

ARTICLES

Contemporary Application of Article 17 of the Customs Valuation Agreement in Latin American Countries

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Keywords: Customs Valuation Agreement, customs valuation control, Latin America

<https://doi.org/10.55596/001c.127239>

Vol. 19, Issue 1, 2025

This study addresses the contemporary application of Article 17 of the Customs Valuation Agreement of the World Trade Organization (WTO) by Latin American countries. The methodology comprised a literature review on the subject, an interview with the co-author of *A Handbook on the WTO Customs Valuation Agreement*, and a questionnaire distributed to specialists from customs administrations in Latin America. The study identified differences in national regulations, procedures and approaches to constructing and utilising databases. A common finding was significant difficulties in implementing the Agreement, particularly when doubts arise regarding the truth or accuracy of declared values. Finally, the study highlights opportunities for enhancing customs valuation controls by continuously building the capacity of competent authorities and implementing modernisation tools.

1. Introduction

The imposition of customs duties on imported goods dates to the origins of international trade, impacting merchants in ancient Athens and Rome. Since antiquity, ad valorem rates, expressed as a percentage of the value of goods, have been applied to imports. These rates, which have reached significant highs throughout history, are now generally applied at lower levels.

Nevertheless, as pointed out by Rosenow and O'Shea (2010), the customs value remains a matter of great relevance, especially for developing countries, where customs duties represent a significant part of the national budget. Furthermore, this value is often used as the basis for calculating national taxes on imported goods. It is worth noting that the customs value can also be used for imposing quotas, determining rules of origin and calculating statistical data.

In this context, Goorman and De Wulf (2005) emphasise the importance of customs valuation rules to prevent governments from implementing measures for revenue or protectionist purposes. Thus, standardised valuation rules contribute to promoting transparency and predictability in commercial operations.

The *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, known as the *Customs Valuation Agreement* (CVA), establishes methods and rules for determining customs

value, thereby limiting the sovereignty of member states by standardising the base for customs duties (WTO, 1994). However, this restriction did not diminish the right of customs administrations to verify the truthfulness and accuracy of information related to customs value provided by importers. Article 17 of the CVA safeguards this right, although it does not elaborate on the specific procedural aspects of customs value control.

Three decades after the conclusion of the CVA, it is timely to examine how countries have adapted their internal norms and procedures regarding customs value control. This study, therefore, aimed to analyse the national procedures implemented, with a focus on developing countries in Latin America.

The rationale for studying these countries is based not only on geographical factors but also on other commonalities, such as the adoption of the same legal system (Civil Law) and the influence of historical background on their current stage of economic development. From a historical perspective, it is evident that the young nations of the American continent, shaped by exploitative colonialism, share the characteristic of late industrialisation. This, in turn, directly impacts their participation in international trade and the trade policies they adopt. Despite the historical similarities mentioned, Latin American countries have peculiarities in terms of socioeconomic level, territorial extension, technological development and administrative structure, which can result in different forms of conducting customs value control procedures.

Considering this context, this study aimed to analyse the contemporary application of the CVA, with a focus on Article 17, which grants customs authorities the right to verify the truth and accuracy of any statement, document or declaration presented for customs valuation purposes. Thus, in addition to conducting a literature review on the subject, a questionnaire was sent to customs valuation experts from Latin American countries who participate as delegates on the World Customs Organization (WCO) Technical Committee on Customs Valuation. Out of the 15 countries consulted, representatives from the following countries responded: Brazil, Colombia, Ecuador, Guatemala, the Dominican Republic, Peru and Uruguay. Furthermore, an interview was conducted with Brian O'Shea, an American lawyer, customs affairs consultant and co-author of the World Trade Organization (WTO) book entitled '*A Handbook on the WTO Customs Valuation Agreement*' (Rosenow & O'Shea, 2010).

The most relevant questionnaire results on the topic, based on a qualitative analysis, as well as excerpts from the interview, are described in various sections throughout this article. As such, the intention was not to present a complete description of how each country conducts customs control but to identify the main difficulties that have been faced and the best practices adopted, following the recommendations of the WTO and WCO.

