 12 to 24 months, etc. This value should also be adjusted to take into account any difference in the level and quantities of the transactions being compared. This is dependent, however, on obtaining prices for the same vehicle, as new.
- The method outlined above could also be adapted to be based on the catalogue price of a new imported vehicle of the same make and model, if available. It should be borne in mind that the catalogue price would include post-importation costs so an appropriate deduction should be made for the elements listed in subparagraphs (i) to (iv) of Article 5.1(a).
- Where it is possible to obtain catalogues or specialized periodicals indicating current prices in the used vehicle market of the country of importation, these prices can be used as a basis for valuation. Some countries have recognized national websites which provide price data for new and used cars. For example, [Glass's Guide](#) in the UK. Account should be taken of the vehicle's condition and of all elements affecting its value (for example, abnormal wear, repairs, reconditioning or accessories, etc.) as compared with that of the reference vehicle. Note that as this approach is based on Article 5 of the Agreement; it would not be possible to use catalogue prices for vehicles produced in the country of importation. As in the previous example, appropriate post-import costs listed in Article 5 should be deducted, as appropriate.

Use of a valuation database for motor vehicles

Some administrations that do not have access to a national catalogue, periodical or website of second-hand car prices have developed databases for this purpose. Sufficient data is required on each vehicle to allow comparisons to be made. The best practices outlined in Section 3 d), [Development and use of a valuation database as a risk assessment tool](#), should be followed. The prime source of data should be from previous importations of used vehicles. Account should be taken of condition as well as age when comparisons are made between a declared value and a database price. The vehicle's mileage can be considered as one indicator of condition.

Data to be included in the database could include the following elements:

- | | |
|--|---|
| 1. Vehicle make & model | 8. Accessories |
| 2. Vehicle type
(e.g. truck, van, saloon/sedan) | 9. FOB value |
| 3. Engine size | 10. Sea freight |
| 4. Fuel | 11. Port charges |
| 5. Transmission | 12. Inland freight
(vehicle transported from point of entry) |
| 6. Mileage | 13. Inland freight
(vehicle driven from point of entry) |
| 7. Tonnage | 14. Condition |

See also an example of a used motor vehicle declaration form at [Annex II](#), a document which is required in Zambia.

c. Pre-shipment inspection (PSI)

Private sector inspection companies (commonly referred to as PSI) have been employed by governments over many years as a means of strengthening Customs controls; particularly in developing countries since the introduction of the Agreement. They are able to fulfill a number of services for Customs, including providing assistance in the verification of declared Customs values. PSI companies typically have access to international price data, both in export (pre-shipment model) and import (destination inspection model) markets which can assist in this regard.

Explanation of PSI from WTO [website](#):

Pre-shipment inspection (PSI) is the practice of employing specialized private companies to check shipment details — essentially price, quantity, quality — of goods ordered overseas. Used by governments of developing countries, the purpose is to safeguard national financial interests (prevention of capital flight and commercial fraud as well as Customs duty evasion, for instance) and to compensate for inadequacies in administrative infrastructures.

The agreement recognizes that GATT principles and obligations apply to the activities of pre-shipment inspection agencies mandated by governments. The obligations placed on PSI-user governments include non-discrimination, transparency, the protection of confidential business information, an avoidance of unreasonable delay, the use of specific guidelines for conducting price verification and the avoidance of conflicts of interest by the PSI agencies.

The obligations of exporting contracting parties towards PSI users include non-discrimination in the application of domestic laws and regulations, prompt publication of such laws and regulations and the provision of technical assistance where requested.

Often the decision to employ a PSI company is made at a high government level, rather than by the Customs service itself. A Customs administration may therefore feel frustrated in this situation and consider that they should be carrying out the functions being undertaken by the PSI company, including valuation control.

WTO Agreement on Pre-shipment Inspection

This agreement sets out certain standards PSI companies should follow in conducting their services. This includes an obligation to follow the principles of the WTO Valuation Agreement when carrying out their services and sets out conditions for conducting price verification. Note in particular:

Preamble: [the WTO Agreement on Pre-shipment Inspection recognizes] that GATT principles and obligations apply to the activities of pre-shipment inspection agencies mandated by governments.

Article 20, footnote 4: The obligations of user members with respect to the services of pre-shipment inspection entities in connection with Customs valuation shall be the obligations which they have accepted in GATT 1994 and the other multilateral trade agreements included in Annex 1A of the WTO Agreement.

Countries who continue to employ the services of such companies are required to advise the WTO accordingly on an annual basis. In 2011, eight countries still employed inspection agencies for revenue protection purposes and 17 employed support services, either for destination inspection or selective PSI purposes.⁵

A WTO Working Party on PSI was also created. Note this recommendation in their final report from 1999: “...that developed countries ensure that developing countries receive the necessary technical assistance for domestic capacity building in order that the transition away from PSI can be made.”

IFIA (International Federation of Inspection Agencies)

The IFIA have issued a [Code of Practice on PSI mandated by government](#) which also promotes practices which are consistent with the WTO Valuation Agreement. Provisions relevant to Customs valuation are as follows:

Section 2.20.2 Providing technical advice on a value for Customs Purposes states that IFIA PSI Members shall:

- (A) follow the Customs valuation rules or applicable regulations or requirements of the User Government, and
- (B) comply with the Customs valuation principles of Article 5 [Customs Valuation Principles] to the extent that these are not contrary to the requirements of the User Government.

The Permanent Technical Committee considered this issue at its 178th Session in March 2007. Document reference [PC0182E1a](#), “Development of the role of PSI companies,” provides background to the topic and suggests the following measures to manage effective transition:

1. clearly and unambiguously setting out the reciprocal responsibilities in the new contract provisions in cases of transfers;
2. the actual transfer of technical valuation tools as also set out in the contract, and especially of databases for determining the Customs value;
3. commitment to regularly updating this same information to ensure it remains valid, upon ad hoc request or as a matter of course;
4. the training of Customs officials in transaction value, which has been somewhat forgotten given the predominant role of pre-inspection companies in determining the value;

⁵ WTO document G/VAL/W/63/Rev.13

5. the training of Customs officers in the use, updating and supplementing of information for valuation databases;
6. raising the awareness of these same officers about new trade flows from emerging countries, about new products appearing on markets and on the prices set within the informal sector;
7. the establishment of services responsible for information, studies and analysis of trade flows and tasked with gathering as much data as possible on trade activities, trade flows and developments within the specialized enforcement directorates;
8. the establishment, within major Customs clearance offices, of units responsible for performing these same functions at local level;
9. the organization of a formal information exchange system between all services, possibly through the implementation of modern communication networks (interconnected automated sites, Internet networks, etc.);
10. the monitoring and very meticulous use of information collected which will help to implement risk analysis in all the Customs services and in all control procedures;
11. individual supervision of officers with powers to determine the Customs value through modern automated methods, including the insertion of a range of values in automated Customs clearance systems for products which are most sensitive to fraud or which generate the most revenue;
12. the systematic and immediate review of the most sensitive Customs declarations in Customs offices in order to quickly determine inconsistencies, especially for fleeting imports in the informal sector;
13. the implementation of an investigation policy in the most fraud-sensitive companies, based inter alia on uncharacteristic flows in the most commonly imported goods.

