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# **Customs and key compliance developments**

12 - 14 September 2023

**ANNUAL COMPLIANCE CONFERENCE**

**Baker  
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# **An overview of customs valuation**

Thursday 14 September, 2.30 - 3.30 pm BST

**ANNUAL COMPLIANCE CONFERENCE**

# Speakers



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**Background**

# Importance of Customs Valuation

Customs valuation is an **essential** and **complex** element of customs compliance and a key area of focus for customs **audits** and **enforcement** globally.

## Impacts

- 1) Government Revenue;
- 2) Trade Law and Policy;
- 3) Trade Restrictions;
- 4) Preference Programs

## Challenges

- Customs value based on intercompany transfer prices
- Additions to value
- Transactions not involving sales

# Complex Valuation Issues

1

## Intercompany Transfer Pricing

- Demonstrate to customs authorities that transfer prices are acceptable arm's length customs values under customs rules
- Identify, capture and report, when necessary, retroactive transfer pricing adjustments

2

## Additions to Value

- Assists – Identify and apportion value of dutiable elements not included in the price
- Royalties and License Fees – Intercompany and involving third parties

3

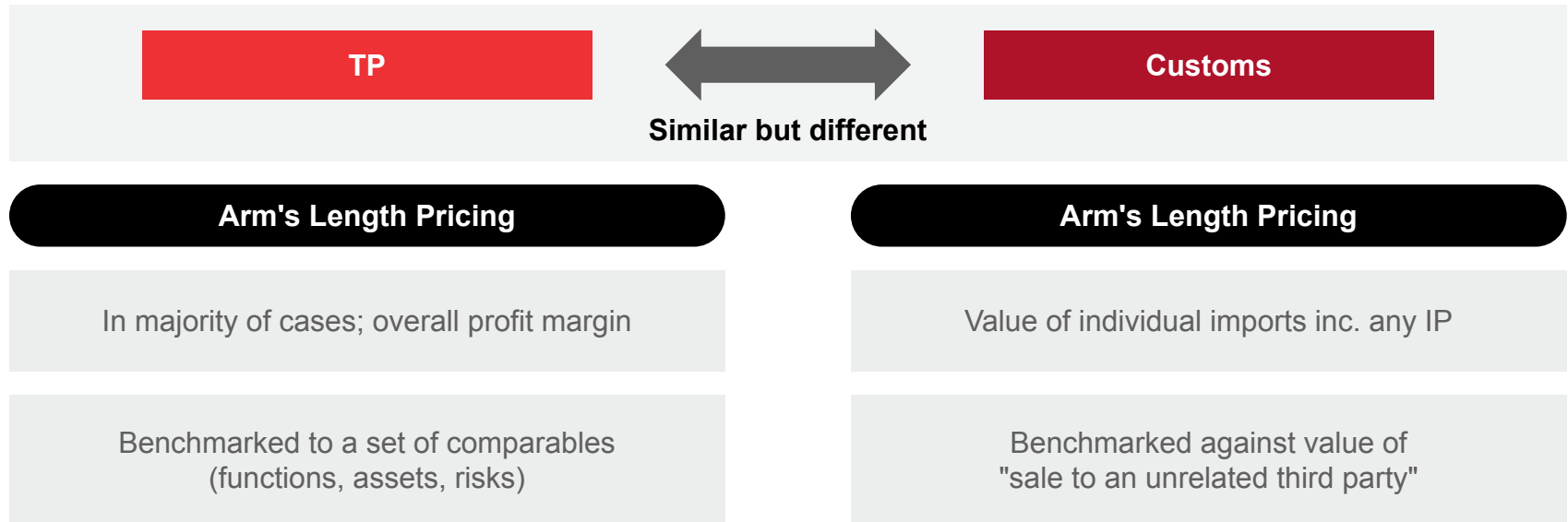
## No Sale Transactions

- Inventory transfers



# Customs & transfer pricing

# Interplay between TP and customs - Collaboration is vital

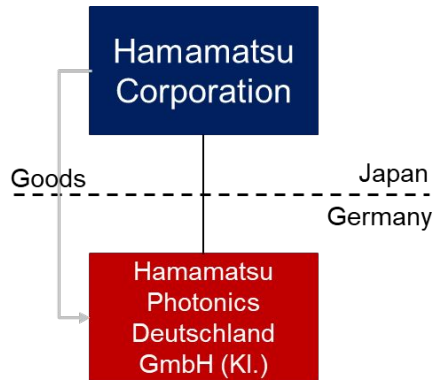


- Use of TP analyses / valuations to support customs values
- Separation of TP and customs valuations



