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Customs and Key Compliance Developments

13 – 15 September 2022

ANNUAL COMPLIANCE CONFERENCE

**Baker
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Customs Valuation: Best Practices and Pitfalls

14 September 2022, 2.30 – 3.30 pm BST

ANNUAL COMPLIANCE CONFERENCE

Speakers



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Basic Rule: Transaction Value

(Plus certain additions, where not already included in the price)

WTO Valuation Agreement

Basic rule: "The customs value of imported goods shall be the **transaction value**, that is the **price actually paid or payable** for the goods when **sold for export** to the country of importation, adjusted in accordance with the provisions of Article 8" (Article 1)

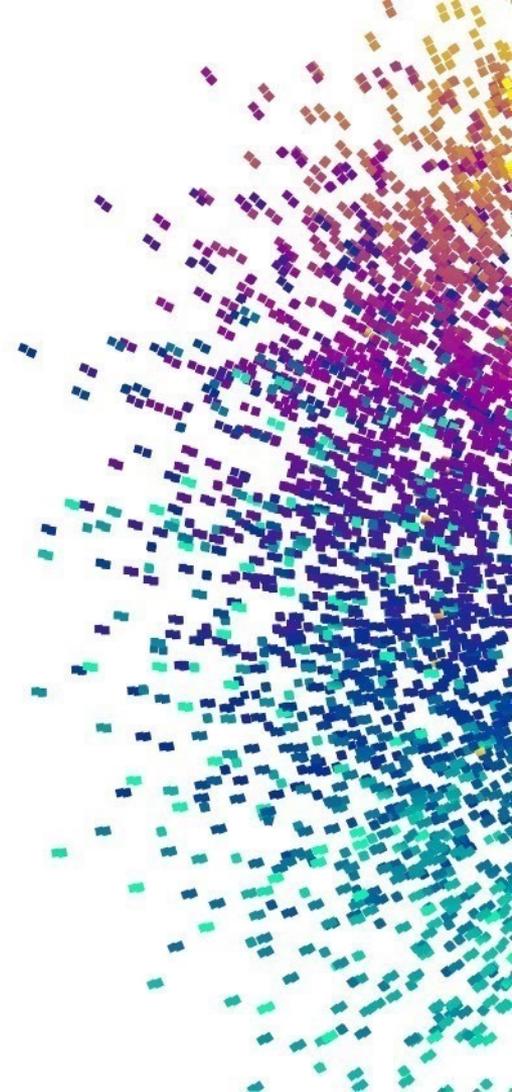
What Items Should Be Added?

Article 8 WTO Valuation Agreement



Items to be included as elements of the transaction value:

- Commissions and brokerage (excl. buying commissions)
- Cost of containers / packing
- Value, apportioned where appropriate, of any assist supplied by buyer to seller, directly or indirectly, free of charge or at a reduced cost
 - Materials, components, parts, tools, dies, moulds
 - Engineering, development, artwork, design work, plans and sketches
- Royalties and licence fees the buyer is required to pay, directly or indirectly, as a condition of sale
- Proceeds of subsequent sale accruing to seller
- Delivery costs i.e., transport/ insurance/ loading and handling charges up to the place of importation (e.g., US, EU, UK)