It is also noted that proposals have been made in the context of the Trade Facilitation Negotiations, taking place as part of the WTO Doha Trade Round, suggesting that PSI should be eliminated.

WCO advice to Customs administrations:

- The WCO does not as a rule recommend that an administration use the services of inspection companies for PSI or destination inspection for the purposes of control of Customs valuation. There may be exceptions, however, for example, in a post-conflict reconstruction situation.
- The services of a PSI company should not be seen as a long-term solution to tackling the problems of undervaluation.
- For those countries that still employ private agencies - including pre-shipment inspection (PSI) companies - Customs should develop a strategy to terminate existing contracts at the earliest opportunity. Administrations should strive to ensure that such contracts are of short duration and contain a knowledge transfer and training component which will help the administration develop the necessary capacity to conduct Customs controls, including valuation controls, without external assistance.
- The WCO Secretariat may be contacted to provide assistance and advice in this regard. The WCO also encourages developed countries to provide assistance as recommended by the WTO Working Party on PSI.
- The WTO Agreement on Pre-Shipment Inspection and the IFIA Code of Practice make clear that PSI companies should conduct their services in

accordance with the principles and methodology of the WTO Valuation Agreement. Customs may therefore monitor the conduct of PSI companies to ensure they are carrying out or assisting with control of Customs valuation in compliance with the WTO Agreement and relevant supporting instruments, such as WTO Decision 6.1.

- PSI is a standing agenda item for the WTO Committee on Customs Valuation. Administrations that have concerns about the conduct of PSI operations in their country being in contravention of the WTO Agreement may consider raising issues and concerns at the WTO Committee, via the appropriate national channels.

d. Multinational enterprises: key valuation issues

Details of technical valuation issues are not covered in these guidelines. The References section lists sources for such information. It is useful, however, to highlight the current and recent key issues arising in valuation control of multinational enterprises (MNEs) around the world. MNEs represent more than 60% of all world trade. A brief introduction is given below to three topics of particular interest:

1. Transfer pricing and Customs valuation: The interaction and possible synergies between these two methodologies applying to direct taxation and Customs duties respectively have been discussed at several fora in recent years. Multinationals are required to satisfy both Customs and tax authorities in respect of similar questions and objectives relating to related party transactions. Customs' objective is to determine whether price influence has taken place (in accordance with Article 1 of the Agreement) and the tax objective is to ensure that an arm's length price has been set (typically using criteria established in the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations). There are competing tensions, however, between the two regimes as Customs are seeking to ensure every appropriate element is included in the Customs value, whereas the tax objective is to ensure the taxable profit does not include inappropriate elements to reduce tax liability. Furthermore, comparisons between a transfer price and a Customs value are highly problematic for several reasons; for example, a transfer price is based on aggregate values and may include goods and services obtained domestically and internationally, whereas the Customs value is relevant to an individual transaction of imported goods.

The key questions are: 1) to what extent can a transfer pricing study provide useful information for Customs when determining whether price influence has occurred in a related party transaction, and 2) how should Customs treat post-importation price adjustments which have occurred for transfer pricing reasons?

The TCCV is now examining these issues which are posing challenges for Customs administrations. A TCCV instrument has been issued, (Commentary 23.1), which establishes that a transfer pricing study may be of use to Customs when examining a related party transaction. It is recommended that Customs valuation departments establish a dialogue with their counterparts in the direct tax authority or department responsible for transfer pricing. This

will help facilitate the sharing of training and information, etc. A WCO e-learning module on this topic is available via the [CliKc!](#) platform.

2. Third-party royalties and license fees: A common scenario in multinational trade is the concept of contract manufacturing of trademarked goods which works as follows: An importer buys licensed goods from a manufacturer who is not the license holder. This sale is used as the basis for the price actually paid or payable under Article 1. The importer is also party to a license agreement with the licensor (the rights holder) and is required to pay royalty fees in return for the rights he acquires. The question posed is whether this royalty is includable in the Customs value under Article 8.1 (c) of the Agreement; i.e. is the payment related to the imported goods and is it paid as a condition of sale of the imported goods? The TCCV has examined a number of cases which contain these features. As a result, an instrument has been produced, Commentary 25.1, which gives useful guidance in dealing with cases of this nature.
3. Sale for export: Complex trading chains are common in multinational trade. Goods can be bought and sold several times before reaching their final destination. The question arises therefore, in multiple sale situations, which sale fulfils the criteria of Article 1 and may be used as the basis for the transaction value? Particular attention should be paid where intermediaries have been involved in the supply chain. It is not always apparent whether they have bought and sold the goods or have simply performed buying/selling agent functions, acting on behalf of another party. If this is the case, the goods have not been sold for export.

Commentary 22.1 of the TCCV examined a case where two sales had occurred, prior to importation. The conclusion states:

1. *...the underlying assumption of Article 1 is that normally the buyer would be located in the country of importation and that the price actually paid or payable would be based on the price paid by this buyer, and*
2. *in a series of sales situation, the price actually paid or payable for the imported goods when sold for export to the country of importation is the **price paid in the last sale occurring prior to the introduction of the goods into the country of importation**, instead of the first (or earlier) sale, and that,*
3. *this is consistent with the purpose and overall text of the Agreement...*

These situations can be highly complex and it is recommended that Customs valuation specialists in Customs administrations become familiar with these issues and are aware of latest developments (e.g. by following the discussions taking place in the TCCV) so they can provide advice as necessary within their administrations.

e. Fighting valuation fraud

In relation to valuation fraud, there are two broad risk areas with respect to use of the transaction value:

