

JEL Classification: F53, H21, P33

CUSTOMS VALUATION – CHALLENGES IN BOSNIA AND HERZEGOVINA IN LINE WITH THE WTO VALUATION AGREEMENT AND THE WCO INSTRUMENTS AND TOOLS

Ognjen ALAGIC

*Head of Customs Office, Indirect Taxation Authority,
Novi Grad, Bosnia and Herzegovina
E-mail: ognjen.alagic@uino.gov.ba*

Abstract

As a country in transition, Bosnia and Herzegovina is facing many challenges on the road to the European Union, including the creation of a modern and well-organized Customs administration. The author points out that the problem of determining the Customs value is itself emerging as the primary, taking into account that it is in direct relation to the calculation of indirect taxes and the influx of revenue in the budget. The author found the challenge for research study in this area, among other things, in the fact that, although the methods for determining the Customs value are internationally recognized rules, national legislation as well as the extensive experience, Customs officials are often helpless and do not have a quality and a clear answer in some cases.

Using the WTO Valuation Agreement, the WCO instruments and tools as well as many years of experience of the author in the Customs administration, an attempt was made to contribute to a better understanding of the institute. Additional analysis of national legislation in the field of Customs value by the research exposes the current situation in the practice, giving concrete examples that follow certain problems and possible options for overcoming them.

Based on the above, he put forward proposals and suggestions that would lead to better and more comprehensive approach to the determination of the Customs value, such as the difficulties faced daily Customs authorities of B&H related to the undervaluation of goods from Asia and the lack of documentation, the problem of obtaining information on the basis of international agreement, the subsequent control in customs procedures, human resources, the discretionary powers of Customs officers, database (risk management), court decisions and the international exchange of information on Customs valuation.

To discuss fully the key subject, the author used the following scientific methods: analysis, synthesis, comparison, generalization.

Finally, the author concludes that the customs value is a rare area for which it can be argued that any decision made regarding the subject topic, taking into account international regulations and national legislation, could always be different. The responsibility for finding an adequate balance in each case, taking into account the rights and obligations of the Customs administration, on the one hand and economic entity, on the other hand is always imperative.

Keywords: customs value, the WTO Valuation Agreement, the WCO instruments and tools in the field of Customs value, international trade agreements with B&H, Indirect Taxation Authority.

Introduction

I have chosen Customs valuation as a topic for my research work for several reasons. Although we face numerous problems in the customs administration as a country in transition, the problem of determining the customs value, that is, the calculation of indirect taxes definitely comes first, given that it is directly related to the revenue stream that goes into the budget. Accordingly, the Customs valuation is, after all, our primary problem. It is indisputable that the methods of determining the customs value are internationally recognized rules. Nevertheless, the legal framework and all other bylaws, including huge experience of customs officials, are often powerless and have no quality and clear answer in individual cases .

Using the WCO instruments and tools in the area of valuation and my personal experience I will, at least to some extent, try to contribute to a better understanding of the problem and ways to overcome them in our daily work. I am aware that the customs value is one of the most complex customs areas and it is a great challenge for me to face with it in a future .

Also, regardless of extensive experience in the Customs service in my own country, my future international research would be an additional incentive for my work and progress in the Customs service where, through my commitment, I always gave my selfless contribution. Also, I sincerely hope that the practical benefit from this Research Paper will be for all customs family and the benefit that the Customs service of Bosnia and Herzegovina will have through the exchange of experiences with other countries and looking at the functioning of customs issues in a broader context.

1. The WTO Valuation Agreement – in brief

The WTO Valuation Agreement is formally known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994. It replaced the GATT Valuation Code as a result of the Uruguay Round multilateral trade negotiations which created the WTO in 1994. The Agreement provides a Customs valuation system that primarily bases the Customs value on the transaction value of the imported goods, which is the price actually paid or payable for the goods when sold for export to the country of importation, with certain adjustments.

Where the Customs value cannot be determined on the basis of the transaction value, it will be determined using one of the following methods:

- the transaction value of identical goods,
- the transaction value of similar goods,
- the deductive value method,
- the computed value method,
- the fall-back method.

The above valuation methods must be used in hierarchical order.

The Agreement is intended to provide a single system that is fair, uniform and neutral for the valuation of imported goods for Customs purposes, conforming to commercial realities and outlawing the use of arbitrary or fictitious Customs values. The Agreement, by its positive concept of value, recognizes that Customs valuation should, as far as possible, be based on the actual price of the goods to be valued.

With the majority of world trade valued on the basis of the transaction value method, the Agreement provides more predictability, stability and transparency for trade, thus facilitating international trade while at the same time ensuring compliance with national laws and regulations.¹

The Agreement has 24 articles and 3 annexes.

¹ <http://www.wcoomd.org/en/topics/valuation/overview/wto-valuation-agreement.aspx>

The Technical Committee on Customs Valuation is established in accordance with Article 18 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, under the auspices of the World Customs Organization (WCO) with a view to ensuring, at the technical level, uniformity in interpretation and application of the Agreement. The Technical Committee carries out the responsibilities described in Annex II to the Agreement and operates in accordance with the rules of procedure contained therein, with assistance provided by the WCO Secretariat.

The Technical Committee shall comprise representatives of Members of the World Trade Organization. Representatives of Members of the WCO, who are not Members of the WTO and the WTO Secretariat, may attend meetings of the Technical Committee with Observer status. Subject to the approval of the Chairperson of the Technical Committee, the Secretary General of the WCO may invite representatives of governments who are neither Members of the WTO nor Members of the WCO, and representatives of international governmental and trade organizations, to attend such meetings as Observers.²

The purpose of the Technical Committee is to the following:³

- examine specific technical problems arising in the day-to-day administration of the Customs valuation system of Members of the WTO and to give advisory opinions on appropriate solutions based upon the facts presented;
- study, as requested, valuation laws, procedures and practices as they relate to the Agreement and to prepare reports on the results of such studies;
- prepare and circulate annual reports on the technical aspects of the operation and status of the Agreement;
- furnish such information and advice on any matters concerning the valuation of imported goods for Customs purposes as may be requested by any Member of the WTO or the Committee on Customs Valuation (hereinafter referred to as “the WTO Committee”) which has been established under the auspices of the WTO in accordance with Article 18 of the Agreement;
- facilitate, as requested, technical assistance to Members of the WTO with a view to furthering the international acceptance of the Agreement;
- carry out an examination of a matter referred to it by a panel under Article 19 of the Agreement;
- exercise such other responsibilities as the WTO Committee may assign to it.

