WCO Secretariat Note

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Effective and efficient revenue collection in cross-border e-commerce

I. Introduction

The growth in cross-border e-commerce has generated enormous opportunities for the global economy, providing new growth engines, developing new trade modes, and driving new consumption trends. Furthermore, e-commerce has helped to keep the economy going by enabling trade and transactions to continue during the COVID-19 pandemic. It is expected that customers might get used to online deliveries, and that the significant increase in e-commerce will continue even after COVID-19.

This fast-evolving trading environment requires comprehensive and well-considered solutions from all stakeholders, including Customs, to manage the unprecedented growth in volumes, address associated border risks, and conduct fair and efficient revenue collection.

For adequate revenue collection, Customs need to manage this time-sensitive flow of goods, particularly the large number of relatively low-value and small e-commerce shipments, effectively.

For the purpose of effective and efficient revenue collection, the Framework of Standards on Cross-Border E-Commerce (E-Commerce FoS) suggests that Customs consider applying, as appropriate, various types of models of revenue collection (e.g., vendor, intermediary, buyer or consumer, etc.) for duties and/or taxes; the Annex on revenue collection approaches provides the details of these various models.

Furthermore, the Secretariat has received a number of questions on Customs valuation and the use of Post Clearance Audit (PCA) for e-commerce, it being noted that these are also key elements for effective and efficient revenue collection.

In addition, as suggested by the E-Commerce FoS, the application of e-payment is a vital option to pursue as a measure for ensuring supply chain continuity under the COVID-19 pandemic.

Against this background, this Note intends to provide basic explanations about the application of Customs valuation and the use of PCA for cross-border e-commerce, as well as the introduction of an e-payment option, with the aim of supporting Customs administration' efforts to facilitate cross-border e-commerce while collecting duties and taxes effectively.

II. Customs valuation of cross-border e-commerce goods

i. Customs valuation and Duty/Tax

During the clearance process, once the appropriate rate of duty has been established, the basis on which the duty is calculated ("Customs value") must be determined. The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (GATT), generally known as the World Trade Organization (WTO) Customs Valuation Agreement provides the basis used for Customs valuation; this Agreement should be applied to e-commerce cargoes as explained in the Technical Specifications (Para 6.1.3) to the E-Commerce FoS.

The Customs Valuation Agreement provides the rules to value imported goods for the purpose of levying ad valorem duties of Customs. The primary basis to determine the Customs value of imported goods is the transaction value. Transaction value is the price actually paid or payable for the goods when sold for export to the country of importation, subject to specified adjustments.

As provided in the General Introductory Commentary of the Agreement, Customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply. Therefore, the goods purchased through e-commerce should be treated, for Customs valuation purposes, just as goods purchased by other means.

However, as the e-commerce supply chain is characterized by short delivery times and the introduction of new stakeholders with new business models and new trade modes, there could be some difficult Customs valuation cases when goods have been purchased through e-commerce. This Note provides general information with associated instruments adopted by the Technical Committee on Customs Valuation for some envisioned cases related to cross-border e-commerce.

ii. Cases specific to cross-border e-commerce

Case 1: Discount

The price could be rather low in certain scenarios, compared to the price of goods purchased in the traditional market.

In 2019, the Technical Committee on Customs Valuation adopted a new instrument on "flash sales" (Advisory Opinion 23.1). "Flash sales" are promotional sales offered in the short term and at highly discounted prices to attract potential purchasers; they are often encountered in the online sales environment.

In accordance with Advisory Opinion 23.1, given that the basis for the transaction value is the price actually paid or payable for the imported goods under Article 1 of the WTO Customs Valuation Agreement, the discounted price for imported goods purchased during a flash sale is accepted as the basis for Customs valuation.

Case 2: Domestic sales occur after the importation for storages

Cross-border e-commerce is time sensitive and vendors who establish a partnership with e-platforms prefer to import the goods to build local inventory stocks in local warehouses e.g. fulfillment houses/centres (hereafter fulfilment centres) to shorten the delivery time and therefore ensure just-in-time delivery. There are cases where the domestic sales occur after the importation for storage and in these cases there is a need to examine the "sales" to determine the transaction value under the WTO Customs Valuation Agreement in these transactions.