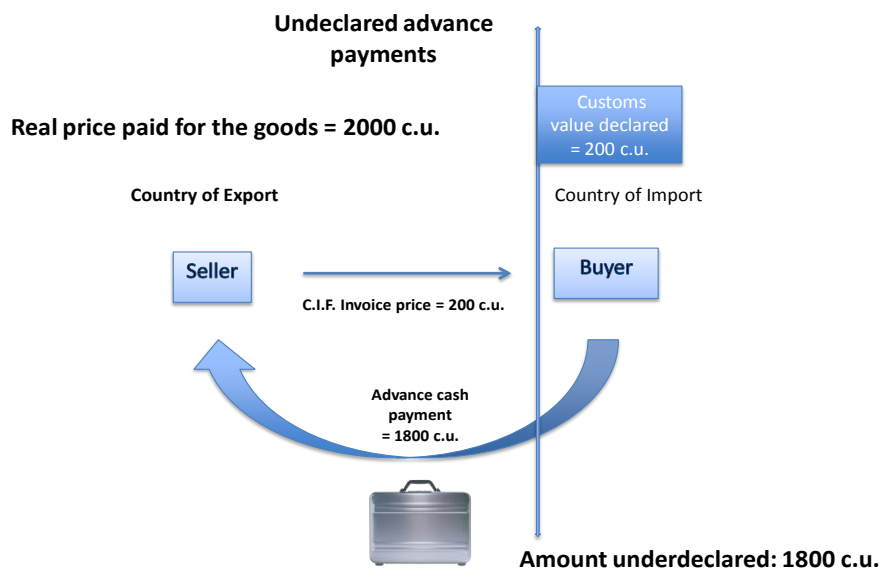
- 1) Fraud in relation to the price actually paid or payable: The prime example of this is an underdeclared invoice price (known as false, or “double,” invoicing). Other examples include falsely claimed discounts and related party transactions where price influence has occurred. With regard to the question of false invoices, a common question asked is how they can be identified. There is no easy solution; high-quality false invoices can be produced on low-cost computer printers and can appear genuine, including company logos, addresses, etc. In some cases, it is possible to detect indications of fraudulent invoices, based on observation, local knowledge or risk intelligence. Examples may be retained for reference purposes at the national level. In any case where it is suspected that the invoice does not represent the true price paid or payable, it is necessary to request and examine supporting evidence. The appropriate enquiry procedure has been outlined above (c. Procedure to follow when doubts exist regarding the truth or accuracy of the declared value: WTO Decision 6.1). It is important to respect this procedure in all cases of suspected fraud. Only in cases where incontrovertible evidence of fraud is found would this not be appropriate.

Where the enquiry procedure has been followed, it is then necessary to determine whether the evidence produced supports the declared price or not. If not, further investigation can be conducted if fraud is still suspected and Customs consider the level of risk warrants follow-up action. Such investigation should involve an examination of the trader’s books, records and premises for information which confirms that the price was intentionally underdeclared.

There are, however, a number of ways where a fraudulent operator can conceal such incriminating information. Failing to maintain purchase documents and legitimate accounts is one example. In this case, it is important to have penalty provisions which can be applied where such documents have not been retained or are not produced on request.

Another example is payment in cash which is not recorded by the business nor routed via reputable banks or financial institutions where records would be held. A particular variation of this is undeclared advance cash payments:

Personal couriers may carry bags of cash out of the country to make a down payment on the goods in the country where the goods are being purchased. A sales price has been confirmed but the seller agrees to issue an invoice for the outstanding balance only and no formal receipt or invoice is issued for the advance payment.



A further means of price manipulation is to falsely attribute part of the payment for imported goods as a payment for services, such as management fees. As in the previous example, the invoice which is presented to Customs may not represent the full price actually paid for the goods. Indications of additional payments which are described as service activities, apparently unrelated to the imported goods, may be investigated further by Customs to confirm their veracity, where it is suspected that such payments are includable in the price actually paid or payable under Article 1.

Another means of identifying potential undervaluation is by comparing the insurance value of consignments with the declared value. Where a large discrepancy is found, enquiries may be made to establish whether the insurance value in fact represents the true price paid for the goods and the declared price has been undervalued. Appropriate legal powers may be required, see example in [Annex IV](#).

- 2) Undeclared payments and price elements includable in the transaction value under Article 8: This includes selling commissions, assists, royalties and license fees and freight.

One common valuation fraud area is the misdescription of a selling commission (dutiable) as a buying commission (non-dutiable). The relevant contract and functions carried out by the agent in question can be examined to determine if the commission should be regarded as selling or buying.

Regarding elements such as assists and royalties and license fees, it is typically very difficult to prove fraud as the criteria for determining inclusion are complex and in some cases not definitive. An importer may claim either that he was unaware of the appropriate legal provisions or that he believed the elements did not meet the criteria for inclusion in the transaction value. This underlines the importance of advising importers of the legal requirements at every opportunity and recording details when the advice was given.

Overvaluation

Overvaluation of imported goods may be linked to illegal export of currency or money laundering and can be effected by the buyer and seller collaborating to artificially inflate the declared price of the imported goods. This can also be used as a basis for moving company funds to jurisdictions with lower direct tax rates. An additional element may therefore be built into the declared price of imported goods and the excess money is then channeled to the chosen destination.

General

Much of the earlier advice provided in these guidelines applies equally to the detection of fraud as it does to improving compliance. Namely, a strong risk management and intelligence system is needed and Customs should focus valuation fraud investigation as far as possible on the post-import environment, as valuation-related information is typically limited at the border.

Equally important is the need to maintain a record of past irregularities, both for non-compliance and fraud. Where an operator has been instructed to correct his procedures, based on previous mistakes, and is found to be still making similar errors which have resulted in underpayments of duty, then there is a greater chance that fraud has occurred. Even where fraud cannot be proven for repeated irregularities, an incremental penalty scale is recommended as an effective measure.

Although Post-Clearance Audit is not an investigation tool, it may occur that indications of possible fraud are discovered during an audit. In these cases, as recommended in the WCO Guidelines on Post-Clearance Audit, the appropriate course of action is for the PCA office to withdraw from the audit without alerting the commercial operator and refer to Customs investigation specialists for follow-up action. If an investigation is made and the auditee is informed about the formal start of investigative procedures, the auditee will become a suspect with significantly different legal rights.

It is clear that proving fraud is more difficult when dealing with certain sectors of the informal trade. Where transactions have been paid for in cash and/or formal books and records have not been maintained, necessary evidence is unlikely to be found.

Fraud officers need to be aware of the key principles and methodology of the Agreement and should work closely with valuation specialists to ensure that their actions follow these principles and seek advice where necessary.

Exchange of information options may also be considered as a basis for investigating suspected valuation fraud. The recommendations in Section 4 e), [Options for exchange of Customs valuation information](#), should be followed.

Please refer also to the Revenue Package Schedule for additional material on valuation fraud.

6. SUMMARY

Since the 1980s, substantial technical assistance and capacity building activities have been provided by the WCO, national administrations and others to assist countries in the implementation and application of the Agreement. However, problems and challenges remain for many countries.

Duty rates are steadily falling in most parts of the world, generally following WTO trade rounds. However, relatively high duty rates in many countries and the various financial crises of recent years still provide incentives for importers to undervalue. The switching of government revenue income to direct taxes reduces the incentive of Customs duty evasion (although typically increases the likelihood of direct tax fraud).

Some governments have chosen to apply specific duty rates for certain goods, that is, duty is based on a factor other than value, such as weight or unit. Determination of duty in these cases rests on the classification of the product and quantity or weight, etc.; therefore the price paid for the imported goods is immaterial. This eradicates the possibility of undervaluation and may be considered by governments as a possible solution for serious undervaluation problems.

