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Issue 54, January 2023

EU importers face customs valuation uncertainty and risk

Traders importing goods into the European Union (EU) are facing increased scrutiny around customs valuation — with uncertain treatments and recent court cases making this an area of increased risk for disputes, assessments and penalties.

One hot topic is the interplay of transfer pricing adjustments and customs valuation for related party transactions. Key questions include:

- Should later transfer pricing adjustments be taken into account retroactively in adjusting customs values?
- Should upwards and downwards pricing adjustments be treated in the same way?
- What is the correct basis for valuing goods for customs purposes at the time of importation, if they may be subject to a transfer pricing adjustment later?

It was anticipated that the recent judgment in the Hamamatsu case,¹ would have helped to settle these questions. However, the legal reasoning of the judgment largely offers room for interpretation rather than definitive answers.

The German court ruled that a downward adjustment of transfer prices does not entitle the company to claim a refund of import duties. However, the outcome is unclear as to whether upward price adjustments should also be ignored for customs valuation purposes. This is a crucial point, and one where importers and the Member States' customs authorities may differ in their views. The court's reasonings also cast doubt on the use of the transaction value method as an acceptable method for valuing goods at importation if they may be subject to later transfer pricing changes — but does not provide definitive guidance.

To date, the EU has not issued further guidance on these issues. And, in practice, individual Member States may interpret the rules differently — leading to more confusion. So, the risk of customs audits and disputes around these issues remains. EU importers should review their customs valuation policies in the light of this case and consider the possible impact of any pricing adjustments on their previous declarations.

Read more on this topic in the latest issue of [TradeWatch magazine](#).

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1 [Hamamatsu — a long journey about to end?](#) (page 63)

Poland: Transfer pricing adjustments and their impact on VAT, excise and customs duties" (page 66) and "Technical Committee on Customs Valuation approves new advisory opinions on ancillary charges" (page 3)

Related articles:

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