Chart 1 describes several types of fulfillment centres related to e-commerce. With a view to understanding the relationship between importation and domestic sales based on the business models, including those shown in Chart 1, Customs may need information to determine whether:

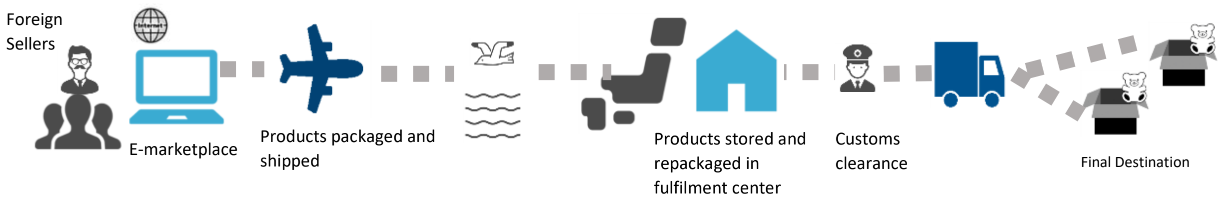
- A sale for export could be established in accordance with the Agreement
- the importer could be identified as the buyer for Customs valuation purposes ; or
- the importer is an intermediary who buys or sells goods for the account of a principal.

In this regard, Advisory Opinion 1.1 specifies a list of situations in which imported goods would not be deemed to have been the subject of a sale, and Advisory Opinion 14.1 provides guidance on the meaning of the expression 'sold for export to the country of importation'. Reference regarding intermediaries could be made to Explanatory Note 2.1.

[Chart 1]

Type 1. Offshore Fulfillment Centre, which is designed to service both domestic and international sales.

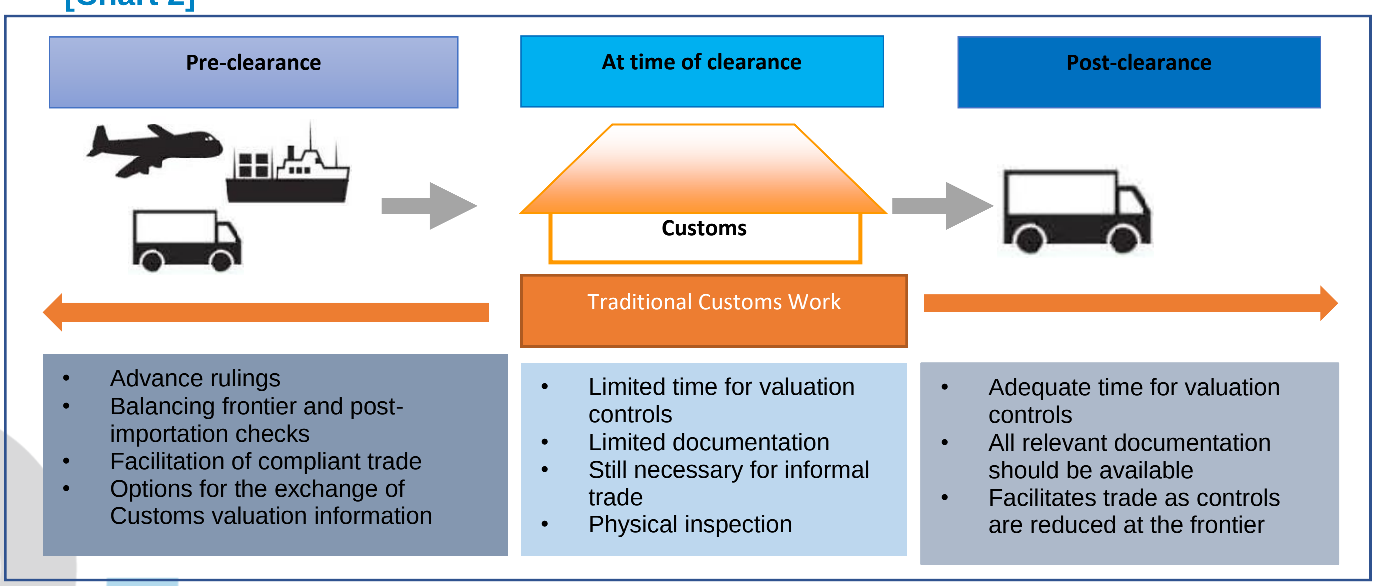
Type 2. Free zone (FZ)/Bonded Warehouse Fulfilment Center: International shipments move in-bond to a FZ/Bonded warehouse, where goods are stored until they are sold. When the goods are sold, Customs formalities take place to remove the goods from the FZ/bonded warehouse for export, or for Customs clearance /delivery to the customer.