Effective, structured training programmes are essential to provide the necessary skills to officers working with Customs valuation. The level and depth of knowledge required should be based on an individual's responsibilities. Skills are required in a wide range of topics, including:

- Valuation technical skills
- PCA techniques
- Accounting and bookkeeping (including professional qualifications)
- IT skills
- Anti-fraud/investigation techniques
- Risk analysis
- Risk management
- Commercial awareness
- Legal knowledge (including professional qualifications)
- Trainer skills
- Effective communication with the private sector

Training delivery methods should be broad ranging; options include national or regional classroom training events, on-the-job training, academic study and WCO e-learning programmes (via the [CliKc!](#) platform).

There are no easy solutions to the problem of undervaluation, within the framework of the Agreement. The objective should be to encourage and promote compliance and reduce levels of non-compliance. This demands a strategic and coordinated approach and requires high-level management support to effect the necessary changes, focusing on key risk areas.

Valuation Five–Point Plan Checklist

1) ESTABLISHING LEGISLATION & POLICY

- ☐ Is national/regional legislation adequate to fully implement the Agreement and conduct post-clearance controls?
- ☐ Is national valuation policy established?
- ☐ Is adequate guidance available to Customs officials, regional offices etc.?
- ☐ Does the administration team monitor and contribute to the work of the Technical Committee on Customs Valuation?

2) MANAGING RISK

- ☐ Are up-to-date, reliable import trade statistics available?
- Is a risk management system established which:
 - ☐ Is based on the WCO Risk Management Compendium?
 - ☐ Incorporates a risk database including importer profiles?
 - If a Valuation Database is used, (optional) is it:
 - ☐ Only used as a risk assessment tool?
 - ☐ Using previously validated Customs declaration data as the prime source?
 - ☐ Focusing on high-risk importers and goods only?
 - ☐ Using only current data?
 - ☐ Applied in accordance with TCCV Guidelines?
 - ☐ Subject to management checks?
- Exchange of Customs valuation information (optional). Before being considered:
 - ☐ Have all other options for verification at national level been exhausted?
 - ☐ Have the TCCV's [Guidelines on the Exchange of Customs valuation information](#) been taken into account?
 - ☐ Have mutually agreed terms for information exchange been agreed with the exporting country?

3) IMPROVING COMPLIANCE

- Has a compliance programme been developed which:
- ☐ Establishes an appropriate balance between frontier and post-importation checks (PCA)?
 - ☐ Ensures the enquiry procedures set out in WTO Decision 6.1 are followed in cases of doubt?
 - ☐ Provides education and assistance to the trade?
 - ☐ Offers advance valuation rulings?
 - ☐ Facilitates compliant trade?
 - ☐ Incentivizes the informal trade; including working with informal trade associations?
 - ☐ Incorporates an appeals procedure?
 - ☐ Allows release of goods against security in cases of doubt?
 - ☐ Promotes use of the transaction value?

4) FIGHTING FRAUD

- ☐ Are staff members aware of the key valuation-fraud risk areas?
- ☐ Are adequate investigative legal powers, including incremental penalty system, in place?

5) ACQUIRING SKILLS AND KNOWLEDGE

- Is a national or regional training programme in place which provides skills as appropriate in the following areas?
- ☐ Customs Valuation
 - ☐ PCA
 - ☐ Accountancy
 - ☐ Anti-fraud/investigation
 - ☐ Risk management and risk analysis
 - ☐ Train the trainers
 - ☐ Knowledge of legitimate trading strategies and pricing practices
 - ☐ Communicating with and educating the private sector
- Does the training programme ensure relevant skills are maintained and updated?

ANNEX I: VALUATION TOOLS AND INSTRUMENTS

Extract From Revenue Package Schedule: Topic 2 - Customs Valuation

Section 1 - PRIME TEXT		
INSTRUMENT	DESCRIPTION AND AVAILABILITY	ACTION REQUIRED BY MEMBER
2.1.1 WTO Valuation Agreement ("the Agreement")	<ul style="list-style-type: none"> Prime international instrument for customs valuation, formally known as the <i>Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994</i> The Agreement provides customs valuation methodology and details other related requirements including options and derogations It is an obligation for all WTO Members (currently 153) to adopt this GATT Agreement for determination of customs value in respect of ad valorem duty rates Text available: <ul style="list-style-type: none"> WCO Valuation Compendium (paper or online versions) Brief Guide to the Customs Valuation Agreement WTO Website 	<p>WTO Members are required to fulfil the following obligations (<i>Note: this information will also provide assistance to Members seeking WTO accession</i>) :</p> <ul style="list-style-type: none"> Ensure that national law, regulations and administrative procedures are in conformity with the provisions of the Agreement (see Articles 12⁶ and 22.1⁷ of Agreement). Notify WTO Valuation Committee as required under a Decision of the WTO Committee on Customs Valuation⁸ and Article 22.2⁹). <i>Note: Around 43 countries have not yet notified the WTO.</i> Make choice under Article 8.2: Members have an option to include or exclude certain freight and insurance costs from the Customs value. Make choice under Article 9: Members have an option to use the conversion rate in effect at the time of exportation or importation. <p>- <i>Note that specified derogations are available to Members on request (Annex III).</i></p>

⁶ Article 12: "Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned."

⁷ Article 22.1: "Each Member shall ensure, not later than the date of application of the provisions of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement."

⁸ Available in WTO document G/VAL/5, 13 Oct. 1995.

⁹ Article 22.2: "Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations."

Section 1 - PRIME TEXT		
INSTRUMENT	DESCRIPTION AND AVAILABILITY	ACTION REQUIRED BY MEMBER
	<ul style="list-style-type: none"> - The Agreement also requires Members to provide the following facilities: 	<ul style="list-style-type: none"> - Provide penalty-free appeals procedure (see Article 11¹⁰ of Agreement) - Provide facility to release goods against security where reasons to doubt declared value (see Article 13¹¹ of Agreement)
2.1.2 Instruments of WTO Customs Valuation Committee	<ul style="list-style-type: none"> - Decisions drafted by the WTO Customs Valuation Committee in support of the Agreement - Available in WCO Customs Valuation Compendium (paper or online versions) and via the WTO website <p>The key WTO Decisions are listed below:</p>	
	<ul style="list-style-type: none"> - Decision 3.1 states that charges for interest under a financing arrangement shall not be regarded as part of the customs value. 	<ul style="list-style-type: none"> - Implement in national policy and law - Advise WTO once decision made
	<ul style="list-style-type: none"> - Decision 4.1 provides an option to omit the value of specified software when imported on carrier media. 	<ul style="list-style-type: none"> - Decide whether to adopt (many countries have already chosen to adopt) - Advise WTO once decision made - See information in Commentary 13.1 and WCO Basic Valuation Training Module, Lesson 24
	<ul style="list-style-type: none"> - Decision 6.1 details the approach to be adopted where there are reasons to doubt the truth or accuracy of a declared value. It provides a balance between the rights and expectations of both Customs and importers. 	<ul style="list-style-type: none"> ▪ Implement steps listed in the Decision into standard procedures ▪ See information in Advisory Opinion 19.1 and Case Studies 13.1, 13.2, WCO Customs Valuation Control Handbook, WCO Basic Valuation Training Module, Lesson 24, WCO Intermediate/Advanced Training Module: Lesson 4

¹⁰ *Article 11:* "1. The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty. 2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority. 3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal."