2. Background

A significant step towards standardising customs valuation was made with the signing of the *General Agreement on Tariffs and Trade* (GATT) in 1947, marking an important milestone in international trade practices. As noted by Zolezzi (2022), Article VII of the Agreement introduced the principle of customs valuation based on the actual value of the imported goods on which duty is assessed.

In practice, different criteria for establishing the actual value were created. However, as Trevisan (2016) explains, numerous countries ended up adopting the theoretical model advocated by the *Brussels Convention on Customs Valuation of Goods*, concluded in 1950 or as it became known, the Brussels Definition of Value. According to this theoretical model, the actual value corresponds to the normal price of the product, or the price that the imported goods or a similar product would reach in a sale made by independent parties under conditions of free competition. This methodology gained notable acceptance from customs administrations. However, acceptance was mitigated by distortions in international trade resulting from arbitrary adjustments made by customs administrations in determining the calculation base for customs duties, leading the international community once again to reconsider the approach.

The rules for determining customs value were subsequently debated in several rounds of GATT negotiations. As a result, the Customs Valuation Code was finalised during the Tokyo Round (1973–1979), although, as noted by Rosenow and O'Shea (2010), it faced strong opposition from developing countries.

This objection, according to Goorman and De Wulf (2005), stemmed from the different commercial realities existing in industrialised countries, as they did not present significant problems regarding the informality of the economy and the lack of compliance by foreign trade operators. In this sense, developing countries argued that the Code's proposal did not allow action in situations of undervaluation, which were frequently faced. These countries also argued that adopting the Code would increase the risk of fraud and, consequently, revenue reduction.

To minimise rejections, proposals for the establishment of a CVA as a successor to the Customs Valuation Code were discussed within the framework of the Uruguay Round. As part of these discussions, provisions for Special and Differential Treatment were introduced, with the key measure being an extended implementation period for developing countries.

In 1994, within the Uruguay Round of Multilateral Trade Negotiations, the CVA was concluded. This Agreement became part of the *Marrakesh Agreement Establishing the World Trade Organization*, in its Annex 1A, as stated by Macedo (2020). Additionally, to attract developing countries to the CVA during the Uruguay Round, a decision known as 'Shifting the Burden of Proof' (SBP) was introduced. This decision aimed to transfer the burden of proof to importers in cases where reasonable doubts arose concerning the

truthfulness and accuracy of the declared value.¹ Goorman and De Wulf (2005) comment that although this decision, adopted by the WTO Customs Valuation Committee in 1995 as Decision 6.1, was an instrument to be used in cases of undervaluation, its complexity made the application of the CVA poorly suited to the needs of countries.

Goorman and De Wulf (2005) also report that the concerns of developing countries were not fully considered, or even ignored. This resulted in the incomplete incorporation of the provisions of the CVA and, consequently, non-compliance with obligations assumed within the WTO. Hence, Goorman and De Wulf consider that, despite receiving numerous technical assistances, either from the WTO or the WCO, developing countries have not been successful in implementing the CVA.

In this regard, a study published by the International Chamber of Commerce (2015) points out, with concern, the growing number of countries adopting behaviours that violate the CVA, specifically using customs administrations' databases to establish reference prices or minimum prices to be applied in import declarations.

3. Customs value control

3.1. Right of customs administrations to doubt the truth or accuracy of the declared value

As a basic principle for customs valuation, the CVA establishes the transaction value according to Article 1. This is the first and main method, corresponding to the price actually paid or payable for the imported goods, adjusted based on the provisions of Article 8 of the CVA. When the transaction value cannot be applied, the customs value of the imported goods shall be determined through the successive and sequential application of the substitute methods provided for in the Agreement.

Although the principle of the primacy of the transaction value exists, it is not absolute. On this matter, Sehn (2022) points out that the WCO Technical Committee on Customs Valuation, in Advisory Opinion 10.1, emphasised that the truthfulness and accuracy of the information and documents used for valuing imported goods are essential requirements for applying the transaction value. As mentioned earlier, under Article 17 of the CVA, no provision of the Agreement may be interpreted as limiting or undermining the rights of customs administrations to ensure the truthfulness or accuracy of any statement, document or declaration submitted for customs valuation purposes.