Type 3. Domestic Fulfilment Centre: International shipments are cleared by Customs prior to entering the fulfilment centre where goods are stored until they are sold. When the online sale takes place, it is a domestic sale. From a Customs perspective, the company that operates the fulfilment centre may/may not be the purchaser of the goods or the importer.

III. Comprehensive and effective valuation control with three stages

[Chart 2]



It is considered that effective Customs valuation control involves three stages with the consideration of pros and cons of each stage as described in Chart 2.

Traditionally, Customs conducted its controls at the time of clearance. Due to limited time for valuation controls and limited documentation, Post Clearance Audit was introduced with the aim of effectively assessing all the necessary documentation after clearance. Furthermore, the Technical Specifications of the E-Commerce FoS explain that the use of advance electronic data for effective risk management is cross-cutting and underpins trade facilitation, security and safety, revenue collection and measurement and analysis.

IV. Utilizing Post Clearance Audit (PCA) for cross-border e-commerce

i. PCA and audit-based control

The overall objective of PCA is to ensure that Customs declarations have been completed in compliance with Customs' legal requirements including assessments of the declared value, origin and classification of the goods as well as other requirements in respect of import or export; PCA is carried out through the examination of a trader's systems, accounting and other business records, and premises.

Notably, PCA is audit-based control; instead of checking each declaration at the clearance stage, Customs can utilize PCA for checking, during a single visit, a selection of declarations lodged over the previous years. A complete picture of the business can be captured during the PCA audit, including details of business models, trading methods, supply chain partners, etc.

Standard 6.6 of the General Annex to the Revised Kyoto Convention (RKC) stipulates the need to use audit-based controls. Audit-based controls as represented by PCA are a very effective way to ensure Customs valuation. This is because this method provides access to accounting information that is not submitted to Customs at the border. For this reason, audit-based control is strongly related with the provisions of WTO Customs Valuation Agreement in its function. For example, the interpretative notes in Annex 1 of the Agreement encourage Customs administration to utilize information consistent with General Accepted Accounting Principles (GAAP).

PCA should be an effective tool for cross-border e-commerce, but the challenge may be how to ensure compliance with record-keeping requirements that are consistent with GAAP by unknown or occasional importers and how to maximize the benefit of audit-based control and PCA for those importers.

ii. Documents can be assessed at PCA

The record-keeping requirement is a fundamental element that supports PCA. In general, importers should possess the documents needed for Customs valuation and other stakeholders can supplement their documents by the means described in Chart 3.

[Chart 3] Documents can be accessed at each stage

	Pre-clearance	Time of clearance	Post-clearance
ocuments	• Documents for Advance Ruling (Sales contracts, product spec sheets etc.) • Manifest • Advance Electronic Data (AED) • Advance exchange of Customs valuation information?	• Declaration • Invoice • Packing list • Bills of lading • Certificate of origin …	• Sales contracts • Commission contract • Order sheets • Processing instructions • Manufacturing report • Product spec sheets etc. • Account books

However, cross-border e-commerce is characterized by a myriad of unknown and/or occasional importers (B-to-C and C-to-C) who may not possess the documents necessary for PCA.   Those importers are less likely to be responsible and knowledgeable in terms of explaining the detail of business models, trading methods and supply chain partners. Therefore, in order to conduct PCA effectively, Customs need to consider who is in the best position to explain the details of business models and supply chain partners to Customs with the access to the relevant documents and who are suitable for audit-based control.

One of the options could be to establish a partnership with e-commerce platforms/e-marketplaces and fulfilment centers under the Authorized Economic Operators (AEO) programme, for example. Specifically, Type 2 and Type 3 fulfilment centres, which are physically located in the importing country as explained in Chart 1, could possess the knowledge and documents required for PCA and be suitable for audit-based control. By strengthening cooperation and partnership with such e-commerce stakeholders, Customs could even facilitate their trade at clearance by applying account-based duty/tax collection on a periodic basis while conducting the necessary audit-based assessments after the clearance of goods.

V. Utilizing pre-clearance stage for cross-border e-commerce goods

i. Utilizing Advance Electronic Data

At the pre-clearance stage, advance information can be obtained on imminent cargo arrivals via shipping manifests and other sources. This data can be analyzed by risk analysis teams who can make preliminary targeting selections. Typically, however, limited information is available at that stage to enable detailed checks regarding valuation or classification of the imported goods. Therefore, at the pre-clearance stage, the compliance level of traders on the tax revenue aspects will be improved by exchanging relevant information through advance rulings, consultations and public awareness.