¹¹ *Article 13:* "If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances."

Section 2 - SUPPORTING INSTRUMENTS AND TOOLS		
INSTRUMENT/TOOL	DESCRIPTION AND AVAILABILITY	RECOMMENDED ACTION FOR MEMBER
2.2.1 Instruments of the Technical Committee on Customs Valuation (TCCV)	<ul style="list-style-type: none"> ▪ Various supporting instruments (e.g. Advisory Opinions, Commentaries, etc.) providing technical interpretations on many key valuation issues drafted by TCCV ▪ Not legally binding, but can be very useful to determine policy and ensure consistency ▪ Available in the WCO Customs Valuation Compendium (paper or online versions) 	<ul style="list-style-type: none"> ▪ Ensure valuation policy specialists are familiar with texts ▪ Integrate key texts into national policy as required ▪ See information on selected instruments in WCO Basic Valuation Training Module and Intermediate/Advanced Training Module
2.2.2 Practical Guidelines on Valuation Control	<ul style="list-style-type: none"> - Covers the key considerations for developing an effective, valuation control programme, including: <ul style="list-style-type: none"> ○ Managing valuation risk ○ Promoting a compliance-based approach ○ Establishing a balanced programme, incorporating advance rulings, border controls and post-clearance audit (PCA) ○ Development and use of a valuation database as a risk assessment tool ○ Valuation treatment of the informal trade, second-hand goods, and working with private inspection companies. - Supported by case studies (Brazil, India and Mauritius) describing Members' valuation control programmes and past experiences to assist Members in the development of national programmes. - Available via Members' website 	<ul style="list-style-type: none"> - Recommended for use by all staff dealing with customs valuation
2.2.3 Guidelines on the development and use of a National Valuation Database as a Risk Assessment Tool	<ul style="list-style-type: none"> - These Guidelines were developed essentially as a risk assessment tool to help developing countries overcome difficulties in implementing the Agreement. - Drafted by TCCV in 2004 as part of package of responses to WTO Terms of Reference following Doha Ministerial Decision 8.3. - Available here. 	<ul style="list-style-type: none"> ▪ The Guidelines are of particular benefit to Members who have set up such a national computerised database or are considering doing so. ▪ Members should confirm that such databases are only being used as a risk assessment tool and are not being used as a basis for establishing a minimum value. ▪ Ensure valuation policy specialists are familiar with the Guidelines.

Section 2 - SUPPORTING INSTRUMENTS AND TOOLS		
INSTRUMENT/TOOL	DESCRIPTION AND AVAILABILITY	RECOMMENDED ACTION FOR MEMBER
		<ul style="list-style-type: none"> Consider alternatives to valuation databases; e.g. develop a wider risk-based database used in conjunction with an audit approach as a means of ensuring compliance. See further information in WCO Customs Valuation Control Handbook.
2.2.4 Guide to the Exchange of Customs Valuation information	<ul style="list-style-type: none"> The Guide sets out procedures to be carried out by Customs where there are reasons to doubt the truth or accuracy of a declared customs value, before considering a request for information to the exporting country customs administration. Drafted by TCCV in 2003 in response to WTO Terms of Reference following Doha Ministerial Decision 8.3. Available here. See also Article 7¹² of the International Convention on Mutual Administrative Assistance in Customs Matters ("Johannesburg Convention"). 	<ul style="list-style-type: none"> Ensure valuation policy specialists are familiar with the Guide. Information available in Lesson 9 of WCO Intermediate/Advanced Valuation Training Module and in WCO Customs Valuation Control Handbook.
2.2.5 WCO Customs Valuation Control Handbook	<ul style="list-style-type: none"> The Control Handbook provides operational assistance and practical guidelines for Members working with the Agreement, especially in relation to procedural control mechanisms. It focuses on how to achieve an acceptable balance between trade facilitation and effective Customs controls. Revised version issued by TCCV in 2007 (partial revision). Available in hard copy or CD-ROM from WCO online Bookshop. 	<ul style="list-style-type: none"> Ensure valuation policy specialists are familiar with the Handbook and make available to operational staff. Incorporate where necessary in national instructions/guidelines.
2.2.6 Brief Guide to the Customs Valuation Agreement	<ul style="list-style-type: none"> Contains text of the Agreement and interpretative notes Annex II covering Committee procedures not included. Available here. 	<ul style="list-style-type: none"> Useful as handy reference to WTO Agreement text for all staff working with valuation.
2.2.7 Model Operation to combat	<ul style="list-style-type: none"> Developed from the experience of one particular operation conducted 	<ul style="list-style-type: none"> Can be considered for use in situations where

12 "Information for the Assessment of Import or Export Duties and Taxes

1. On request, the requested administration shall, without prejudice to Article 42, in support of the proper application of Customs law or in the prevention of Customs fraud, provide information to assist a requesting administration that has reasons to doubt the truth or accuracy of a declaration.

2. The request shall specify the verification procedures that the requesting administration has undertaken or attempted and the specific information requested."