¹ Morgero & Maciel (2024) analyse the burden of proof by examining the history of valuation rules, Decision 6.1 from the WTO Committee on Customs Valuation, and Advisory Opinion 19.1 from the WCO Technical Committee on Customs Valuation. In cases where the importer applies Article 1 of the CVA and customs authorities question the truth or accuracy of the declared value, Morgero & Maciel (2024) conclude that the burden of proof lies with the importer. This conclusion is based on the fact that the importer holds the relevant documents and information regarding the declared value.

Given its relevance, the issue was addressed in Decision 6.1 of the Customs Valuation Committee, which supports customs administrations in formulating the so-called ‘reasonable doubt’ regarding the truthfulness or accuracy of the information or documents supporting the declared customs value. In this case, the responsibility rests with the importer to provide further clarification and submit any relevant documents or evidence demonstrating that the declared value accurately reflects the amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. Should the customs administration still have reasonable doubts about the truthfulness or accuracy of the declared value after receiving additional information, or in the absence of a response, it may decide to reject the transaction value.

Zolezzi (2001) mentions that Decision 6.1 does not clarify the reasons for doubting the declared transaction value. However, despite the conciseness of the text, the author argues that the main reason for customs authorities to doubt the truthfulness or accuracy of the transaction value of imported goods is the declared price being lower or significantly lower than expected in a regular transaction.

This statement is ratified by experts from some of the countries consulted. Reasonable doubt arising from low prices of imported goods is indeed one of the main reasons for conducting customs value control, as mentioned by experts from Ecuador, Guatemala and Peru.

For instance, the National Customs Service of Ecuador provides a specific manual for applying reasonable doubt on its website, which begins with a value alert based on the analysis of values from databases and other specialised sources (National Customs Service of Ecuador, 2021). Reasons for doubting the documentation or information are notified to importers, whether regarding the truthfulness, accuracy or completeness of the declared customs value. Within five days, importers must provide evidence of the declared value, which may include payment-related documents and accounting records.

In addition to the low prices of imported goods, experts from Brazil, Colombia and the Dominican Republic have highlighted three common factors that typically prompt customs value control: transactions between related buyers and sellers; use of false invoices or other false documents; and absence or incorrectness of adjustments provided for in Article 8 of the CVA (such as sales commissions, transport and insurance). Among the adjustments of Article 8 of the CVA, experts from Peru and Uruguay emphasised that the payment of royalties and licence fees are the main causes for conducting the customs value verification procedure. In fact, royalties and licence fees have consistently been the most debated topic in sessions of the WCO Technical Committee on Customs Valuation, as demonstrated by the 19 Advisory Opinions issued to date.

Concerning the price discrepancy, interviewee Brian O'Shea highlighted that this fact alone would not be grounds for rejecting the transaction value, unless the discrepancy was significant, and the importer did not provide a reasonable explanation. This reasoning aligns with Advisory Opinion 2.1 issued by the WCO Technical Committee on Customs Valuation, which concluded that the mere fact that a price is lower than the current market prices for identical goods could not be a reason for its rejection for the purposes of Article 1.

Regarding the criteria for considering a price low, Zolezzi (2001) comments that it is not advisable to establish fixed percentages to decide whether a transaction value is acceptable or not. Zolezzi argues that such variations should be analysed considering both the nature of the goods and the degree of fluctuations in their prices in the market.

From another perspective, based on an analysis of the current international trade, Macedo (2022) goes further, challenging the primacy of the transaction value as envisaged in the CVA, pointing out three main reasons. The first reason is that, instead of the competitive market, characterised by competition through supply and demand and price formation under conditions of free competition, there is a predominance of price definition in imperfect markets, such as monopolies or oligopolies. The second reason concerns the 'servicification' process, which goes beyond the use of brands and royalties, consisting of the redistribution of value between goods and services, attributing greater value to the service. The third reason relates to the scarcity of goods that can be considered comparable, considering the restrictions imposed by the CVA on the definition of identical or similar goods. The author concludes that the natural process of value creation within the economy is gradually reducing the significance of the transaction value, which is the primary foundation of the CVA.