# "Hamamatsu" ECJ and German Case law

ECJ dated 20 December 2017 - C-529/16; German Federal Finance Court 17 May 2022



- ECJ and Federal Finance Court **refused** the **duty refund** based on retroactive TP credit (despite of being supported by an APA between Germany and Japan).
- Reason: lack of quantifiable data regarding specific, transaction-based TP adjustment at the time of importation.
- Conclusion: **TP adjustments do not have an impact on customs value** (to keep in mind: the ruling was made with respect to a refund!).
- Remaining question: Valid for upward **and** downward adjustments, and for all customs valuation methodologies???

Finance Court Munich dated 27 October 2022

- Conclusion: TP adjustments (here upward adjustment) **do not have an impact** on customs value.
- **Caveat:** TP must **not be arbitrary** and has to reflect the "true economic value" for the product at the time of importation.
- Remaining question: How does the customs administration test the "true economic value" of an imported product?



# United Kingdom updates

# HMRC's new customs valuation policy for Related Party Transactions

- On 6 November 2022, HMRC amended its guidance on customs valuation:
  - "[T]he [current] real economic value for the imported goods cannot be assured at the time when they are sold for export to the UK"
  - "You will not usually be able to use Method 1 with a margin-based transfer pricing model"
  - "If the sale is dependent on conditions or considerations where you cannot work out their value, then you cannot use Method 1"
- According to HMRC there is no legislative basis for a customs value based on TP adjustments because the value of any adjustment must be **known or knowable at the time the goods are sold for export** (cf. based on HMRC's interpretation of Art. 133 Union Customs Code Implementing Act 'UCC IA' and equivalent post-Brexit legislation).

# Timeline of events

**HMRC amends guidance on customs valuation of imports**

3 November 2022

**JCCC duty & liability meeting – HMRC presents its valuation approach and views on the relationship between transfer pricing and customs valuation**

- "Where the price paid or payable is not determined and will be subject to an adjustment up or down then it is questionable that it is a genuine transaction value under [Method 1]."
- "If operator volunteers TP related material to evidence circumstances of sale then HMRC may consider it"

9 February 2023

**HMRC announces that Advanced Valuation Rulings ('AVR') will be introduced**

- "They will provide certainty to customers on how to arrive at the customs value for their goods."

15 March 2023

**AVR system goes live and HMRC publishes guidance on submitting AVR applications**

27 April 2023

# Advanced Valuation Rulings (AVR) introduced from 27 April 2023

HMRC will confirm receipt of an AVR application within 30 days of receipt, and provide a decision on the AVR within 90 days of an application being accepted

Parts of the application may be made public—including attachments that are not marked as confidential

AVRs are valid for 3 years; a unique reference number (must be quoted on the customs declaration)

AVRs do not impact the ability to apply for a simplification under Method 1 (e.g. assists).

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# North America updates

# North America Updates



## United States

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Customs valuation remains a target for audit and enforcement purposes with particular attention paid to related party values based on transfer prices.



## Canada

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CBSA proposed amendments to the valuation regulations to require that the value declared for duty purposes is the price of the last transaction that causes goods to be imported into Canada.



## Latin America

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Significant increase in customs audits and many related to customs valuation and, in particular, related-party pricing and inclusion of royalties.

Mexico: Master Plan targeting 34% increase in foreign trade collections with focus on undervaluation



**Africa**



# Africa regional updates

## Southern Africa

30 day rule.  
Time bar for refunds.  
Levi Strauss v SARS.

### Key takeaway

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- Increased collaboration with TP.
- Strong focus on assists .

## East Africa

Kenya: Lack of formal procedures to report.  
Time bar for refunds.

### Key takeaway

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- Advance customs valuation ruling.

## West Africa

Nigeria: Lack of formal procedures. Difficulty to obtain refunds.

### Key takeaway

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- Advance TP verification/ruling.

# Africa regional updates

## Key point

Health checks.



## Key point

Proper planning and policies.



## Key point

Limit risks and exposure.