Section 2 - SUPPORTING INSTRUMENTS AND TOOLS		
INSTRUMENT/TOOL	DESCRIPTION AND AVAILABILITY	RECOMMENDED ACTION FOR MEMBER
valuation fraud using double/false invoicing	<p>between Russia and the EU. Model focuses on high level of information exchange, issued February 2004.</p> <ul style="list-style-type: none"> - Available here. 	exchange of information channels are established with exporting country.
2.2.8 Checklist on Drafting National Valuation Legislation for implementation of the WTO Valuation Agreement	<ul style="list-style-type: none"> - This checklist provides an overview of the Agreement and specific considerations for each Article of the Agreement. It helps Members to formulate and incorporate the Agreement into national legislation. - Drafted in question and answer format. - Available here. 	<ul style="list-style-type: none"> - Countries that have yet to notify the WTO of their valuation legislation should use this Checklist and take action accordingly.
2.2.9 Diagnostic Tool on Tariff Classification, Valuation and Origin Work and Related Infrastructure	<ul style="list-style-type: none"> - Developed to provide a route map and self-assessment mechanism which will help Members assess their current level, identify weaknesses and plan the necessary steps for strengthening their infrastructures and control programmes. 	<ul style="list-style-type: none"> - The new diagnostic tool will assist Members with the identification of problems and solutions in these areas
2.2.10 Guidelines on Customs Infrastructure for Tariff Classification, Valuation And Origin	<ul style="list-style-type: none"> - Developed to provide a route map and self-assessment mechanism which will help Members assess their current level, identify weaknesses and plan the necessary steps for strengthening their infrastructures and control programmes. 	<ul style="list-style-type: none"> - The new guidelines will assist Members for strengthening Customs infrastructure in these areas
2.2.11 Technical Guidelines on Advance Rulings For Classification, Origin and Valuation	<ul style="list-style-type: none"> - Prepared to align and combine the various texts currently available which provide advice in relation to issuing advance rulings on classification, origin and valuation. In particular, this was done in the light of the WTO Trade Facilitation Agreement (TFA) Article 3 which encourages WTO members to provide rulings for Customs valuation 	<ul style="list-style-type: none"> - The new technical guidelines will assist Members to establish procedures for Advance Rulings on Valuation
2.2.12 WCO Guide to Customs Valuation and Transfer Pricing	<ul style="list-style-type: none"> - Produced in response to needs expressed by Customs administrations and the business sector. It consists of technical background on Customs valuation and transfer pricing principles and methodologies, a summary of the work conducted to date and references to good practices developed by Member Customs administrations 	<ul style="list-style-type: none"> - Members are encouraged to use the guide to make better use of transfer pricing studies for Customs valuation purposes
2.2.13 Mirror analysis guide, including case studies	<ul style="list-style-type: none"> - It is acknowledged that accurate quantification of potential revenue loss is a great challenge. However, the WCO's "mirror analysis" project is an example of how export and import 	<ul style="list-style-type: none"> - Members are encouraged to conduct "mirror analysis" for better focused risk assessment and, in turn, improved compliance

Section 2 - SUPPORTING INSTRUMENTS AND TOOLS		
INSTRUMENT/TOOL	DESCRIPTION AND AVAILABILITY	RECOMMENDED ACTION FOR MEMBER
	trade statistics can be compared for the same products over the same period to identify possible undervaluation or misclassification of goods. A guide has been prepared on the use of mirror statistics for analyzing discrepancies in Customs import and export data, based on existing literature and analysis of countries' trade data.	levels
2.2.14 Undervaluation of textiles/ Italian experience	- Case study produced by the Customs administration of Italy explaining how they used statistical analysis to target and identify the undervaluation of imported textiles	- Members may consider using the statistical risk analysis techniques in the case study to target undervaluation of imported goods
2.2.15 Good practices guide, including case studies with respect to informal trade	- Informal trade is regularly highlighted as one of several key challenges to effective revenue collection. A good practices guide has been produced, together with national case studies which illustrate Members' various strategies for dealing with this issue.	- Members are recommended to use the guide and case studies to tackle informal trade
2.2.16 Good practices guide, including case studies with respect to termination of inspection contracts	- The WCO Secretariat has conducted several initiatives over recent years to assist and encourage countries which are planning, or considering, termination of inspection contracts, particularly in the areas of classification and valuation. Additionally, Article 10.5 of the TFA states that Members shall not require the use of pre-shipment inspections in relation to tariff classification and Customs valuation. A good practices guide has been produced, together with supporting national case studies, in order to provide valuable guidance to other Customs administrations who still maintain such contracts.	- Members are encouraged to consider the guide and case studies when planning to take over core functions previously conducted by inspection companies
2.2.17 WCO Valuation training Basic Module	- This Module, updated in 2014, assists in the development of a comprehensive level of knowledge and understanding of the Agreement, including its history, methodology, interpretation, application and supporting mechanisms. Contains 27 Lessons with exercises covering: <ul style="list-style-type: none"> - Associated requirements such as right of appeal and release against security - WCO and WTO Valuation 	- Use of Module recommended for operational and policy staff, valuation specialists and senior/middle managers.

Section 2 - SUPPORTING INSTRUMENTS AND TOOLS		
INSTRUMENT/TOOL	DESCRIPTION AND AVAILABILITY	RECOMMENDED ACTION FOR MEMBER
	Committees and relevant instruments <ul style="list-style-type: none"> - Management of valuation risk - Organisational infrastructure requirements - Pre-shipment Inspection - Available from WCO Online Bookshop. 	
2.2.18 WCO Valuation training Intermediate/ Advanced Module	<ul style="list-style-type: none"> - This Module, updated in 2015, assists in developing a higher level of Customs valuation knowledge and understanding, especially in regard to the complexities of the WTO Valuation Agreement in today's trade facilitation environment. Includes 10 Lessons with exercises covering: <ul style="list-style-type: none"> - Complexities in application of valuation methods - Instruments of the WCO and WTO Valuation Committees - Trade practices/Commercial Awareness - Transfer Pricing - Policy development - Valuation Risk Management - Verification/post-import audit - Available: WCO Online Bookshop 	<ul style="list-style-type: none"> - Use of Module recommended particularly for valuation specialists, senior/middle managers and policy staff.
2.2.19 Valuation E-learning programme	<ul style="list-style-type: none"> - Incorporates material from Basic & Intermediate/Advanced Modules with added interactive exercises/lessons. - Available via CLiKC! 	<ul style="list-style-type: none"> - Recommended for use by all staff dealing with customs valuation.
2.2.20 Updated Transfer Pricing E-learning Programme	<ul style="list-style-type: none"> - This course co-developed with the OECD aims to explain the issues and problems of transfer pricing from both tax and customs points of view. - Available via CLiKC! 	<ul style="list-style-type: none"> - Recommended for use by all staff dealing with multi-national companies in the field of customs valuation.
2.2.21 Customs Valuation/ audit E-learning programme	<ul style="list-style-type: none"> - Available via CLiKC! 	<ul style="list-style-type: none"> - Via case studies, this module helps Members become familiar with Customs valuation methods and enquiry methods.

ANNEX II: EXAMPLE OF USED VEHICLE DECLARATION FORM



ZAMBIA REVENUE AUTHORITY CUSTOMS SERVICES DIVISION USED MOTOR VEHICLE DECLARATION FORM (Attach to Bill of Entry)

DECLARATION BY IMPORTER/AGENT

Agent Name..... Code

Importers Name TPIN

1. Vehicle Make & Model.....

2. Year..... Vehicle Type (Truck, Van, Saloon).....

3. Engine Size Transmission Fuel.....

4. Mileage Tonnage

5. Accessories
(Tick)

AC : Air Conditioning	AW : Alloy Wheels	PS : Power Steering	SR : Sun Roof	CL : Central Locking
PW : Power Windows	TB : Turbo	SP : Spoiler	PM : Power Mirror	SRS : Air Bags
TC : Twin Cam	EFI : Fuel Injection	ABS : AntiLock Brakes	HD : High Deck	JL : Low Deck

6. FOB value..... Sea freight..... Port charges.....

7. Inland freight (VDS)..... Inland Freight (Own wheels)..... Other Charges.....

8. Total CIF (foreign currency)

To support your declaration and facilitate quick clearance, please provide the following:

- Genuine Invoices, with original date stamp impressions of other Customs administrations
- Bills of lading
- Freight and port charges invoices/payment receipts
- Export/transit Customs declarations, with original date stamp impressions
- Bank transfers
- Email/fax correspondence with the seller
- Internet print outs of the vehicle during your shopping/enquiry
- Auction participation certificate/receipts
- Advertising materials in the market of purchase (newspaper/magazines etc)

I/we.....being theimporter(s) agent
do hereby declare that the particulars contained herein and documents attached/presented herewith are true and complete and
comply with the provisions of the Customs and Excise Act – Cap 322.