3.2. Timing of customs value control

Regarding its temporal aspect, customs value control can be conducted at different moments, either before, during customs clearance or after the release of goods. However, given the positive notion of value imposed by the CVA, characterised by the primacy of the transaction value, international organisations such as the Inter-American Development Bank (2009) recommend shifting control to a later stage. This is because analysing commercial documentation, particularly the accounting of companies and the movement of foreign exchange, is essential to prove the price paid or payable for imported goods and adjustments to the price, such as sales commissions, royalties and transportation, among others.

In the same vein, the interviewee mentioned:

The most effective way to implement the CVA is not at the time of clearance, but rather through post-clearance audits. This measure implies the need for customs officials trained in post-clearance audits and legislation to support them.

Furthermore, it requires raising awareness among stakeholders involved in foreign trade about the importance of customs valuation, ensuring the preservation of operation records for a certain period.

Indeed, customs valuation is of great national relevance and deserves broad dissemination among foreign trade operators, with the expectation that awareness may induce behavioural change. Supporting this understanding, the WTO (2020), upon celebrating the 25th anniversary of the CVA, pointed out that the desired voluntary compliance with the Agreement's rules by importers tends to result from established confidence that customs valuation rules are consistently and standardly applied by customs administrations. Thus, adopting measures aiming for regular dialogue with the private sector tends to stimulate compliance with the rules as expected.

Regarding the analysis of the price actually paid or payable, as presupposed by the transaction value method, the interviewee commented that:

To carry out customs value control, it is necessary to seek evidence in documents and accounting records, as well as to verify the amount transferred from the buyer to the seller. This is usually not possible during the clearance procedure. However, less developed countries continue to carry out procedures in this way. This is because, once the goods are released, customs administrations encounter difficulties in performing control, as importers typically do not maintain records. Certainly, some types of controls can be carried out during clearance, especially in cases where there are noticeable discrepancies in documents that do not require an in-depth investigation. However, operators who intend to commit fraudulent actions usually present documents in a way that appears consistent so that the fraud is not identified.

Goorman and De Wulf (2005) explain that post-clearance audits are hardly applicable in developing countries, where a large proportion of importers operate in the informal sector, using unreliable invoices, inadequate accounting records, without a fixed address and with frequent changes in business names. In these situations, only a well-structured customs administration can detect fraud with a high degree of sophistication in invoice falsification.

When commenting on customs value control carried out in Uruguay, based on the provisions of Article 17 of the CVA and Decision 6.1 of the WTO Customs Valuation Committee, Bianchi (2018) clarifies the role played by customs authorities during customs clearance. In this situation, the focus is on detecting more evident errors, such as the lack of declaration

of transport or incorrect currency information, which can be quickly corrected. On the other hand, if there is suspicion regarding the declared price, the specialists in customs valuation can conduct post-clearance audits up to 5 years after the release of the goods. Bianchi (2018) also highlights the possibility of control occurring before customs clearance, based on risk analysis. Parameters considered in this analysis include the country or zone of origin, the type of goods and the parties involved in the operation.

Indeed, the CVA did not provide for procedural aspects of customs value control. Although recommendations from international organisations advocate prioritising post-clearance audits to avoid disrupting the flow of goods worldwide, the fact is that the wide diversity of realities faced by countries must be considered when establishing national customs procedures. Thus, measures that may seem unnecessary for one country may be essential for ensuring protective mechanisms for another. The challenge then arises to balance the need for effective combat of these illegal practices with the urgency of simplifying and expediting customs procedures.

3.3. Risk management: building and updating a reference value database

The effective implementation of the CVA also requires the establishment of a database that allows for resolving doubts about the truthfulness and accuracy of declared customs values. This database is especially important for developing countries, considering that commercial invoices cannot be accepted as a representation of the price actually paid or payable in a significant percentage of imports. Thus, Goorman and De Wulf (2005) consider that building and updating this database should be considered a priority, without which the proper implementation of the CVA cannot be expected.

