

Customs Valuation Appraisal Methodology: a Comparative Analysis of European
and United States Governing Legislation

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Dedication

First and foremost, I dedicate this dissertation to my wife, Aishling Mealy, and son, Alfie David Aherne. Whilst working full time, I embarked on five years of full-time academic studies, which consumed my evenings and weekends. During this time, I achieved an Honours Degree in International Business Studies, and have now completed my Masters in International Law, all of which has only been possible with the continued support and encouragement of my wife. Secondly, I dedicate this work to my parents David and Rita Aherne, both of whom have always encouraged me to push forward and continue to learn as much as possible in anything I have undertaken. The encouragement of my direct family has been superb, and vital to me in completing my studies, and for this I am eternally grateful.

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List of Acronyms and Abbreviations

AEO – Authorised Economic Operator

BVD – Brussels Definition of Value

CCC – Community Customs Code

CFR – Code of Federal Regulations

CIF – Cost, Insurance and Freight

EDI – Electronic Data Exchange

EEC – European Economic Community

EU – European Union

FAS – Free Alongside Ship

FCA – Free Carrier

FDI – Foreign Direct Investment

FOB – Freight on Board

FTA – Free Trade Agreement

GATT – General Agreement on Tariffs and Trade

GST – General Sales Tax

GST – Goods and Services Tax

ICC – International Chamber of Commerce

IMF – International Monetary Fund

IP – Intellectual Property

ITO – International Trade Organisation

NAFTA – North America Free Trade Agreement

TTIP – Transatlantic Trade and Investment Partnership

UCC – Union Customs Code

US – United States

USCS – United States Constitution

VAT – Value Added Tax

WTO – World Trade Organisation

Abstract

This research sets out to identify the customs duty appraisal methodology best suited to modern international trade. The research identified the most effective method from the position of reducing operational barriers to trade. The operational review identified that the use of an appraisal methodology could be detrimental to trade overall, acting as a barrier to trade facilitation and fuelling internal competition. The research also identified why traditional protectionist measures do more harm than good to the domestic activity of the trade nation employing such measures.

Research methods employed as part of this study included a mix of qualitative and quantitative research through industry research surveys focused on EU and US industry professionals. Legislative analysis and practical observations from industry experience were also considered within the research. The major findings of this research were that the US has clearly founded legislation driving the use of a specific method of appraisal aimed at ensuring equity and fairness amongst its member states. In contrast, the European method creates internal competition through lack of appropriate legislation, demographics and misalignment across tax law. Therefore, allowing individual member states to implement programmes to promote locations as a point of import, thus creating internal competition amongst member states. The main finding was that alignment of legislation and practise between the two trade blocks would be advantageous to trade facilitation overall.

This is a significant consideration, given that the centre of this research focussed on trade facilitation measures of the two largest trade nations in the world, as they look to embark upon a trade facilitation agreement. There is no evidence available in the public domain to show that this misalignment between processes and practices has been considered, or how it will ultimately lead to disparity in trade practices. The limitations of this research were that, because of its unique nature, very little information was available on the financial impact of alignment. For this reason, further study is needed in this area of duty appraisal alignment, together with any financial impact that this may have on either trade block.

Introduction

Which valuation appraisal methodology is best suited to the European Union (EU) in modern international trade? The concept of valuation appraisal methods for the purpose of calculating import taxes, both direct and indirect, has been a consideration for most nations at some stage, and the World Trade Organisation (WTO) has generally given the host nation a choice of two specific methods. This research aims to analyse the two methodologies adopted by trading nations, and examines both in relation to their specific functions and how they may support or hinder trade facilitation. The overall intention is to identify whether either method creates advantages or disadvantages in international trade, and to seek to answer the question: which valuation appraisal methodology is best suited for the EU in modern international trade?

The main thesis of this research is to show that the current method employed by the EU creates a barrier to trade facilitation, and acts as a protectionist measure against the domestic activity of the EU by creating higher costs for imported goods through the appraisal method used at the point of entry into the EU. It also aims to show that the concept of customs valuation links not just to valuation of goods for duty appraisal, but works in direct correlation with current European Value Added Taxes (VAT) legislation. The thesis aims to illustrate how such methods may be dated, and no longer suited to the promotion of trade facilitation. This is considered specifically in relation to the current trade talks between the two trade blocks of the EU and the United States (US).

The importance of this topic is not to be underestimated. With the world's two largest trading blocks having entered into trade facilitation talks in an attempt to reduce barriers to trade, this dissertation focuses on what is considered to be a primary non-technical barrier to trade that may not have been considered in depth as part of the trade talks. What has not been considered to date is how the allowed methods interact, the challenges they create, and how such challenges will be fuelled with direct trade routes between the two named trading blocks. The reduction of trade barriers appears to be a positive step towards the removal of customs tariffs, and this dissertation illustrates that this requires not only the lessening or elimination of the *ad valorem* duty at point of import, but also equity and reciprocity in trade practices, in order to create both

equality, and more effective operational practices for the flow of goods between the two trade nations of the US and EU.

Research Methodology and Scope

The comparative analysis methodology employed in this research focuses on the legislation and the application of the various methods in every day trade operations. The scope of research includes industry-specific research in the form of surveys targeted at customs and trade compliance experts such as law specialists, customs brokers and customs agents. It does not focus on any financial gains or losses of such practices employed, and worthy of consideration is an acknowledgment that the two concepts considered in this research have differing levels of financial impact for a host nation.

The methodology concepts employed for the research in this dissertation include quantitative research, in the form of data collected through the use of open surveys to industry practitioners, and investigative comparative research, focused on the legal frameworks and legislation of the two trade blocks of the US and the EU – the primary focus of this comparative analysis.