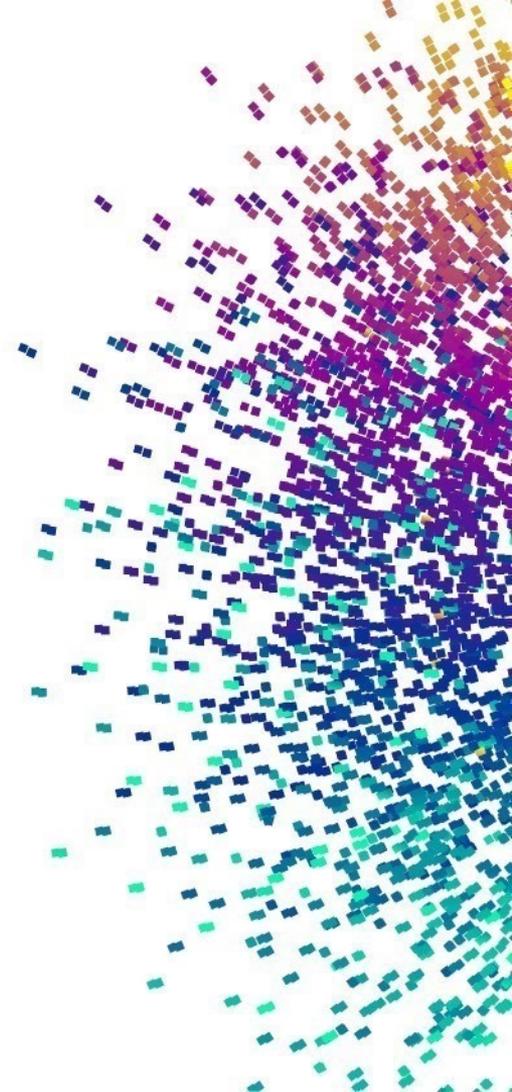


What Items Can Be Left Out?



Items to be excluded as elements of the transaction value, where shown separately on invoice:

- Transport and insurance **after** importation
- Charge for construction, maintenance etc. **after** importation
- Interest under financing arrangement
- Charges for right to reproduce (e.g., in the UK/EU)
- Buying commission
- Import duties



WTO Valuation Methods

Six Methods, to be applied sequentially (Articles 2-7)

Transaction value of identical goods

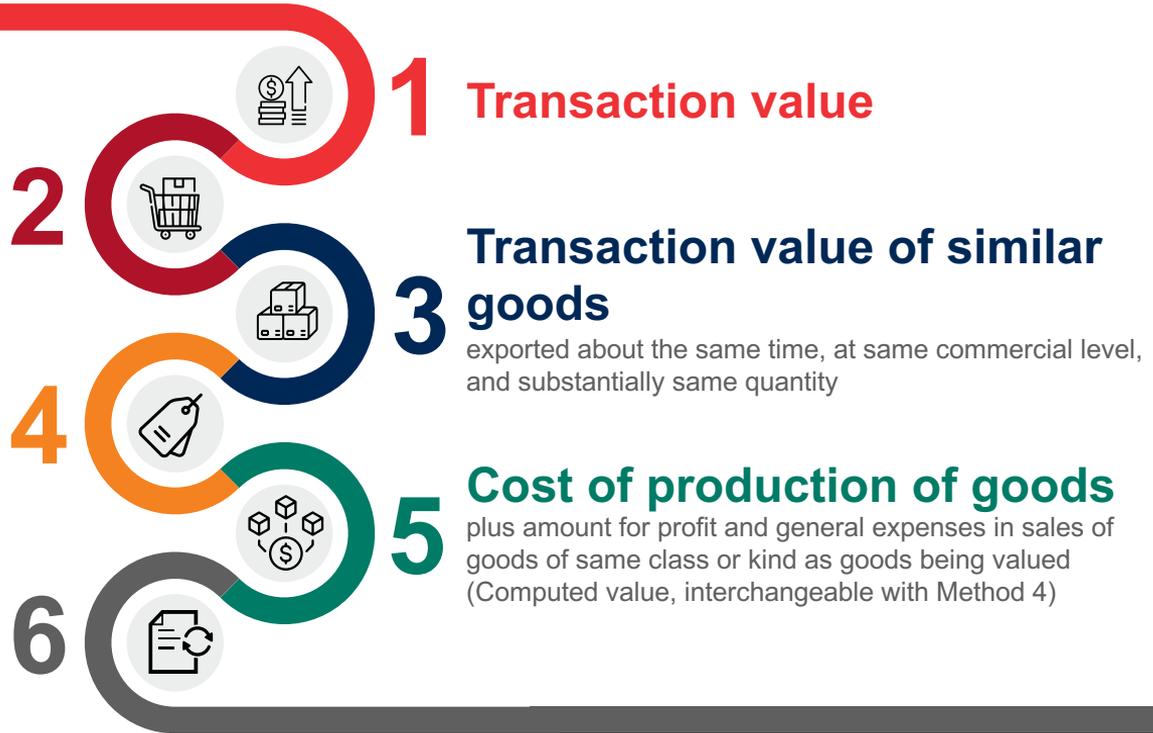
exported about the same time, at same commercial level, and substantially same quantity

Equivalent selling price in the country of importation

(Deductive value, interchangeable with Method 5)