This database is crucial not only for risk management, serving as a tool to detect undervaluation or overvaluation, but it is also important for comparative purposes in the application of the transaction value methods of identical or similar goods, provided for in Articles 2 and 3 of the CVA, respectively. Its use as an information source is compatible with the CVA and enables decision-making in an informed manner. However, Goorman and De Wulf (2005) emphasise that experience has shown that the use of databases often tends to lead to the establishment of minimum price lists, which are contrary to Article 7.2 of the CVA.

Regarding this subject, the interviewee stated that countries use different procedures for constructing databases. Typically, the database does not include all traded goods but focuses on goods that present a risk of being undervalued in declarations, making the analysis more targeted and efficient.

The interviewee provided information regarding the import declarations that make up the database in countries where only transactions that have been verified by customs administrations are included in the database. This is because most transactions are directed to the green channel, making it impossible to conclude that these transactions are correct and bona fide. For example, if an import occurred six months ago and the importer wants to

use that value for the application of methods provided in Articles 2 or 3 of the CVA, the customs administration could verify if that declared value from six months ago is correct and then agree to its use as a substitute method. In the interviewee's opinion, building the database with values that have been analysed is the best methodology to adopt. Some might argue that if the goods were directed to the green channel, it means that customs accepted that value. However, it should be remembered that this acceptance is only in a technical sense, as there was no actual verification.

It is important to note that none of the experts who responded to the survey indicated the exclusive use of automated processes for validating declared customs values. Thus, the essential role of customs officers is highlighted.

The interviewee also commented that in some countries, when there is an import of goods considered high risk, importers receive an automatic message from the system requesting the completion of certain information for valuation purposes, as well as the presentation of photographs. This does not mean that the importer was selected for inspection but is simply a way that the customs administration uses to build the valuation database.

The interviewee also presented another way of building the database, which is implemented by some customs administrations. In this case, customs officers attach to the system all information, documents and photos related to import declarations selected for inspection, in real-time (and not in post-clearance audit), to collect information on identical or similar goods. However, this procedure takes time and requires significant data storage space. In countries where there are specific fraud problems, this may be useful, and the cost may be justified.

Matsudaira and Daly (2022) also note that the database should be restricted to goods considered high risk, preferably with values validated by customs administrations, particularly for commodities. A common practice is the sale of a database with market values from companies specialised in this activity.

Regarding the construction of the database, Goorman and De Wulf (2005) emphasise that import declarations that have been verified and considered reliable should be its main source. According to experts from Ecuador and Colombia, the database used for applying methods provided in Articles 2 and 3 of the CVA is built in this format, containing only customs values that have been subject to control procedures carried out by customs officers who accepted the declared values. On the other hand, experts from Guatemala, the Dominican Republic and Uruguay reported that the database contains all declared customs values, including values for goods directed to the green channel of customs clearance, where clearance is automatic.

The expert from Peru explained that the Peruvian database contains all declared customs values, including goods directed to the green channel, as well as records classified as 'analysed values' and 'values under evaluation'

resulting from a price analysis of imported goods reflecting market price behaviour. This database provides price references to verify the declared values of imported goods, enabling the eventual generation of reasonable doubts about these values. In addition, the database provides references for the use of the methods established in Articles 2, 3 and 7 of the CVA.

The interviewee regards the publication of the database as problematic, considering the difficulty of publishing declared values while respecting confidentiality. In most cases, traders know who their competitors are and the origin of the goods. Even if names are not published, competitors will identify the operators.

Among the countries consulted, Peru is the only one that publishes import declaration information. The data is published on the institutional portal of the National Superintendency of Customs and Tax Administration (2022). However, accessing it requires the import declaration number, which theoretically ensures confidentiality.