Since being established, the TCCV has brought numerous decisions, advisory opinions, commentaries, explanatory notes, case studies and studies.

2. The WCO instruments and tools in the area of valuation – in brief

2.1 Revenue Package – Practical Guidelines for Valuation Control

The Revenue Package (<http://www.wcoomd.org/en/topics/key-issues/ecp-latest-proposal/instruments-and-tools/six-areas.aspx>) was developed by the World Customs Organization in response to WCO Members' concerns in regard to falling revenue returns in the light of the global financial crisis and declining duty rates. Collection of revenue has historically been the cornerstone of a Customs administration's responsibilities. In response, the WCO Secretariat conducted a work programme addressing the specific concerns of its Members in relation to fair and efficient revenue collection. In particular, there was a demand for guidance on practical control issues and application of international standards such as the WTO Valuation Agreement (<http://www.wcoomd.org>).

² http://www.wcoomd.org/en/about-us/wco-working-bodies/tarif_and_trade/technical_committee_on_customs_valuation.aspx

³ http://www.wcoomd.org/en/about-us/wco-working-bodies/tarif_and_trade/technical_committee_on_customs_valuation.aspx

In June 2012, the WCO Council approved a new set of tools for Customs administrations which provide guidance on practical aspects of valuation control. This includes, inter alia, formal instruments, guidance notes and training material. The WCO Members are encouraged to consult the Package to ensure that necessary requirements have been met and that all relevant material has been obtained by the administration and is being utilized as appropriate. It is equally important that commercial operators have access to the unrestricted information produced by the WCO and other bodies, which can assist an importer in meeting its obligations to Customs in respect of declaring and paying the correct Customs duty and to be aware of its rights and expectations.⁴

2.2 Guidelines on the development and use of a national database as a risk assessment tool

These Guidelines (<http://www.wcoomd.org/en/search.aspx?q=%2520Guidelines%20>) address various issues pertaining to the development and use of a national valuation database. A national valuation database is a risk assessment tool which may be used by a Customs Administration along with other risk tools to assess potential risk regarding the truth or accuracy of the declared Customs value for imported goods.

The information in the database should be recent data reflecting the Customs value and other pertinent information for previously imported goods. The values may not be used to determine the Customs value for imported goods, as a substitute value for imported goods, or as a mechanism to establish minimum values. In addition, recognizing that differences in prices, including substantial declines, are a part of international trade, a difference between the declared value and the database value(s) is not by itself a reliable indicator of potential risk with respect to the truth or accuracy of the declared value, subject to the provisions of Decision 6.1.

A Customs Administration that uses a valuation database should establish a monitoring mechanism to ensure that the database is being used as a risk assessment tool and that the information stored in the database is updated on a regular basis.⁵

2.3 Guide to exchange of customs valuation information

This Guide (<http://www.wcoomd.org/en/search.aspx?q=Guide%2520to%2520exchange%2520of%2520Customs%2520valuation%2520information>) is designed 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 of the importing country before requesting information from the Customs administration of 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 exchange of valuation information between Customs administrations may be used when there are reasonable grounds to doubt the truth or accuracy of the declared value and fraud is suspected. The information should not be used as a basis for the determination of Customs value.⁶

3. The National Customs administration – organizational structure

On December 29, 2003 the Parliament of Bosnia and Herzegovina adopted the Law on Indirect Taxation and thus ensured the legal basis for establishing the Indirect Taxation Authority, the biggest state level institution. In the course of 2004 the former Customs administrations of the entities and District Brcko were merged. Parallel with the process of

⁴ <http://www.wcoomd.org/en/topics/key-issues/revenue-package/revenue-package-overview.aspx>

⁵ Guidelines on the development and use of a national database as a risk assessment tool, 3

⁶ Guide to exchange of customs valuation information, 1

reorganization of the customs service, a Tax Sector was established for the first time at state level. It was tasked with developing and maintaining a unique value added tax system. The year of 2004 was marked by customs administrations merger and delegation of power. The Indirect Taxation Authority has been functioning as an integral entity at the entire territory of BiH as of January 1, 2005 (<http://www.uino.gov.ba>). The ITA has, as soon as possible, successfully introduced a new taxation system (ITA BiH 2013). The international institutions considered that one of key steps towards establishment of single economic space, reduction of the grey economy, foreign investments encouragement and reduction of foreign trade deficit.

The ITA is an autonomous administrative organization responsible for its activities, through its Governing Board, to the Council of Ministers of Bosnia and Herzegovina. It is a single authority in BiH responsible for enforcement of legal provisions and policy on indirect taxation, as well as for the collection and allocation of indirect taxes revenue. The ITA is responsible for the collection of all indirect taxes in Bosnia and Herzegovina: value added tax, customs duties, excise duties and road taxes. The Headquarters of Indirect Taxation Authority is in Banja Luka. The organizational structure of the Indirect Taxation Authority is the following: five departments and four sections comprising the Office of the Director.

The Customs Department of the Indirect Taxation Authority provides the customs service of Bosnia and Herzegovina. In terms of staff, it is the biggest organizational unit within the Indirect Taxation Authority. The field activities are coordinated by the Headquarters of the Indirect Taxation Authority and four Regional centers: Sarajevo, Banja Luka, Mostar and Tuzla.

The department officials are responsible for the implementation of the provisions related to customs, foreign trade, currency and other provisions referring to the Customs policy of the state. Also they apply the import and export procedures at 30 Customs sub-offices and 59 Customs posts, out of which 40 are passenger border crossings, 4 airports, 8 railway border crossings, 3 overseas mail offices and 4 free zones. The department officials are also responsible for the collection of all Customs duties, excise duties on imported goods and road taxes as well as for the accounting and collection of VAT on importation .

4. Customs valuation – national legislation

The Article VII of GATT is incorporated into national legislation since 1998 when the previous Law on Customs Policy of Bosnia and Herzegovina entered into force. Today, the legal framework and the implementation methodology existing in our administration in the above-mentioned area which I have chosen basically boils down to the Law on Customs Policy of Bosnia and Herzegovina and Decision on Implementing Regulations of the Law on Customs Policy. Other bylaws that regulate the above-mentioned matter are guidance, numerous instructions, regulations, decisions and other documents that in more detailed and more comprehensive way govern the field of Customs valuation. Also, numerous opinions of the Customs Department adopted upon inquiries by natural and legal persons are related to solving specific problems and further contribute to the understanding of Customs procedures, i.e. Customs valuation .