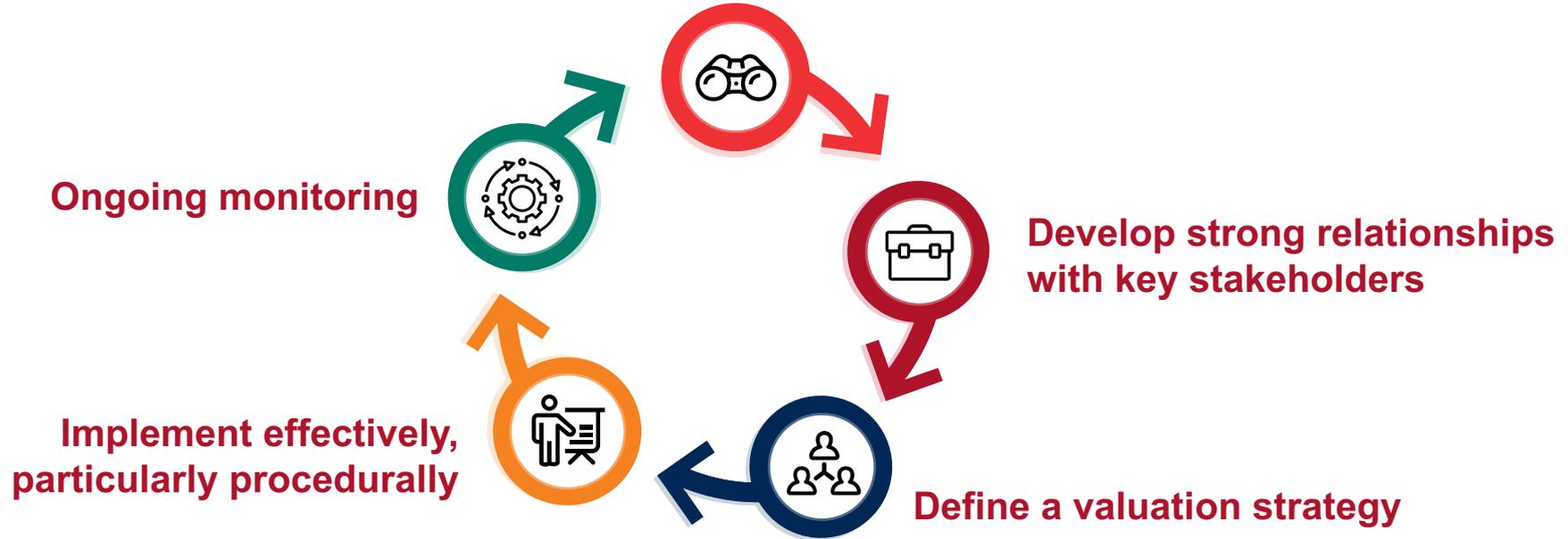
Fallback

Value determined using reasonable means consistent with Valuation Agreement and based on available data in country of importation



A Valuation Lifecycle

Invest in in-house customs valuation expertise



Invest in Valuation Expertise

Best Practices



Dedicated customs compliance function which directs valuation strategy and implementation



Strategically situated, decision-making independence



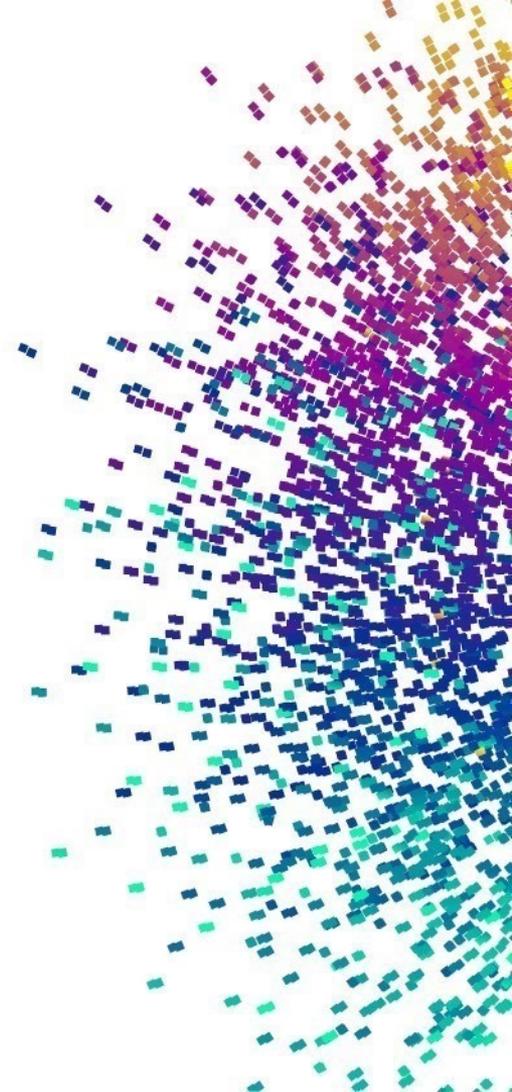
Buy-in and compliance commitment from Management, including financially