3.4. Challenges

According to Goorman and De Wulf (2005), developing countries have faced the following limitations: difficulty accessing information on commodity prices, lack of qualified personnel due to a lack of training, insufficiency of computerised and automated procedures and inadequacy of organisational structure. These authors assert that strictly applying the alternative methods provided for in the CVA is cumbersome, both in terms of costs and time. It requires constant updating of information on the price of identical and similar goods, as well as information that is not readily available, and that requires complicated calculations. The strict application of these rules can lead to delays in the release of goods, especially in countries where post-clearance audits are not established. As a result, many developing countries resort directly to the last method provided for in Article 7 of the Agreement for a significant portion of imports. Goorman and De Wulf (2005) also point out that such practice is far from an ideal situation for a valuation system that should, in theory, facilitate trade.

In this context, Macedo (2020) argues that implementation problems are not linked to the country's economic standing or lack of technical capacity, but rather to the disconnect between the set of rules and the revenue needs of tax systems. Another impasse mentioned concerns the calculation of intangibles, which make up the customs value, such as royalty payments and licence fees, considering that countries lack a computer system with such specific information. Macedo (2020) suggests that minimising this problem would involve implementing measures to enable the exchange of electronic information between customs authorities and organisations related to intellectual property.

The difficulties faced in implementing WTO agreements led Finger (2001) to pose the following questions: did the WTO agreements correctly diagnose the development problems of countries, and did the WTO agreements prescribe appropriate remedies? The answer to these questions,

using the CVA as an example, is 'no' from this author's point of view. One of the problems pointed out is the maximisation of steps and opportunities for negotiation between traders and customs officials, as the Agreement does not consider the customs process as a whole or the integrity issue of those involved. In developing countries, where import duty rates are normally high and income is low, irregularities can be attractive. For the proper implementation of the valuation system, there is no 'one size fits all' model, and it is necessary to identify problems and measures to solve them in each country.

The main difficulties faced in conducting customs value control, according to data obtained from the questionnaire completed by specialists from Brazil, Colombia, Ecuador, Guatemala, the Dominican Republic, Peru and Uruguay, are, in this order: demonstration of the impossibility of applying the transaction value; lack of cooperation from importers in providing documentary evidence of the commercial transaction; and finding identical or similar goods, in terms of Articles 2 and 3 of the CVA. The representative of the Dominican Republic also highlighted the lack of customs cooperation to exchange information as an important difficulty faced.

3.5. Treatment of customs value fraud

Another aspect of vital importance to be analysed is the scope or influence of the CVA on situations characterising customs value fraud. According to the *Glossary of International Customs Terms of the WCO* (WCO, 2018), commercial fraud is defined as any offence of legal or regulatory provisions that customs is responsible for enforcing, committed to evade, or attempt to evade, the payment of duties and taxes on the movements of goods, among other purposes.

The CVA does not have a specific provision on the treatment of cases of fraud in the declaration of customs value. In this regard, Kassimy (2005), Former Deputy Director General of the WCO and responsible for CVA management in the Directorate of Tariff and Trade Affairs, clarified that once fraud is proven, it should no longer be addressed through the CVA but rather following national legislation and national procedures for the repression of customs offences.

The WCO Technical Committee on Customs Valuation addressed the issue in Advisory Opinion 10.1, which provides for the treatment applicable to fraudulent documents. Given that Advisory Opinion 10.1 refers to national legislation, some countries have specifically regulated the treatment of cases of fraud in the declared customs value, which may involve false invoices and collusion between the importer and the exporter.

Similarly, Sehn (2021) contends that the CVA is inapplicable in cases of proven document forgery, with the customs value instead being determined by national legislation, in line with Advisory Opinion 10.1 from the WCO Technical Committee on Customs Valuation. Fernandes (2013) likewise

argues that the mandatory application of the CVA's rules and principles is set aside when import operations are compromised by fraud, whether in terms of value or other aspects.

In Peru, for example, according to information from the specialist consulted, when there are indications of a customs offence or reasonable evidence of the use of false documents, the methods provided for in the CVA are not applied. In these situations, the rules for estimating the value in accordance with the *Ley de Delitos Aduaneros* (Law No. 28008) are applied (Congress of the Republic of Peru, 2003). Brazil also has a specific regulatory provision for cases of value fraud, which is Article 88 of Provisional Measure No. 2,158, of 24 August 2001 (Presidency of the Republic of Brazil, 2001).