## Key point

Test the mechanics.

## Key point

Get rulings.



EU

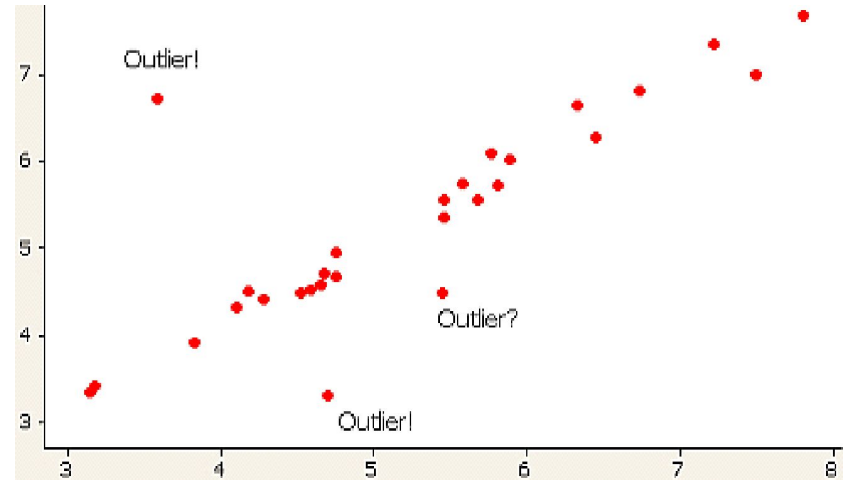
# Introduction

## Article 140 UCC IA

### Non-acceptance of declared transaction values

1 Where the customs authorities have **reasonable doubts** that the declared transaction value represents the total amount paid or payable as referred to in Article 70(1) of the Code, they may ask the declarant **to supply additional information**.

2 If their **doubts are not dispelled**, the customs authorities may decide that the value of the goods cannot be determined in accordance with Article 70(1) of the Code.



# Introduction

## Legal precedents

### International / WTO Dispute Settlement Body

Colombia – Indicative Prices and Restrictions on Ports of Entry, 27 April 2009, WT/DS366/R, Report of the Dispute Settlement Panel, WT/DS366/R.

Thailand Cigarettes – Customs and Fiscal Measures on Cigarettes from the Philippines, 12 November 2018, Report of the Dispute Settlement Panel, WT/DS371/RW.

### EU / Court of Justice of the EU

CJEU 16 June 2016, C-291/15 (**Euro 2004 Hungary Kft**)

CJEU 8 March 2022, C-213/19 (**Commission/United Kingdom**)

CJEU 9 June 2022, C-187/21 (**FAWKES Kft**)

CJEU 9 June 2022, C-599/20 (**'Baltic Master' UAB**)

CJEU pending case, Conclusion A-G 20 April 2023, C-770/21 (**"OGL-Food Trade Lebensmittelvertrieb" GmbH**)

# Dutch District Court (**Rechtbank Noord-Holland**), 6 July 2022, Case AWB - 19 198

## (i) Reasonable doubts?

Textile imports from China.

OLAF tipped off Dutch customs as transaction values were extremely low compared to statistical averages.

OLAF's message + FPL  
=  
Reasonable Doubts

No additional information + contradicting information from Chinese Customs Authorities = Rejection  
Transaction value

## (II) Alternative valuation methods

Customs corrected customs value using FPL and by means of fallback method

District Court: using FPL to determine customs values permissible, **if** no other way!

Low quality garments  $\neq$  average

The customs value must thus reflect the real economic value of an imported good and take into account all of the elements of that good that impact its economic value.

# CJEU EURO 2004

EURO 2004. Hungary Kft applied the transaction value method as the basis of the customs value.

Hungarian Customs rejected the transaction value and asked for additional proof.

Hungarian Customs established the customs value using statistical data.

CJEU customs value is in principle the transaction value, but...

Customs authorities may refuse the transaction value in case of doubts, but should first ask for additional information and documents.

In the case at hand, customs value was 50% lower than the statistical (mean) value.

Decision: Hungarian Customs can refuse the application of transaction value in the case at hand.



# CJEU 'Baltic Master' UAB

Baltic Master imported goods and indicated the purchase price of the goods in the customs declaration.

Lithuanian Customs was of the opinion that Baltic Master and its supplier had to be regarded as related persons and established the customs value on statistical data.