Current state of national legislation on Customs valuation:

- Article VII of GATT has been implemented into our national legislative;
- Articles 26-30 of the Law on Customs Policy BiH (Official Gazette 57/04, 51/06, 93/08, 54/10 and 76/11) are identical to Articles 29-33 of the EC Council Regulation no. 2913/92;
- Articles 60-92 of the Decision on the implementing regulation of the Law on Customs Policy of BiH (Official Gazette 63a/04, 60/06 and 57/08) which include

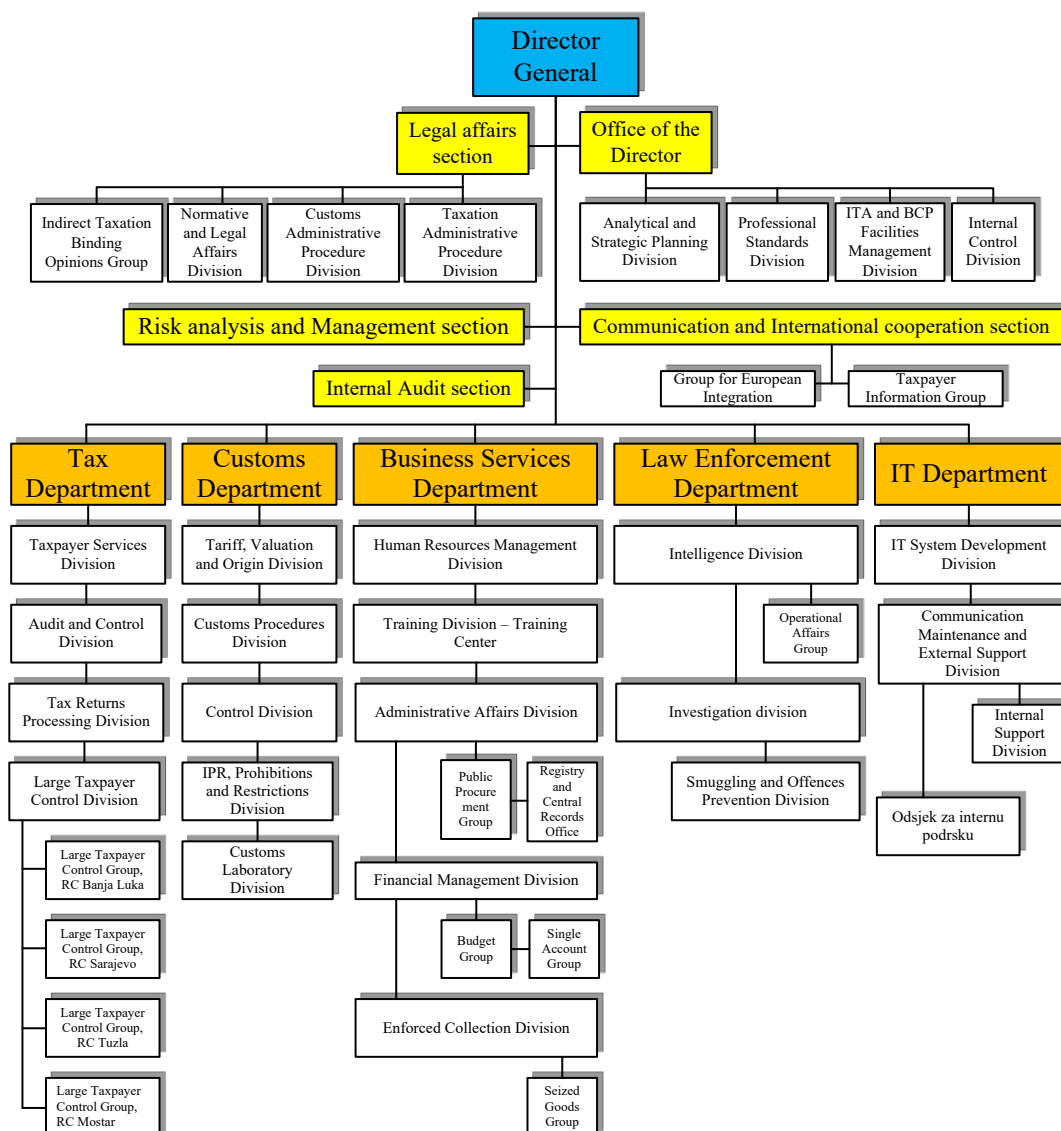


Figure 1. Organizational structure of The Indirect Taxation Authority of Bosnia and Herzegovina Headquarter⁷

Annex 11 to 14 of the Decision; they are almost identical to Articles 141 to 181a Implementing provisions of the EU Customs Code;

- Guidance on Determining the Customs Value (Official Gazette no. 74/07).
Future prospects of the national legislation:
- A new Law on Customs Policy was drafted and sent to the Parliamentary assembly of Bosnia and Herzegovina for comments;
- A new Decision on the implementing regulation of the Law on Customs Policy of BiH is still being drafted;
- No major changes are foreseen by the new legislation regarding the Customs valuation provisions.