It is worth mentioning that the interpretation of Advisory Opinion 10.1 is not unanimous in doctrine. For Trevisan (2016), there would be no possibility for national legislation to establish customs valuation methods different from those established by the CVA, even in cases of value fraud.

Apart from Brazil and Peru, the other countries included in this study do not have distinct valuation rules for cases of value fraud. However, they provide for more severe administrative fines or even criminalisation of conduct depending on the amount subtracted from taxation. Uruguay, for example, adopts the valuation rules provided for in the CVA for situations identified as value fraud and imposes a fine equivalent to twice the taxes due, in accordance with Article 205 of the Customs Code (Congress of Oriental Republic of Uruguay, 2014).

In Ecuador, the offence related to the importation of goods with false or altered documents is provided for in Article 299 of the Comprehensive Organic Criminal Code (National Assembly of Ecuador, 2014). If this offence involves goods valued at more than 150 times the minimum wage, it is punishable by three to five years' imprisonment and a fine of up to 10 times the value of the taxes for which evasion was attempted. For cases of fraud involving goods valued at or below 150 times the minimum wage, Article 190 of the Organic Code of Production, Trade, and Investments stipulates a fine equivalent to three times the value of the goods (National Assembly of Ecuador, 2010).

Other examples of countries where a fine and imprisonment are applied to the perpetrators of customs value fraud are Guatemala (under Article 7 of Decree No. 58-90) (The Congress of the Republic of Guatemala, 1990) and the Dominican Republic (under paragraph 1 of Article 335 of Customs Law 168-21 D/F), with penalties ranging from seven to 10 years and three to six years, respectively.

Kassimy (2005) underscores the importance of countries developing specific programs on valuation matters to combat fraud effectively. These programs should include intelligence techniques and the imposition of

deterrent sanctions against fraud. Kassimy also emphasises that the exchange of information between customs administrations is an essential measure in the context of such programs.

4. Contemporary aspects for the effective implementation of the CVA

The effective implementation of the CVA requires the establishment of several initiatives, including a legislative and regulatory framework, an organisational structure and the training of customs authorities. Additionally, customs valuation procedures must be integrated across the customs administration. According to Goorman and De Wulf (2005), this means that customs valuation analysis should be carried out using risk management technologies, enabling selective and limited checks during the goods clearance process, with more detailed verifications conducted through post-clearance audits.

Two contemporary agreements have provisions regarding the intensive use of technologies, risk management and post-clearance audits. The first is the *International Convention on the Simplification and Harmonization of Customs Procedures 1999*, known as the *Revised Kyoto Convention (RKC)*, representing a milestone for the modernisation of 21st-century customs procedures (WCO, 2006). The second is the *Trade Facilitation Agreement (TFA)*, which aims to simplify, modernise and harmonise import and export processes (WTO, 2013).

In Brazil, with the implementation of the Single Foreign Trade Portal (also known as the National Single Window Project, Portal Único Siscomex), the database contained in the Product Catalogue Module² will lead to greater standardisation in the description of goods (Jambeiro Filho et al., 2024). This initiative will strengthen customs valuation control, particularly in risk management, by enhancing the precision in finding identical and similar goods within the database, as outlined in Articles 2 and 3 of the CVA.

Experts from the Dominican Republic and Guatemala mentioned that the implementation of the TFA required the development of various initiatives that influenced customs valuation procedures, including the development of a single window for information and risk management tools.

The interviewee also commented that Article 12 of the TFA, which deals with the exchange of information between customs administrations, emerged precisely for valuation purposes. One of the reasons is that countries wanted to obtain the export declaration from the exporting country to verify consistency with the price declared in the importing

² The Product Catalogue is one of the modules within the Single Foreign Trade Portal, where the importer inputs detailed information about the characteristics of each traded product. These fields are pre-structured to ensure consistency, allowing for the reuse of this information in future operations, thereby streamlining the process and improving efficiency (Government of Brazil, 2022).

country. Although Article 12 was proposed with the intention of assisting countries in conducting customs valuation procedures, in practice, many countries did not implement this article.