Signature..... Date/...../.....

False declaration shall attract Penalties up to 300% of duty paid value, forfeiture or prosecution.

FOR OFFICIAL USE


Final Customs Value..... Basis..... Reference

*Basis (1= Transaction Value, 2= Identical goods, 3 = Similar goods, 4 = Deductive, 6=Fallback), Ref (for methods 2, 3, 6)

Examiner Signature Date



ANNEX III: EXAMPLE OF SIMPLIFIED CUSTOMS DECLARATION

<div style="display: flex; justify-content: space-between; align-items: center;"> <div> Country: <input style="width: 150px;" type="text"/> </div> <div>  </div> </div> <p style="text-align: center;">COMESA SIMPLIFIED CUSTOMS DOCUMENT For goods of a value not exceeding US\$500</p>				
1. Name of Exporter		2. Port of clearance		
3. Name of Importer		4. Identification of Transport		
5. Goods Description			6. Quantity	
8. Country of Origin	9. Country Destination		7. Net Weight/Volume (kg/litres)	
			10 Value	
FOR OFFICIAL USE				
11. Declaration No. & Date		12. HS Code (commodity code)		13. Customs Value
14. DECLARATION BY EXPORTER/IMPORTER I/We (exporter/importer) do hereby declare the information and particulars declared herein as true and complete Signature.....Date.....Place..... Tel/Fax.....			15. FOR OFFICIAL USE <div style="text-align: center; height: 100px;">(STAMP)</div>	
REVENUE INFORMATION				
16. Duty/Tax Type	17. Duty/Tax Base	18. Rate	19. Duty/Tax Due	20. Total Duty/Tax Due
i) ii) iii) iv)				
Totals				

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ANNEX IV: EXAMPLE OF LAW REGARDING CUSTOMS POWERS AND PENALTY MEASURES

Based on Italian example

The Customs Administration, in its activities for the prevention of and the contrast to fiscal offenses linked to the fraudulent declaration of Customs value and of other key elements of Customs ascertainment, has the power to acquire, by the means foreseen in *[legal reference]*, data and documents concerning the costs of transport, insurance and freight and of any other expenses included in the calculation of the value declared for import, export, transit and entry into a Customs or VAT warehouse.

For the purposes of this paragraph, the Customs Administration may request information and documents to importers, exporters, airport-service companies, shipping companies, legal and natural persons taking care of goods circulation, warehousing and transport and of Customs brokerage.

The gathering and processing of data for the purposes of this paragraph are considered of relevant public interest according to *[legal reference]*. In case of non compliance, within the specified timeframe, with all requests for information provided for in this paragraph, the Customs Administration shall apply an administrative fine - from €5,000 to €10,000, besides the suspension and withdrawal of any authorization and right previously granted to the non-complying trader.

ANNEX V: EXTRACT FROM THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION'S GUIDE TO THE EXCHANGE OF CUSTOMS VALUATION INFORMATION

Recommended procedures for the exchange of valuation information

1. Valuation-related information to be requested from the Customs administration in the country of exportation should be limited to information which is necessary for verifying the truth or accuracy of the Customs value declared by the importer and fraud is suspected. The requested information may include the value of the goods stated in the export declaration/entry presented to the Customs administration of the exporting country.
2. The use of bilateral or multilateral mutual administrative assistance agreements to delineate the appropriate terms for the exchange of valuation information among Customs administrations is recommended.
3. Communication in regard to the exchange of valuation information should take place between appropriate offices designated for this purpose. The designated offices should be notified to the Secretary General of the WCO by the Customs administrations concerned. The Secretary General will make the information concerning designated offices available to Members on the WCO Members Website.
4. Requests for information should be made in writing or electronically. The requested Customs administration may require written confirmation of electronic requests. Where the circumstances so require, requests may be made verbally. Such requests shall be confirmed as soon as possible either in writing or, if acceptable to the requested and requesting administrations, by electronic means.
5. Requests for information should specify:
 - (a) the purpose of the request and the type of information requested;
 - (b) the measures taken by the requesting Customs administration in accordance with the "Checklist";
 - (c) the information necessary to identify the goods and their export declaration/entry, which may include:
 - (i) details regarding the goods (name, quantity, tariff code number, shipping marks, number of packages, invoice number, etc.);
 - (ii) name and address of the importer/buyer/consignee;
 - (iii) name and address of the exporter/seller/consignor;
 - (iv) means of transportation and transport document number;
 - (v) date and place of departure/exportation;
 - (vi) date and place of arrival/importation;
 - (d) any other information deemed useful by the requesting administration.
6. The requested Customs administration should notify the requesting Customs administration of the receipt of the request as soon as administratively possible.

7. The requested information should be provided as quickly as possible, preferably on the basis of a mutually agreed time frame, in accordance with national legal and administrative provisions in the country of exportation and within the limits of the Customs administration's competence and available resources. The response to the request for information should provide the requested information as fully and accurately as possible. The response could also include, as appropriate, the following information:
- (a) whether the export consignment has been identified;
 - (b) whether the export entry documents have been verified;
 - (c) whether the Customs administration's records have been consulted;
 - (d) whether relevant information has been sought from other government agencies concerned;
 - (e) whether the exporter/seller/consignor has been consulted.
8. Where the requested Customs administration cannot provide the information expeditiously, it shall notify the requesting Customs administration of the reasons for its inability or delay in providing the information.

ANNEX VI: REFERENCES AND ACKNOWLEDGEMENTS

References

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- Informal Cross-Border Trade and Trade Facilitation Reform In Sub-Saharan Africa : [OECD Trade Policy Working Paper No. 86](#) by Caroline Lesser and Evdokia Moisé-Leeman
- WCO research paper on Informal Trade Practices and Integrity: [HI0047E1a](#)
- Thomas Cantens and Gael Raballand, 2012. "Mirror Trade Statistics to Help to Identify Customs Fraud. A Cameroon Case Study" in Thomas Cantens, Robert Ireland and Gael Raballand, *Reform By Numbers: Measurement Applied to Customs and Tax Administrations in Developing Countries*, Directions in Development Series, World Bank.