Bosnia and Herzegovina has signed several Mutual Assistance Agreements with

⁷ <http://www.new.uino.gov.ba/show/3278?size=3>

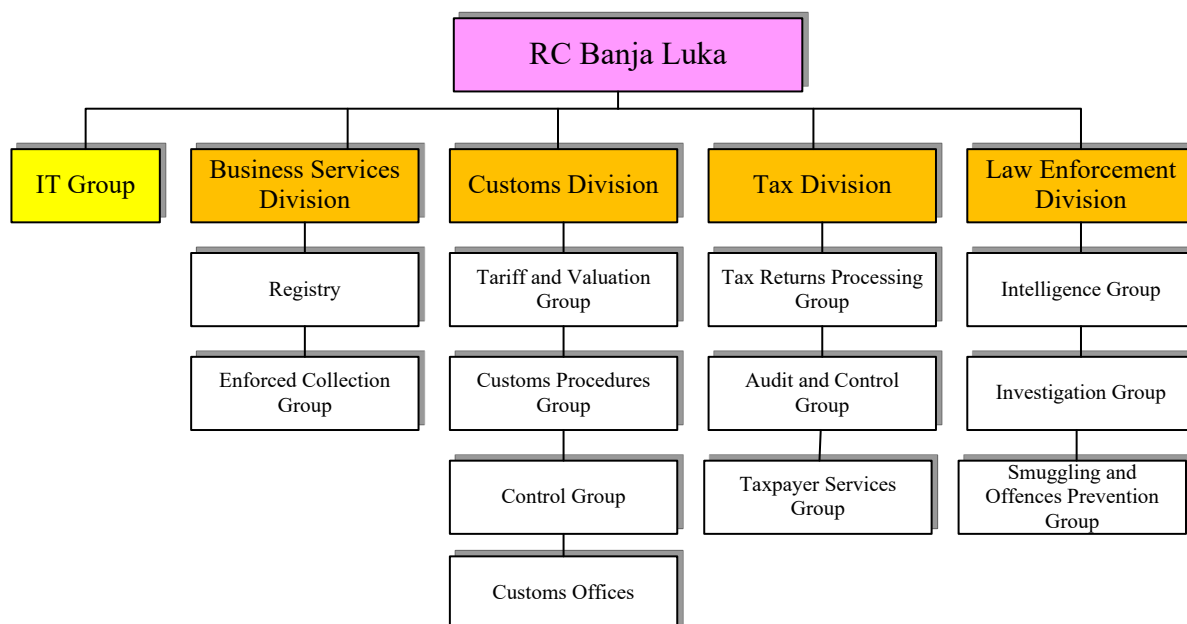


Figure 2. Organizational structure of The Indirect Taxation Authority of Bosnia and Herzegovina Regional center⁸

relevant exporting countries:

- Agreements on mutual administrative assistance in customs matters with Slovenia, Croatia, Serbia, Montenegro and Turkey;
- Cooperation under Stabilization and Association Agreement (with EU);
- Cooperation under CEFTA Agreement with Serbia, Macedonia, Montenegro, Moldova, Albania and Kosovo UNMIK;
- Cooperation as “an act of good will” and “reciprocity” with Ukraine.

Bosnia and Herzegovina has accessed to the Convention establishing a Customs Co-operation Council 04/07/2008 and became member of the World Customs Organization.

Bosnia and Herzegovina had become contracting party to the International Convention on the Harmonized Commodity Description and Coding System 04/08/2012 which entered into force 01/01/2014.

Bosnia and Herzegovina has accessed to the Convention on Temporary Admission (Istanbul Convention) which entered into force 02/03/2010.

Currently, BiH has observer status in the WTO and the ITA has expressed its readiness to implement all the WCO frameworks and standards.

5. ITA, European Integrations and International Cooperation

In today times of globalization and internationalization, no institution can work alone. In accordance with this, main goals and objectives of the ITA is to establish, nurture and develop cooperation with international institutions and the customs administrations in other countries, particularly countries in the region.

As our country is moving closer to the EU, through many projects of modernization of the customs service, recommendations are accepted from the customs administrations of other countries such as Twinning project which is financed from pre-accession funds of the European Union, pursuant to which the legislation has been adjusted and getting closer to the European one.

⁸ <http://www.new.uino.gov.ba/show/3274?size=3>

The ITA is started preparation for the introduction of NCTS (New Computerized Transit System) for which we expect further support from EU. A new improved information system Asycuda World is in preparation, as well as the new Customs Law that will further consolidate and strengthen the Customs Authority of Bosnia and Herzegovina in order to become modern, contemporary and quality service that will in the future to respond to all challenges. It is necessary to capacitate infrastructure of organizational units, with emphasis on border crossings and customs offices, with equipment for work because the same is outdated and inefficient making it difficult for customs officers to do their job well and reveal crimes and customs offenses in their daily work. The ITA and its high-level management are trying to achieve with the WCO full cooperation in all fields.

6. The analysis of the situation within ITA, challenges and problems

6.1 Undervaluation – goods from Asia and deficiencies of documentation

Under-invoicing is a form of smuggling perpetrated by declaring a value of the goods lower than the real value of final importation at the time of the final importation, in order to evade duties and VAT. It occurs when the importer submits to customs authorities an invoice showing a lower transaction value than the price really paid or to be paid for the goods

The first and greatest problem we face in our work every day is the determination of the customs value for the goods coming from Asian and African countries. Administrative cooperation with the aforementioned is slightly more difficult in comparison with others. From the moment of entry of a container shipment into the customs territory of BiH until its release for free circulation via customs procedure we continually experience difficulties in determining the Customs value. The submission of the documentation for Customs clearance (bills, contracts, transportation documents, etc. in most cases has to be additionally analyzed or compared with the same or similar shipments imported at approximately the same time, which can also prove insufficient. It should also be noted that the importer is often not willing to cooperate on the issue of delivery of additional documentation. Beside mentioned, the additional problem is the actual weight of goods in cases in determining the same or similar goods, as they are comparable price too low. The problem is to some extent reduced by a mandatory unloading of goods in the customs warehouses as well as a detailed examination and Customs clearance of such goods on a smaller number of locations. BiH is still a country with a high corruption rate of taxpayers who tend to pay duties in smaller amounts than they should, and therefore the burden of proving the transactional value lies on the importer of such goods. A classical example is paying for goods abroad partly in cash, which is illegal, because the importer reduces the customs value at import to BiH by that amount through a direct agreement with the seller, submitting the reduced invoice at Customs clearance and thereby paying duties in smaller amounts.

At the end of 2013, in order of legitimate and uniform treatment of all organizational units and to avoid the potential risk of loss of income, the ITA issued the Order on the competence of Customs offices for clearance of certain goods originating from Asian and African countries.⁹ This Order covers goods weighing over 500 kg per shipment from Headings Chapter 39, 42, 43, 50-66, 90-97, and finished products under Tariff Heading 85, which is placed under the Customs procedure for release to free circulation and the same is can be cleared only in four Customs Offices in Bosnia and Herzegovina: Gradiska, Tuzla, Mostar and Sarajevo. The Order does not refer to importers who perform Customs clearance of goods covered by the Order for the period of more than three years, if they have no debt on the basis of indirect taxes in the past three years, and that there were not doubt expressed regarding the declared Customs values, e.g which was acceptable as transaction value. In order to determine all the required information and after the completion of the

⁹ Order on the competence of customs offices for clearance of certain goods originating from Asian and African countries, ITA BiH, 2013

transit procedure, the goods are placed in space for temporary storage in a Customs warehouse under customs supervision and offices by submitting a summary application. The Order also stipulates that the goods must be weighted at border crossings as well as in the Customs offices where customs clearance is performed.