However, the Technical Specifications of the E-Commerce FoS explain that the use of Advance Electronic Data (AED) for effective risk management is cross-cutting and underpins trade facilitation, security and safety, revenue collection and measurement and analysis.

Therefore, one possibility could be to access AED at the pre-clearance stage. It should be noted that as e-commerce is very time sensitive, conducting such assessments at the pre-clearance stage should be conducted without causing delays in clearance and increasing burdens on e-commerce stakeholders. With this aim, a well-developed framework for the effective exchange of information related to Customs valuation could be developed between e-commerce stakeholders and Customs administrations.

ii. Utilizing advance rulings for cross-border e-commerce goods

In an effort to provide advance and predictable information to traders in order to facilitate their compliance with Customs requirements, many Customs administrations have established advance rulings, as prescribed in Standard 9.9, the General Annex to the RKC.

The availability of advance rulings on all Customs matters, including Customs valuation, Rules of Origin and HS classification could support effective and efficient revenue collection on cross-border e-commerce shipment. An interested person needs to request an advance ruling and supply all the necessary information for that purpose.

Furthermore, the availability of published rulings related to e-commerce trade could enrich the level of compliance and facilitation not only for the requesting importer, but for all traders involved in cross-border e-commerce, given that the key players of cross-border e-commerce, including vendors and e-platforms/e-marketplaces tend to be located in third countries and have no legal representative in country of importation, making it difficult to request an advance ruling from the Customs administration of that country.

VI. Introducing e-payment to support cross-border e-commerce

In connection with the concept of facilitating Customs procedures through the use of IT technologies, the need for e-payment services is widely recognized, together with the need for e-declarations. The WCO E-Commerce FoS includes Standard 7 on the e-payment option, while the WTO Trade Facilitation Agreement has a dedicated provision on electronic payment (Article 7.2). The RKC Guidelines on Chapter 4 of the General Annex recommends the establishment of electronic funds transfer systems that allow for quick and efficient payment. Recommended Practice 15 of Specific Annex J1 of the RKC recommends the use of credit cards or bank cards as a means of payment for travelers, and they could also be utilized in the context of e-commerce.

It has also been emphasized by the Private Sector that e-payment is an effective measure for ensuring supply chain continuity during the COVID-19 pandemic.

Furthermore, even though the collection of duties and taxes include an e-payment option, the refunding of duties and taxes remains paper-based in some countries.

In general, the electronic payment of duties and taxes are carried out using, but not limited to, the following methods:

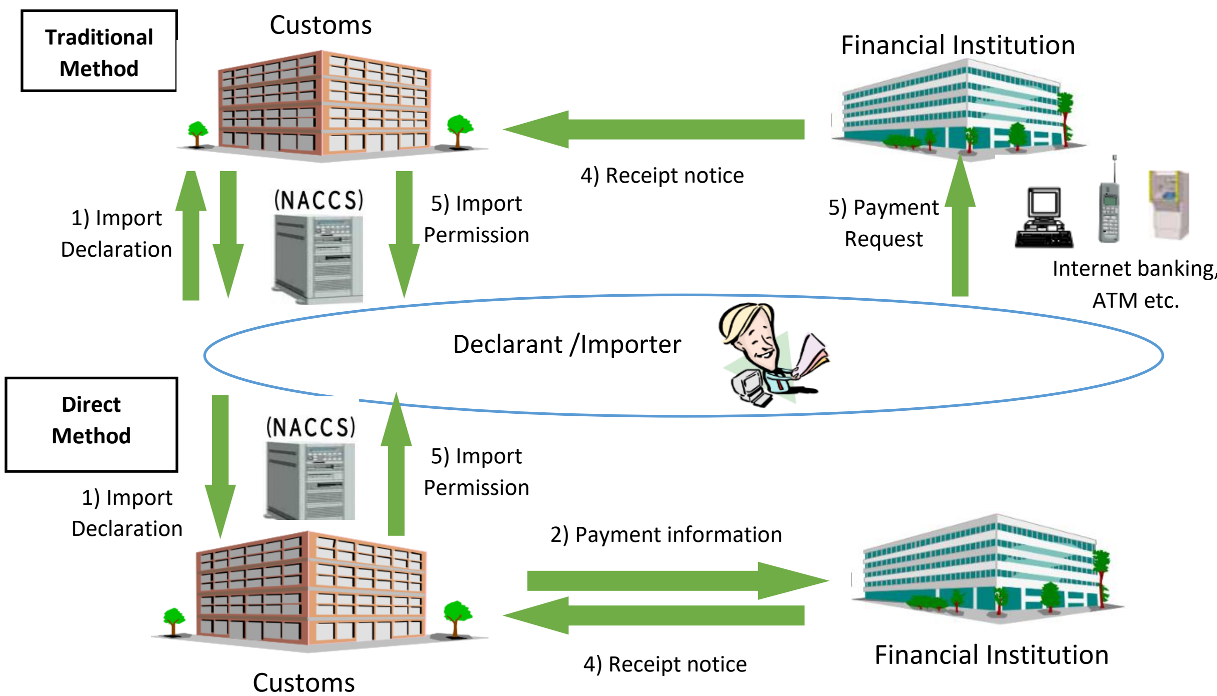
1) Payment into the Customs administration's account through financial institution's website (banks, credit card companies etc.); and/or,
2) Direct interface between the Customs IT system and the financial institutions' systems.