Internal awareness of function's existence and role



Integrate procedures for new joiners into corporate training



Cross Functional Relationships

Best Practices



Build and maintain strong relationships with key stakeholders e.g., Tax / Transfer Pricing, Supply Chain, Logistics, Finance / Accounting, IP, R&D



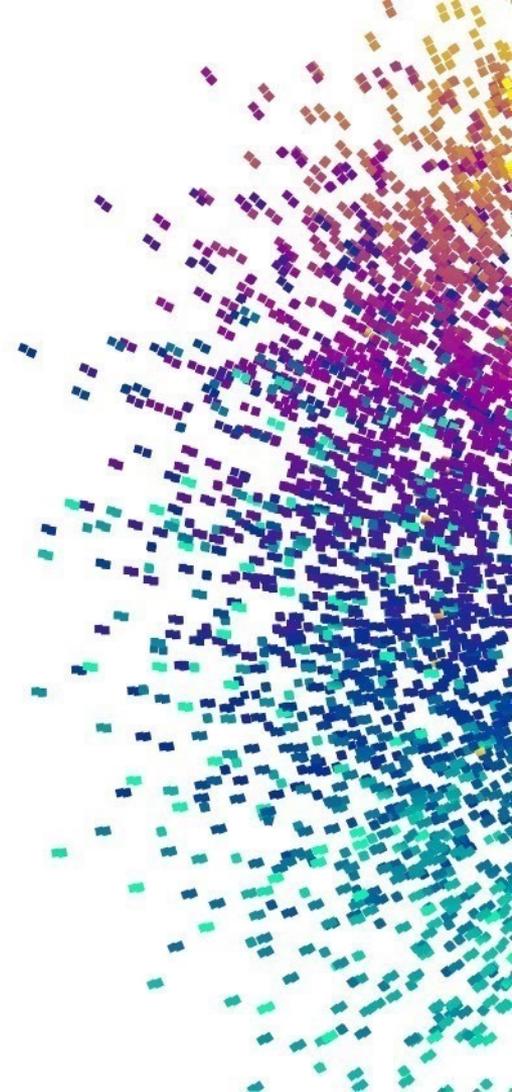
Educate on customs valuation, your supply chains and methodologies, and what is significant from their perspective and integrate procedurally



Integrate customs compliance review process into their internal processes and timeframes to ensure outreach early on and forward-thinking discussions



Document engagement, including guidance



Cross Functional Relationships

Key Areas for Review from a Valuation Perspective



Transfer pricing decisions e.g., new structures, retroactive TP adjustments



Mergers and acquisitions, new business lines



New products launches, commercialisation of prototypes and deployment internationally