Another relevant contemporary factor is the COVID-19 pandemic, which began in December 2019, generating numerous sanitary, social and economic impacts worldwide. Regarding customs procedures, the pandemic also had repercussions, one of its effects being the acceleration of modernisation processes, including commitments made under the RKC and the TFA. These initiatives indirectly enhance the effective implementation of Article 17 of the CVA, as technological modernisation facilitates the selection of high-risk declarations and the verification of the accuracy of customs values.

In this context, experts from Guatemala, Peru and the Dominican Republic mentioned that the pandemic triggered the need for adjustments in customs valuation procedures. It was reported that there was a change in computerised processes, allowing the submission of documentary evidence of customs value electronically.

5. Conclusion

The implementation of specific measures by developing countries related to customs valuation control can result in higher levels of revenue, greater transparency and less interference in commercial flow. To achieve effectiveness in the execution of these measures, support from the WTO, WCO and other international organisations is generally required, mainly to promote technical and financial assistance. Additionally, obtaining concrete results depends essentially on the engagement of the governments involved.

A fundamental measure is the establishment of infrastructure for this purpose, with an appropriate legislative framework and administrative structure, including a national valuation centre. In addition to standardising procedures, this national centre is responsible for building and updating the database, which is essential for risk management and serves as a reference for applying the alternative methods provided for in the CVA.

In this context, the continuous training program for customs administration officials is fundamental, aiming at standardisation of CVA application, focusing on contemporary problems that have been faced, such as declarations with low prices and the omission of royalty payments and licence rights.

Furthermore, support for operators in foreign trade is also valuable, through structured mechanisms for handling consultations, aimed at ensuring compliance with declarations. To prevent declaration errors, disseminating detailed manuals on customs valuation control, such as those developed by Ecuador, is considered best practice. This approach aligns with the principles of transparency and predictability.

Another essential measure for the success of CVA implementation is the modernisation of customs control. This implies the review and rationalisation of operational procedures, the use of cutting-edge

technologies, the preferential conduct of post-clearance audits and effective information exchange between customs administrations. As mentioned previously in this study, the RKC and the TFA contain provisions aimed precisely at modernising customs administrations. Thus, the concrete application of these international instruments, in addition to the clear objective of promoting trade facilitation, can also result in the improvement of customs valuation procedures.

The significance of Article 12 of the TFA for customs valuation control is particularly notable, especially in contexts where there are no other existing bilateral or regional cooperation agreements. In instances where there are reasonable grounds to doubt the truthfulness or accuracy of the information provided, customs cooperation allows for the request of import or export declarations, or instructive documents to verify the details.

Another conclusion from the analysis of the data obtained in this study is that no single model is being adopted for the effective application of Article 17 of the CVA. However, the comparative analysis of the difficulties faced and the measures that have been adopted allows the identification of the current stage of CVA implementation as well as opportunities for improvement. Regarding the efficiency of the procedures related to reasonable doubt, it is noted that it depends on the proper entering of data and maintenance of the reference value database.

In conclusion, while the CVA presents itself as an instrument that enables economic regulation and provides legal certainty by preventing the imposition of arbitrary and fictitious values, it is also a costly and complex mechanism, especially for developing countries. Even decades after its creation, it has not been efficiently implemented in many countries, demonstrating that time is not the determining factor for its appropriate implementation. More than that, it is essential to prioritise customs valuation, through coordinated action by countries, with technical support from the WCO and WTO, for the elaboration of programs specifically aimed at improving control procedures. With the establishment of consistent procedures, executed by trained professionals and using modern technologies, it will be possible to significantly reduce the number of incorrect customs value declarations, which lead to unfair practices in international trade and revenue loss for governments.

Submitted: May 06, 2024 AEST. Accepted: November 06, 2024 AEST. Published: April 30, 2025 AEST.



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