Chart 4 is an example from Japan Customs, whose IT system is connected to those of certain financial institutions to enable e-payment options.

[Chart 4] Introduction of real-time direct debit method (Direct method) in Japan

In Japan, electronic payment has been in operation since 2004 by connecting a high-order information processing system and a multi-payment network. However, there were certain restrictions on the convenience of the current electronic payment procedure, such as the need for taxpayers to provide payment instructions for each individual tax return.

In addition, it has become possible to pay duties and taxes by direct debit from the general account of the taxpayer, as a new method of electronic payment using a multi-payment network. This real-time direct debit method (direct method), which allow the payments directly from a taxpayer's deposit account at the same time as an import declaration was introduced to NACCS (Japan's single window system) for sea cargoes in October 2008, and for air cargoes in February 2010.



VII. Conclusion

The proper application of Customs valuation and the use of PCA for cross-border e-commerce under the concept of audit-based control are important elements for facilitating cross-border e-commerce while ensuring the effective collection of duties and taxes. This Note provides details of two cases of Customs valuation related to e-commerce with associated Advisory Opinions for information. In order to further ensure the proper application of Customs valuation for cross border e-commerce, Customs administrations are encouraged to share e-commerce cases they have encountered for discussion in the WCO Technical Committee on Customs Valuation.

The use of PCA should be explored together with possible partnerships with e-commerce stakeholders, with due consideration of the characteristics of e-commerce trade, such as new business models, many unknown and occasional importers and new players such as e-commerce platform/ marketplaces as well as fulfilment centres. Expanding the AEO concept to include e-commerce stakeholders and conducting PCA to further facilitate their trade through the use of audit-based controls could be one option to explore.

In order to ensure the compliance and predictability of e-commerce trade for all e-commerce stakeholders, utilizing AED and promoting the use of advance rulings for those stakeholders could be very effective means of supporting compliance with national regulations, in particular on Customs valuation, origin and HS classification.

As recommended by Standard 7 of the E-Commerce FoS, providing the option for e-payment of duties and taxes including refunds is a relevant measure for supporting cross-border e-commerce as well as supply chain continuity during COVID-19 pandemic.

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Annex: List of WCO Instruments and Tools related to E-Commerce Revenue Collection

International Convention on the simplification and harmonization of Customs procedures (as amended) (Revised Kyoto Convention)

http://www.wcoomd.org/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf_revised_kyoto_conv/Kyoto_New

WCO Framework of Standards on Cross Border E-commerce

http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/frameworks-of-standards/ecommerce.aspx

WCO SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE)

http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/frameworks-of-standards/safe_package.aspx

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Customs Valuation Agreement)

https://www.wto.org/english/docs_e/legal_e/20-val.pdf

WCO IMPLEMENTATION GUIDANCE ON POST CLEARANCE AUDIT (Members only)

http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/guidelines/pca-guidelines.aspx

WCO GUIDELINES FOR POST-CLEARANCE AUDIT (PCA)

http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/guidelines/pca-guidelines.aspx

WCO Technical Guidance on Advance Rulings

http://www.wcoomd.org/en/topics/origin/instrument-and-tools/advance-rulings.aspx