After that, it is required to unload the goods and determine the actual situation with regard to the reported amount, type, quality and origin of. After completion of the procedure of placement, the next day the importer shall submit a declaration for release for free circulation on the basis of data from the documents accompanying the shipment and data that have been established during the unloading of the goods with complete, accurate and unambiguous information about the goods referred to in the customs declaration for its proper identification and classification regarding Customs Tariff. On the next day Customs officer examines the customs declaration, accompanying documents and information identified during unloading in the warehouse, after which they conduct a physical examination of the goods and the acceptability of the declared transaction value.

If there is a doubt in reported value of the transaction, and if declarant did not provide enough evidence that can be confirmed, importer is informed in written form to submit additional documents (purchase agreement, the export Customs declaration, catalogs with price, invoices for transport by the sea and by land ...), which would eventually prove the transaction value. When the Customs value can not be determined as the transaction value, it must be determined by the prescribed method of determining the order in which you make a record of the determination of the Customs value of the goods. Customs office can always seek the assistance of the Group for the tariff, value and origin of the goods with the obligatory exchange of information between Customs Offices. If the importer disagrees with the established customs value, he also has same right to appeal. Customs offices are required to submit weekly reports on the customs clearance of goods covered by the Order.

6.2 International agreements – problems obtaining informations

Bosnia and Herzegovina has signed several agreements concerning customs cooperation.

The Stabilization and Association Agreement (SAA) between Bosnia and Herzegovina and the EU is entered into force on 01/07/2008.

Central European Free Trade Agreement (CEFTA) is a trade agreement between non-EU countries in Southeast Europe which Bosnia and Herzegovina assessed on 01/01/2007. The agreement went into effect on 22/11/2007.

Free trade agreement between the Republic of Turkey and Bosnia and Herzegovina is entered into force on 01/07/2003.

In general, the exchange of information and mutual cooperation provides help to the parties in this regard. However, checking documentation and proof of origin is on satisfactory level. It could be even more effective given that in some cases we are waiting for results for a few years which create an aggravation for further work on cases that are under control after customs clearance. Those are the cases in which the response to our review shows that during the clearance of the customs authorities was presented forged documents in terms of values and that was undervaluated. It should bear in mind that the statute of limitations for subsequent collection of indirect taxes under the Customs policies expire after the period of 3 and 6 years, except when it comes to crime when the statute of limitations after the lapse of 10 years. After the time limit of 2 or 4 years the administrative procedure against importer cannot be initiated, and as it often happens, the importer does not bear any consequences for falsely declaring the customs value.

6.3 Post clearance audit

The limited documentation required to be produced at the time of importation does not provide the whole picture and context of a commercial transaction, which is necessary to properly determine the Customs value. Post clearance audit and its role is especially important given that customs clearance of goods is a procedure that lasts relatively shortly and is set liberally with the aim of facilitating faster flow of goods. An efficient subsequent control at taxpayers with an emphasis on the documentation that pertains to the import and further circulation of goods is a step towards solving the problem, because the customs value can be far more efficiently controlled in this way. Furthermore, effective PCA is responsible to assure Customs declarations have been completed in compliance with Customs requirements and to verify that the amount of revenue legally due has been identified and paid. Also, they need to ensure goods liable to specific import/export controls are properly declared, including prohibitions and restrictions, licenses, quota, etc. It is undisputed that a combination of skills, knowledge and experience is required to carry out PCA effectively. With the increased of electronic recordkeeping and the complexity and diversity of global trade, the need for higher standards of training becomes increasingly important. Customs administration should be committed to providing auditors with the levels of training necessary to equip them to perform their duties ([http://www.wcoomd.org/en/search.aspx?q=Guidelines%2520for%2520Post-Clearance%2520Audit%2520\(PCA\)](http://www.wcoomd.org/en/search.aspx?q=Guidelines%2520for%2520Post-Clearance%2520Audit%2520(PCA))). Training departments have an important part to play in ensuring that officers acquire the required skills to conduct an audit.¹⁰

The Indirect Taxation Authority encompasses the Section control unit at Head quarters and four Group Control units at four Regional centers. Scope of Customs control is defined by the Law on Customs Policy for each approved treatment or use, as well as the Regulations on the Control of Indirect taxes. Subsequent control includes checking the accuracy of Customs declarations and the correctness of the procedure for the same after the release of the goods under the Customs procedure which was conducted. The same is performed on the premises of the customs authorities or the premises of importers, exporters and their agents and all other persons who have a business directly or indirectly involved in the affairs of import or export goods. The request for control may be submitted by anyone on the basis of which an assessment whether there is a valid reason or not. Head of Department coordinates the work of customs officials exercise control and direct their work.

Continues problem in terms of additional control is the lack of people in general, and especially quality of personnel. It is without doubt that those jobs must involve only people who have experience in the customs service in many various jobs because, otherwise, we have a situation where PCA officers work with questionable knowledge which ultimately leads to poor and superficial control. Difficult cooperation with the parties on the issue of the documentation available is further hampered by a high quality and full control of the tax payers.

6.4 Human resources

The Indirect Taxation Authority is a young institution. As I mentioned before, in the course of 2004 the former Customs administrations of the entities and District Brcko were merged. Combining former customs administrations around 400 Customs officers had lost their jobs. It was a difficult period and the beginning of a new institution with a new organization had to respond to future challenges. At the end 2013 we are adopted the new Rulebook on the systematization of jobs and internal organization which is working just become more efficient in all aspects.

The problems that accompany the work are, in my opinion, normal and expected for a young customs service in the process of transition i.e. modernization. First of all, the

¹⁰ Revenue Package – Guidelines for Post-Clearance Audit (PCA) Volume 1 – WCO, June 2012, 14

problem of quality personnel, i.e. human resources is always present. Also, continuous training of employees through seminars, workshops and training courses will contribute to more efficient work. Attendance of our workers at international conferences and workshops will further strengthen our Customs service through the acquisition of international experience.

6.5 Discretionary powers of Customs officers

It is undisputed that in their daily work, Customs officers are faced with many problems, challenges and obstacles. National legislation in many cases do not answer the specific situation in which case the officer has discretion power in this particular case to consider the price reasonableness of the requested Customs procedures and to resolve them in accordance with applicable regulation.

This is particularly visible in the field of Customs value, e.g. its acceptability and determination, and I repeat myself, for the each specific case. In general discretionary power has both positive aspects, as the individual's ability to be proper and efficient in accordance with the law, to respond to specific problems in determining the Customs value and to make a decision that is objective, professional and efficient.