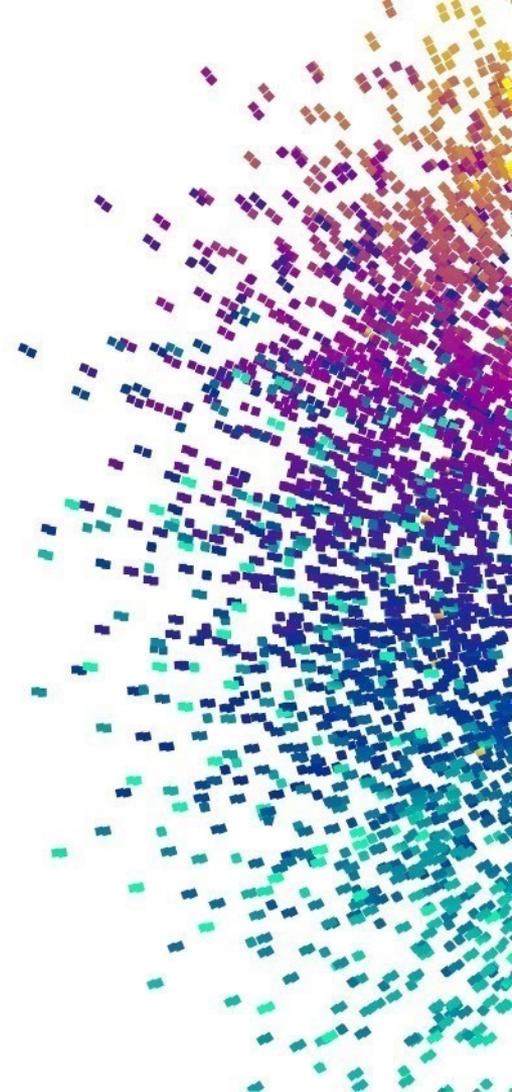
Becoming Importer of Record



R&D provided free of charge/at a reduced rate directly/indirectly by the buyer



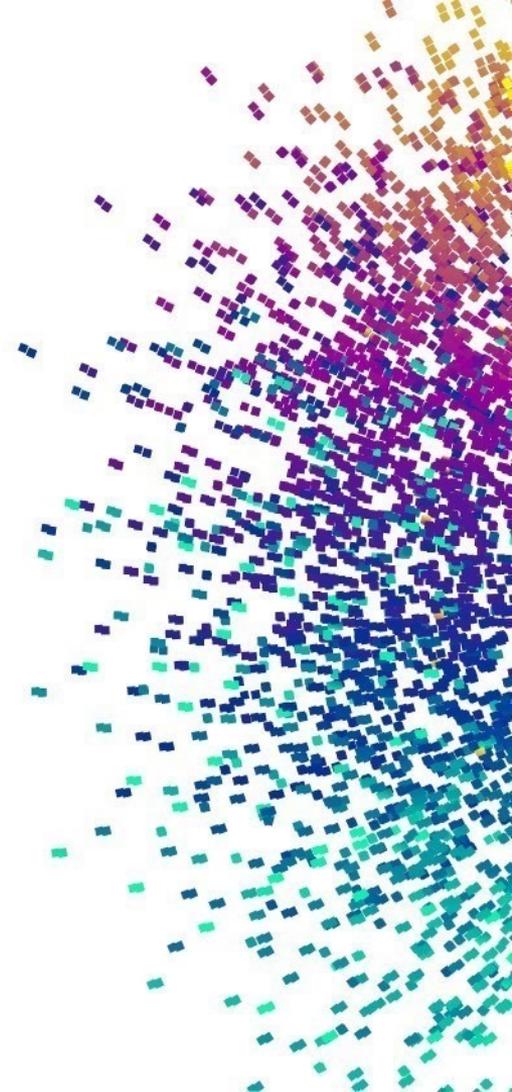
New / changes to existing licence agreements



Define a Valuation Strategy

Best Practices

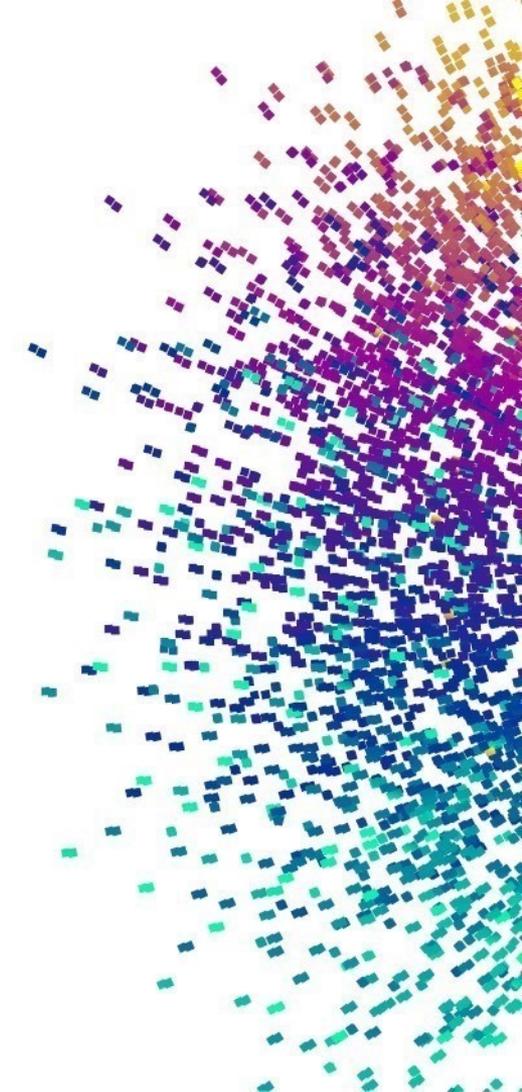
- Identify entire supply chain and sales structure to determine whether a 'sale' takes place
- Identify full transaction (e.g., R&D, IP) and TP structure to determine necessary additions
- Assess feasibility from local import perspective
- Identify where local ruling required/recommended (for simplifications) and define optimum strategy for regulatory engagement
- Apprise and align with key stakeholders
- Document in a Customs Valuation Manual