Same origin and TARIC code, but not 'similar' goods.

CJEU: Potentially 'de facto' related parties.

Question raised to CJEU on the relatedness was referred back to the referring court. CJEU concluded that both options were possible, but it required further checks.

Statistical data may be used for the matter at hand, especially because:

- Baltic Master did not provide additional information concerning the customs value of the goods concerned; and
- The customs authorities must assess with due care the application of the successive customs valuation methods.



# Takeaways

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# Recommendations & Key Takeaways



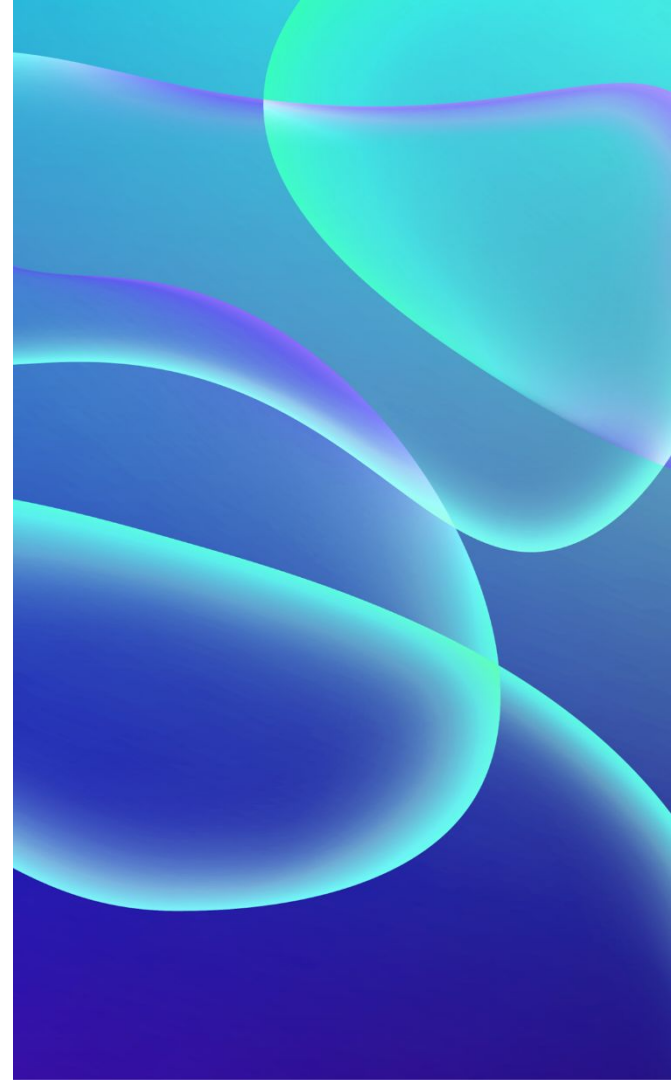
- Ensuring correct valuation is important for preventing potentially significant legal, regulatory and financial risk.
- Valuation can be highly complex, relying on inputs and cooperation from multiple internal stakeholders including the Transfer Pricing and Tax teams is key.
- While valuation is a global issue, different approaches and considerations apply in each jurisdiction.
- Investing in governance and well-defined documentation and procedures is crucial.

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**Questions**

# Next week

<b>01</b>	Tuesday 19 September 2.30 - 3.30 pm BST 3.30 - 4.30 pm CEST 9.30 - 10.30 am EDT	Product compliance & liability: adapting to the new legal landscape
<b>02</b>	Wednesday 20 September 2.30 - 3.30 pm BST 3.30 - 4.30 pm CEST 9.30 - 10.30 am EDT	Cracking down on green claims: enforcement and litigation risks
<b>03</b>	Thursday 21 September 2.00 - 3.00 pm BST 3.00 - 4.00 pm CEST 9.00 - 10.00 am EDT	Perspectives on mandatory supply chain due diligence
<b>04</b>	Thursday 21 September 3.45 - 4.45 pm BST 4.45 - 5.45 pm CEST 10.45 - 11.45 am EDT	ESG reporting: preparing for mandatory climate disclosures



# Catch up on demand

**01** Customs and trade governance strategy

**02** Customs audits, investigations and litigation: how to prepare and manage your response

**03** An overview of customs valuation