On the other side, the deficiencies of the mentioned powers and dangers inherent in the possible misuse of the same cannot be neglected in view of the importance of determining the Customs value and its direct impact on the revenue collection. The lack of knowledge, professional standards and the desire for commitment to the authority delegated may lead to unforeseeable consequences. The customs administration where I come from, Customs officials also have large discretionary powers which are limited by the poor information that they have and that they possibly could to limit and focus, provided by institution. It is about the databases, catalogs, periodical information about the values and similar.

6.6 Analysis – database (risk management)

Risk management is the identification, assessment, and prioritization of risk followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events or to maximize the realization of opportunities.¹¹

Within the context of Customs controls, Chapter 6 of the Guidelines on the General Annex to the Revised Kyoto Convention (Customs controls) includes the following definitions of the concepts of risk assessment and risk management:

Risk assessment: “The systematic determination of risk management priorities by evaluating and comparing the level of risk against predetermined standards, target risk levels or other criteria”.

Risk management: “The systematic application of management procedures and practices which provide Customs with the necessary information to address movements or consignments which present a risk.”

National database, as part of risk management is one of the basic tools that every Customs administration must have in their work. It plays an important role as a helping tool in order to remove doubts and dilemmas in the field of Customs valuation. It is crystal clear that it cannot serve as an option to determine the value, but only as a risk assessment tool and rough information in daily work.

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.

¹¹ http://en.wikipedia.org/wiki/Risk_management, January 2014

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 term of trade volume, by value, which helps to determine the possible revenue risk and optimum time of control.¹²

Our national database is not an ideal solution, taking into account the volume of data and the way in which these can be used. It is endless, done in Excel format and includes all imported and exported to the territory of BiH without specific selective access. From the mentioned reason reviewing and selecting the required information is hampered, finding takes a lot of time and often the data is incomplete and undetermined. For example, if you seek comparative indicators for the cotton T-shirt from China are often not able to find the specific information given to data entries in general, without detailed description of the goods, which are essential conditions for the determination of the customs value as the type of goods, quality and quantity of the commercial effect (for example, information from the database is “T-shirt” or just “Shirt”, no other data without which it is impossible to even compare the values, not to mentioned to determine them).

6.7 Court decisions

Pursuant to Article 6 of the Law on Customs Policy of BiH which stipulates that the Customs authorities leads the administrative procedure and make decisions in accordance with the regulations of the General Administrative Procedure, if the provisions of the said law prescribe otherwise. In the institution where I am working in, the Customs procedure is a specific three levels form of administrative procedure. In fact, the first instance decision is made by the Customs office where clearance took place an after the submission of the Customs declaration to the Customs authorities where the completion of Customs clearance treatment is considered as first instance decision in the administrative. If the importer or exporters dissatisfied with the Customs office, he/she has the same right to complain Regional Centre - Group of Customs procedures, which has a territorial jurisdiction over the Customs office which completed clearance procedure and which, in this particular case, makes a decision of adopting or rejecting the complaint of the importer or exporter. After that, mentioned has the right to appeal to the Department of Legal Affairs at the Central Office, whose decision is final in the administrative procedure. Person can lead dispute against this third level decision in administrative court, and that decision can refute the previous decision of the Customs authorities and adopt the claim of the party.

Exactly the court decisions which contradict the decision of our government in terms of determining the Customs value are the one of the biggest problems that we are facing with. Firstly, because previously completed procedure of customs authorities shall be marked as incorrect, or at the very least unlawful, and second, because the return differences over collected Revenue party we have to go back and statutory penalties.

There are many reasons why the decisions of the Customs authorities fail on courts. The main reason is incorrectly and insufficiently explained customs value determined by the Customs offices. Lack of quality staff, training and seminars, professional attitude towards work and the lack of commitment further contribute to the poorly dealt affairs which have resulted in the above.

¹² Revenue Package – Practical Guidelines for Valuation Control - WCO, June 2012, 11

7. Recommendations and improvements on above mentioned, based on personal opinion and the WCO instruments and tools

7.1 Undervaluation, post clearance audit, human resources, discretionary powers and court decisions

Citing and analyzing the above-mentioned problems in my Customs administration, I would like to point out that I tried to be objective as much as possible in the hope that ultimately, I present my final proposals based on personal experience and the instruments and tools by scoring and with the highest quality and specifically.

I would also like to point out that the Indirect Taxation Authority is institutions, which over the past 10 years has had very good results in their work, since it is still relatively young and that her work is burdened by the general situation in our society. Since its establishing until today, it has undergone many stages and eventually stayed and persisted despite numerous challenges. It is the fact that there are many problems plaguing it work. So, I sincerely hope that my humble contribution towards this research paper will find the way to least partially contribute to solving them.

In the chapter “The analysis of the situation within ITA ...” I presented a detailed the Order on the competence of customs offices for clearance of certain goods originating from Asian and African countries, which is in force for over a year. It raised a clearance procedure mentioned goods to a respectable level in terms of customs valuation and full access. However, I'm sure that with its additional, specific amendments which I hereby present, the final effect from the point of collection of revenue will be more than positive and that in a very short time.

I am of the opinion that the very first thing is necessity and urgency of introduction mandatory bank guarantee for importers involved in the importation of goods covered by the Order. The same decision would not cover legal persons which are engaged in importing goods from Asia and Africa for three years, and who do not have debt on the basis of indirect taxes, not be involved in misdemeanor or criminal convictions, nor had the declared customs values that caused doubts about the reality of the same, or which were acceptable and higher than other comparable values during the clearance. Also it would be of the benefit to previously analyze in detail risk management with clearly defined criteria. These are mainly importers importing goods originating from China, and the same is in fact a commodity that represents prestigious brands, generally known to the public (Nike, Adidas, Lacoste, Mango, Bershka, Pull & Bear).

Feasibility analysis of whether certain companies meet those criteria, ex officio, would be carried out once a year, after which individual companies could be exempted of guarantee, as to other companies, after the established irregularities, would be obliged to provide guaranty. Also, it would be provided that Management decides on the possible claims of companies to lift the obligation of guaranty. All new taxpayers who are just beginning to deal with the import of mentioned goods would have to provide the required guarantee, unless they not present a valid documentation (contracts for future business cooperation, product catalog, estimates etc). It is without doubt that the meaning of the introduction of the bank guarantee is primarily directed to importers who import goods directly from China in container shipments, intended for the so-called “market sales” and sales on outdoor and indoor markets. The introduction of mandatory bank guarantee would be a direct strike on so-called “suitcase” companies or companies that are established for a short time, and imported several containers disappear which prevents subsequent control of same. The BiH enterprises can establish for a symbolic amount of money and a simplified procedure for couple of days. Exactly the guarantee which would be necessary for their operation could be crucial for deciding whether to establish a business or not. Possibility to do the import by another entity would be reduced to a minimum because another entity

would not be easily pawned their status, a special guarantee for suspicious transactions. Ultimately, the guarantee to deter them from engaging in suspicious activities, and a huge benefit of the customs administration after the established irregularities in the subsequent control after which the amount claimed indirect taxes could easily charge. Bank guarantee would be, at the end, a clear message to everyone that the irregularities concerning the customs debt to be safely collected and should not in any case will not be able to avoid.