Implement Effectively

Best Practices

- Design, document and implement well-thought-out, robust and detailed **internal and external controls** through policies, procedures and audit framework
- Ensure roles, responsibility and accountability are clear
- Provide explicit instructions to brokers on the customs value to be declared in SOPs, which are communicated, discussed and reviewed periodically
- Automate where possible to mitigate human error
- Maintain accurate and easily accessible import data sources to evidentially support values declared



Ongoing Monitoring

Best Practices



Proactive broker management and oversight are key to mitigating risk and legal liability



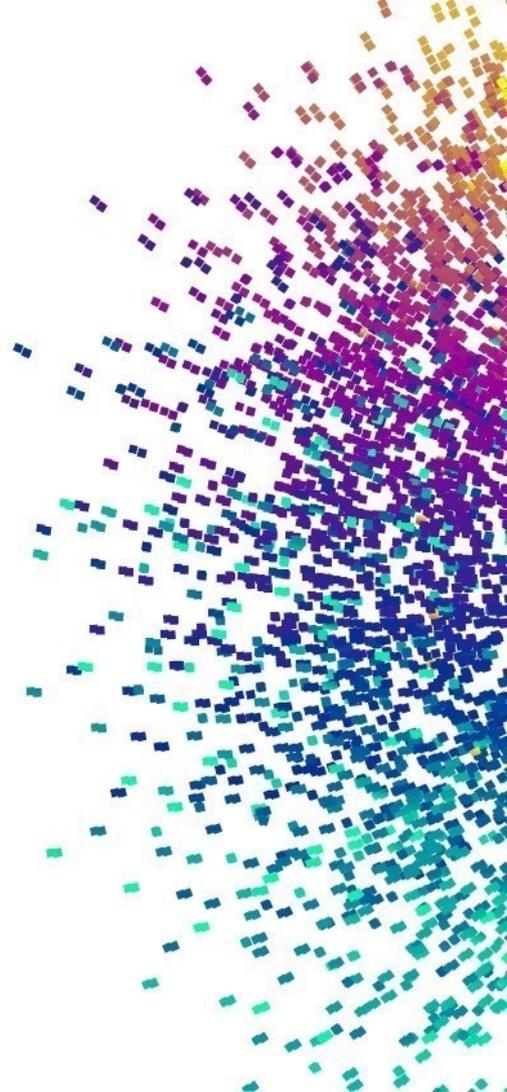
Well-designed, informed and resourced valuation-related audits are key to identifying valuation errors, internally and by brokers



Implement a procedure for addressing errors proactively to ensure accountability and effective mitigation



Be alert to the risk of external audit and prepare





Customs valuation has strategic importance as an area of potentially significant legal, regulatory and financial risk



Underline its importance internally for buy-in and to raise awareness



Valuation can be highly complex, relying on inputs and cooperation from multiple internal stakeholders



Proper governance is instrumental



Invest in well-defined and documented procedures

Questions



Tomorrow's session

Impact of Russian Sanctions: Customs Considerations

Thursday 15 September

2.30 - 3.30 pm BST

3.30 - 4.30 pm CEST

9.30 - 10.30 am EDT





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