Acknowledgements:

The WCO would like to thank the many Member administrations who, among others, have made valuable contributions to the development of these guidelines, including the administrations of:

Brazil
Burkina Faso
Dominican Republic
Ecuador
Former Yugoslav Republic of Macedonia
India
Indonesia
Italy
Kenya
Korea
Malawi
Mauritius
Morocco
Rwanda
Togo
Uganda
Ukraine
Zambia



ANNEX VII: ICC BACKGROUND NOTE ON COMMERCIAL PRICING PRACTICES

Understanding commercial pricing practices

A fundamental consideration when using a valuation database is to realize that often there are legitimate business reasons why prices for the same goods may vary. Advisory Opinion 2.1. of the Technical Committee on Customs Valuation (TCCV) on the 'Acceptability of a price below prevailing market prices for identical goods' states the following on the question whether a price lower than prevailing market prices for identical goods can be accepted for the purpose of Article 1 of the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994: "The Committee considered this question and concluded that 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, subject of course to the provisions of Article 17 of the agreement".

There are many commercial pricing practices applied by cross-border traders that may result in a declared value to be lower than indicated by customs valuation databases.

In this regard the examples below might be helpful to increase the awareness among customs administrations that prices might be lower than expected for very valid commercial reasons.

a) Differences in pricing for products falling within the same tariff heading

- *Business rationale:*

There are often valid reasons for disparities in pricing between importations of goods falling within the same tariff provision. At times the disparities may be very wide and therefore there is no practical value to apply a comprehensive, "one size fits all" value derived from a database compiled on a tariff provision basis. This can be further clarified by taking the importation of bicycles as an illustration.

Bicycles are classified for tariff purposes in heading 8712 of the Harmonized Tariff System. It is clear that not all bicycles are the same and that not all bicycles carry the same price. Therefore, their customs value will vary according to that price, which is a function of their differences, including in their physical composition. This acknowledgment is key to realizing the limitations of the valuation databases. A bicycle that has been built for use in the Tour de France, or another similar premier sporting event, will be ultra-light and benefit from all the latest technology. Such a state-of-the-art bicycle will ordinarily be far more expensive than a bicycle built for everyday use. It would be a significant error to apply the higher cost of the racing bicycle to all other imported bicycles just as it would be an error to apply the lower cost of the conventional bicycle to that of the racing bicycle. Similarly, it is important to note that prices for the identical item may vary with time, as the market price may rise and





fall. It would therefore not be logical or fair for a customs authority to insist on the former customs value. The above thus raises the question how a valuation database could help in finding a customs value for bicycles or other products.

- *Type of evidence customs may expect:*
Presentation of a valid commercial invoice, product specifications showing the configuration of the article, special provenance of the imported article, other factors showing comparability or not, as well as proof of payment.

b) Launching in (new) markets by allocating Advertising Marketing Promotional (AMP) funds

- *Business rationale:*
Multinational enterprises (MNEs) groups of branded goods may use sole distributor arrangements in early stage market penetration or to launch a new product in a market. Under these arrangements, the pricing for newly introduced product will be negotiated taking into account the expectation that the distributor will spend a disproportionate share of marketing funds on advertising and brand building for the new product. In fact, it is often the case that the sole distributor is contractually obliged to invest on its own account significant AMP funds to seed the brand and build awareness and affinity with new consumers in market. For example, MNE sales of established products to the distributor may be typically discounted from the manufacturer's suggested retail price by 30% to 40%, while new product sales are discounted by 66%. In this scenario, the import price for the new product in this scenario will be lower than import prices of more established brands of similar goods in the same market so as to enable the sole distributor to resell the new product at a market competitive price, and earn a sufficient return. Were the import price higher, the sole distributor could end up making an inappropriately low profit, or even to operate at a loss, such that it would no longer be commercially viable for the distributor to continue doing business with the MNE group.
- *Type of evidence Customs may expect:*
Presentation of signed distribution agreement between MNE group and sole distributor showing obligation for AMP investment, copies of third party invoices to the sole distributor for AMP-related goods and services, invoices and payment records for the new product, coupled with evidence that the distributor's chart of accounts shows no other payments to the MNE which are additions to transaction value.

c) Importing goods at discount prices

- *Business rationale:*
In a dynamic business environment, an entrepreneur concludes a distribution agreement with a distributor, related or non-related, ensuring



that risks and responsibilities are properly divided between both actors, in line with the role of the parties. There are a number of operating principles listed below as an example:

- Company A will set the product price for the distributor in such a way that he is able to cover his costs (distribution, sales and promotion/marketing) while also making a profit.
- Company A may sometimes communicate the maximum recommended resale price per product but it is understood that the distributor alone determines the price at which it resells in the market and is therefore responsible for the profit he is making.
- Company A will establish and communicate the yearly marketing fund level (in local currency or USD) based on forecast plans – this can be changed during the year upon mutual agreement. It would be provided in total with suggested split by brand.
 - It is clear that if it comes to the marketing fund, the distributor is spending his or her money – this is not the money of Company A, and should not be referred to as such.
 - The marketing fund would be spread among the total value of the product acquired by the distributor in order to have a common percentage discount on each single product. This will lead to greater stability of the import prices.
 - This method will ask for internal re-balancing of marketing spending inside the books of Company A to reflect the real spent by brand/category- if justified by materiality.
- Company A will order and pay for the advertising expenses in the market (TV, radio, print, Internet) either directly or through a dedicated third party agency. This approach will result in additional customs duty (30%) and VAT (17%) expenses. This is however seen as necessary to maintain the consistency of the 'Global Distributor Model' and avoid exposing the distributor to a difficult decision whether to spend the money on advertising or 'move it to profit'. The additional benefit is that such equity building expenses would clearly support the claim of Company A to all intellectual property created over time in the market.

- *Type of evidence customs may expect:*
Distribution agreement between entrepreneur-Company A and related or non-related distributor

d) Differences in portfolios depending on the competition in the market;

- *Business rationale:*
Many MNE Consumer Packaged Goods groups will adopt a diversified portfolio approach to branded goods. This enables the group to compete across various consumer price points for maximum market penetration. In such circumstances, the product portfolio in any individual market will contain goods of very different price points within the same harmonised system subheading, ranging from luxury custom made, to standard mass



market, to low value category entry. It is challenging for customs officers to assess the differences in the specific product types which may result in “comparing apples and oranges”.

- *Type of evidence Customs may expect:*
Presentation of product marketing material and product fact sheets to establish comparability factors.

e) Duty free channels:

- *Business rationale:*
Duty free operators selling branded goods generally sell direct to end consumers and therefore operate at a different commercial level and in a different business environment to traditional importer/wholesalers. In traditional importer/wholesaler scenarios, additional system profit is required to appropriately remunerate other participants in the value chain. Furthermore, differences in the travel retail channel (e.g. the existence of a captive consumer group at airports) may drive differences in AMP strategies and the resulting expenditures. These commercial differences are generally reflected in different import prices for identical goods in any one particular market.
 - *Type of evidence customs may expect:*
Demonstrated differences in commercial level of trade.
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