The procedure of Customs clearance of goods from the said tariff head is also described in the said Order and conduct of customs officers for each phase of procedure. My opinion is that a lot of things could be improved to provide more effective and clearer procedures and avoid any dilemma, particularly in the area of discretionary powers of customs officers.

The traditional Customs clearance procedure is carried out at a border crossing or internal customs office. In the time of Customs clearance customs officers have limited access to the records that they available. Mostly it comes to invoices, shipping documents, contracts, etc. since the time of customs clearance limited. My proposal would refer to the insistence for filing all documentation available at the time of clearance. When I say available, I mean the documentation that he actually has and may have in their accounts at the time (cannot ask to submit proof of a transaction abroad if the same invoices can be seen that a deferred payment of 60 days). It is logical that the importer at the time of importation has the invoice, bill of lading and ship manifest. To this it should be approached with caution, taking into account the Decision taken by the Committee on the Custom Valuation 6.1.

In my opinion, when the declaration by the carrier to fill out an additional form to fit declaration statements created by the customs in which the importer under full moral and legal responsibility by shippers confirmed the existence of the documentation available at the time of its submission to the customs and documentation which at that time was available with a time estimate of when the same could be made available to the Customs authorities. The importer was obliged to put his stamp and signature or to stand behind their statements on the said form, to with the obligatory note that giving false information a misdemeanor punishable in particular, is not a small amount. To these should be primarily accelerated clearance procedure without wasting time searching for documents pursuant to the Decision 6.1, and reinforced the responsibility of enterprises that are ready to risk reducing Customs value. If subsequent control found that to be a legal entity at the time of clearance had a document, and then it was pointed out, would be a sufficient reason for tort liability, which would ultimately general and their work easier.

Obligatory submission of the said documents would reduce the ability of customs officials to decide whether or not to particular document should be submitted. All of it would further lead to a more complete and meaningful data to the declaration and again somewhat impaired the ability of the importer to decide whether or not the documents presented to customs.

In my opinion, the problem relating to the determination of the Customs value when the same cannot be accepted as the transaction is most complex and requires serious response. In this mentioned problem, almost all the above analysis is integrated, as undervaluation, post clearance audit, human resources, discretionary powers, databases, and most court decisions. At the moment when a customs official suspect and ask for additional documentation in accordance with the Decision 6.1 should be viewed with a special attention. Article 16 and 17 of the Agreement provide a form of balance between the rights and obligations of the customs authorities and importer. With just that, there is nothing to prevent us from express a reasonable doubt as submitted documentation. Term “reasonable doubt” is not defined, but can be considered as uncertainty or hesitation based on rational data, information or facts in the context of the particular circumstances of the transaction

which is mainly being checked. This refers especially on low price of imported goods in comparison with available data.

I believe that communication with the importer for the purpose of seeking additional documentation must be on the highest level of detailing and explaining the reasons for doubt. In order to avoid individual solutions to individual customs officers who are usually diverse, it is necessary to prescribe a uniform form of communication with the importer, because only in this way can we defend our determined Customs value before courts. Prescribing the clear procedures in the process of seeking documentation will avoid the arbitrariness and reduce the discretionary powers which will certainly contribute to a balanced work in all organizational units. Time alleviating the problem in terms of human resources for prescribing detailed treatment possibility failure, and even when it comes to lack of qualified staff, will be minimized.

The moment when the customs authority decides that the Customs value cannot be determined as the transaction is key decision from the standpoint of further proceeding. I mentioned fortifications customs value of the notes and lists in a document called the “record of the determination of the Customs value”. I must point out that is the same for both defects, the unexplained. It is dangerous, especially in a situation when the decision was made at the expense of the importer and where the appeal is more than certain and it is assumed that the subject will end up at the court. The report does not foresee a serious and a detailed explanation of the decision guided by the Customs Officer regarding determination of the value. And with that fact, we are doomed to get a negative court decision or return the difference collected indirect taxes from the statutory default interest.

It is a key response to the aforementioned problem. Customs authority must, in each case of determination of the Customs value, to issue a decision in the administrative proceeding (intro, disposition, reasoning and legal advice), because only in this way that our well-reasoned and fact-based decisions will have quality in the courts. It should be seriously consider the option of sampling the goods in those cases where the complaint of importers evident. Possibility to see the goods after Customs clearance procedure can only contribute to a possible subsequent forensic examination in court procedure. My opinion is that this is the only way to have positive judicial decisions in the future, which has not been the case so far.

I also believe that the problem could be reduced to a certain extent by a continuous international cooperation by way of data exchange at the world level, whereby care would be taken to protect data and prevent possible misuse. Minimally one representative of each interested member country of the WCO would be engaged on this, who, apart from regular correspondence with colleagues from other countries once a month, would participate annually in a meeting in which the advantages and disadvantages of such cooperation would be analyzed, and more concrete steps for solving the problems of customs value would be agreed on. Full-scope cooperation between the countries – senders of goods (China, Turkey) in terms of delivering responses to requests for checking data on the Customs values of exported goods would be of an utmost importance.

7.2 National valuation database as a risk assessment tool

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. However, ultimately, it

¹³ Revenue Package – Practical Guidelines for Valuation Control - WCO, June 2012, 10

is the importer and declarant who decide whether or not they will provide accurate and truthful information via a Customs declaration.¹³

My administration 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. Thereafter we will be able to direct our 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. Certainly, knowledge of national trade trends is essential for understanding and identifying potential revenue risk areas. 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.¹⁴

The use of databases in the risk assessment context may occur at any stage: prior to the lodging of the import declaration, at the time when the declaration is lodged (verification of the data entered in the declaration), throughout the clearance process and/or after the goods have been released.¹⁵ National valuation database is a very important as a means to identify potential under valuations of imported goods. Also we need to consider programmes which rely 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. As a general rule of thumb, the more that Customs can conduct effective post-clearance controls, the less necessity there is for valuation database.

In the analysis of the situation within ITA, I have already mentioned our national database and its deficiencies and weaknesses because we have one database for all previously imported products. Definitely, it is highly resource to maintain a valuation database for all products in the Customs Tariff. As a more practical solution, I would recommended that the our future database contains prices for selected high-risk trade sector only. The range of goods included in the database can be modified as risk change. It is essential to our future national valuation database that should necessarily encompass Headings Chapter 39, 42, 43, 50-66, 90-97, and finished products under Tariff Heading 85 which are already covered by our previous mentioned Order. In my opinion, based on personal experience, I would add also chapters 2, 7, 8, 9, 10, 17, 67 and 87.

I also mentioned the problem with a lack of adequate description. 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.

A certain set of key data elements should be extracted for each importation and transferred into the database. These elements may include, inter alia:¹⁶

- Customs entry number
- Customs entry date
- Harmonized System code

¹⁴ Revenue Package – Practical Guidelines for Valuation Control - WCO, June 2012, 10-11

¹⁵ Guidelines on the development and use of a national database as a risk assessment tool, 6

¹⁶ Revenue Package – Practical Guidelines for Valuation Control - WCO, June 2012, 17

- 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

Taking photos of goods during physical examination, which would be stored digitally along with the price data for the product in question, will provide a further means of comparison.

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.

Once our database will be established and populated with data, ITA should develop a procedure for using it. For example, we can selectively compare certain declared prices with either individual price of comparative goods contained in the database. Another possibility is to compare prices with average prices derived from a number of importations which might be a better solution. 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. Also important thing is to create software for establishing standards or average deviations of price for a particular product. Declared prices which fell outside the standard deviation range, so called "outliers", would be flagged up for further enquiry through a clear warning. 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.

Another technique that could be applied 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. For example, an average price per kilo can be determined, based on declared values for Chapters 61, 62 and Chapter 64 goods. If the possibility for regional cooperation exists, the same comparisons can be made between relative average declared prices between countries in the region.

Finally, all staff with access to the database should receive adequate instruction that the valuation database can be used only as a risk assessment tool and that price in a database cannot be automatically applied to replace a declared value were doubts exist taking into consideration the WTO Decision 6.1.

¹⁷ Guide to exchange of customs valuation information, 1

7.3 Exchange of Customs valuation informations

First of all, it should be emphasized that exchange of information is only part of the solution to effective valuation control and should form part of a more comprehensive approach. Successful valuation control depends on a long-term strategy of reform and modernization of Customs administrations. In particular, Customs administrations should rely on a control mechanism, using intelligence (<http://www.wcoomd.org/en/search.aspx?q=RILO>) based risk assessment and post-clearance auditing systems, which are fundamental to improving Customs valuation control regimes.¹⁷

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. It means that all appropriate documentation has been made available to the Customs administration and has been inspected (customs entries, bills of lading, commercial invoices, contracts of sale, payment and bank records,). Also they should check previous importations of the same importer in the national valuation database and request from him additional information related to the specific import.

If after all of these previous mentioned checking's, there are still reasonable grounds to doubt the truth or accuracy of the declared value and fraud is suspected, assistance from the Customs administration of the exporting country may be sought, in accordance with the following recommended procedures.¹⁸

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 or requested information may include the value of the goods stated in the export declaration/entry presented to the Customs administration of the exporting country. 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.

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.

Requests for information should be made in writing or electronically. 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.¹⁹

Requests for information should specify:

- - the purpose of the request and the type of information requested;
- - the measures taken by the requesting Customs administration;
- - the information necessary to identify the goods and their export declaration/entry;

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. 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.²⁰

¹⁸ Guide to exchange of customs valuation information, 3

¹⁹ Guide to exchange of customs valuation information, 4

²⁰ Guide to exchange of customs valuation information, 5

Summary and concluding remarks

The research paper that I presented in the Customs valuation area was aimed at that one expert, professional and objective approach to the problem of attempting to determine the problems in my customs administration and offered her optimal proposals, as much as it was in my power. Years of experience in a Customs service has been taught me one simple lesson: my entire proposal to solve anything in the Customs area demanded serious engagement and commitment on my part.

I dare say that the customs value may be the only area in which we can safely say that any decision we make, taking into account international regulations and national legislation, could be different. Conditionally speaking, the circumstances in which we are meeting in this field are not always clear – black or white. On the contrary, they are often grey and keep us in eternal dilemma: whether we are in the present case acted properly, taking into account the rights and responsibilities of us, as a Customs administration, and undertaking, with the other side. It is a great responsibility to find adequate balance in each case that, simply put, tip the scales at any point, do not over tighten to any side. That is exactly what is, in my opinion, the key question and answer that should always have before us. That is why the continuous training, as well as this work, for me, a great challenge and a huge stimulus to further work.

Generally, I think I have all my expectations fully implemented and have presented in this study, which is in front of you.

And finally, my messages and recommendations to all who so desire and are able to read this research paper: if any part of it finds its place and being implemented in my Customs administration or any other worldwide or be helpful to any Customs officer, I will assume that my work was not in vain.

Endnotes

1. Guidelines on the development and use of a national database as a risk assessment tool, website: <http://www.wcoomd.org/en/search.aspx?q=%2520Guidelines%2520on%2520the%2520development%2520and%2520use%2520of%2520a%2520national%2520database%2520as%2520a%2520risk%2520assessment%2520tool>
2. Guide to exchange of Customs valuation information, website: <http://www.wcoomd.org/en/search.aspx?q=Guide%2520to%2520exchange%2520of%2520Customs%2520valuation%2520information>
3. <http://www.wcoomd.org>
4. <http://www.uino.gov.ba>
5. Order on the competence of Customs offices for clearance of certain goods originating from Asian and African countries, ITA BiH, 2013
6. Revenue Package, Guidelines for Post-Clearance Audit (PCA), Volume 1, WCO, June 2012, website: [http://www.wcoomd.org/en/search.aspx?q=Guidelines%2520for%2520Post-Clearance%2520Audit%2520\(PCA\)](http://www.wcoomd.org/en/search.aspx?q=Guidelines%2520for%2520Post-Clearance%2520Audit%2520(PCA))
7. Revenue Package, Practical Guidelines for Valuation Control, WCO, June 2012, website: <http://www.wcoomd.org/en/topics/key-issues/ecp-latest-proposal/instruments-and-tools/six-areas.aspx>
8. RILO Info No. 03-2012, website: <http://www.wcoomd.org/en/search.aspx?q=RILO>
9. WTO Valuation Agreement, website: <http://www.wcoomd.org>