The theoretical framework draws upon both the legislative review and the quantitative data analysis to focus on the variants between the two opposing valuation methods and how they impact on trade facilitation. Throughout the research, the dissertation focuses upon the concept of trade protectionism through application of the laws, and highlights how such a practice may no longer be fit for purpose, as the trade blocks of the US and EU seek to embark upon the implementation of a free trade agreement (FTA).

The thesis is developed in a framework based upon the following legal ideas:

- EU legislation EEC No. 2913/32 Article 32(e) acting as a barrier to trade;
- US Customs Legislation 19CFR creating an advantage to trade;
- Article VII of the General Agreement on Tariffs and Trade remains ambiguous on the concept of valuation appraisement in modern international trade;
- Variations of customs valuation appraisement methods will impact on the Transatlantic Trade and Investment Partnership (TTIP) process;

- Variations of customs valuation appraisal methods will impact on the reduction of trade barriers between the two trade blocks under the premise of the TTIP.

The comparative analysis focuses on the specific customs legislation of the US and the EU, drawing comparisons between the two legislative frameworks and identifying the key features of each as they relate to the comparative study, and also how they will interact in any potential trade agreement, and how they both fall within the remit of the framework of Article VII of the General Agreement on Tariffs and Trade.¹

Although the primary source of analysis will be the comparison between US and EU legislation the work will also consider analysis of each method of appraisal and its governing legislation in relation to current trade topics of the TTIP. This area of research is supported by the quantitative research conducted in the form of two specific surveys completed by industry experts from both the European Union and the United States.

Use of specific case law is limited in this research as little case law specific to appraisal disputes exist. The lack of case law in this area stems from the provisions of GATT Article VIII (3) of the general agreement on Tariffs and Trade² that specify:

No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

The key concepts that this research aims to identify include: whether either method offers any form of strategic advantage or creates any disadvantage; which of the two methods is best suited to modern international trade; and if either method acts as a measure of protectionism and creates any non-technical barrier to trade. This research also considers how opposing methods might impact the trade agreement.

¹ World Trade Organisation, 'Technical Information on Customs Valuation', <http://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm> accessed 10th January 2015.

² Ibid.

Chapter 1: Customs Valuation Appraisalment and the WTO Governing Legislation

This chapter sets out to introduce the topic of duty appraisalment by providing a prologue to the concept of duty calculation and the methods used to formulate the appraisalment process. The concept of international commercial terms (incoterms) is introduced, focusing on specific terms relevant to this research. The evolution of appraisalment methods has resulted in two specific types of incoterms becoming the norms upon which to calculate the applicable duty amounts levied upon the goods as they enter into a customs territory. An overview of the Cost, Insurance and Freight (CIF) and Freight on Board (FOB) incoterms is provided, setting out the main provisions of each term as applied in international contracts. The chapter then considers the history of the existing agreements which have led to the accepted practice of the two methods used in international trade.

1.1 The Concept of Value Appraisalment and Duty Calculation in International Trade

The concept of effective valuation of goods for the purposes of international trade is defined within Article VII of the General Agreement on Tariffs and Trade (GATT).³ The valuation methodology and rules were defined following widespread dissatisfaction with the Brussels Definition of Value (BVD),⁴ previously used by many European nations, and the American Selling Method, used by the US⁵. The valuation methodology defined within the GATT sets out to provide clarity and guidance for the international community on how goods should be correctly valued primarily for the purposes of International Trade between WTO treaty member states. The method of valuation is based upon what is known as transaction value, and was agreed following the Tokyo round of discussions concluded in 1979,⁶ and later replaced by the 'WTO Agreement on Implementation of Article VII of the GATT 1994 following conclusion of the Uruguay Round'.⁷ 'Transaction value is the price actually paid or payable for the

³ Ibid.

⁴ Ibid.

⁵ M. Matsushita & T.J. Schoenbaum, *The World Trade Organisation, Law, Practice and Policy* (2nd edn Oxford University Press, Oxford 2006) 264.

⁶ Ibid 263.

⁷ Matsushita & Schoenbaum (n.5) 259

goods, with adjustments for certain specified costs that are incurred but not reflected in the price, such as selling commissions, packing costs, royalties, licence fees and assets'.⁸

The alignment of valuation methods is an important feature for the purposes of international trade as goods value is the primary source for the calculation of national taxes such as VAT⁹ on import into Europe. Such taxes are common in other trading nations in the forms of Goods and Services Tax (GST) or General Sales Tax (GST) which are applied to goods on import into a territory or state. The valuation of goods is also the primary driver for determining the amounts to be collected in the form of tariffs, such as customs import duties. Tariffs are a form of tax on imported goods, which can be applied as *ad valorem*, specific and mixed.¹⁰ The *ad valorem* method and mixed methods are directly linked to the customs value of the goods. In addition to the taxes and tariffs of member states there are also additional rules in International Trade around transfer pricing,¹¹ which is directly impacted by the valuation of goods in international trade. Lux notes that two specific options are available for fixing the amount to be paid in the form of a duty on imports. The first is criteria based relating to the properties of the product, such as its weight, volume or surface; and the second option is a calculation as a percentage of the value of the product (*ad valorem* duties).¹²

Although WTO member states have aligned to a standard methodology for determining the valuation of goods for International Trade, there is no specific alignment across all WTO member states in relation to the methods used in the appraisal of customs values to calculate tariffs in the form of import duties. Two distinct methods have become the norm in International Trade. The two commonly used methods in calculating duty rates at point of import into a customs territory are FOB¹³ and CIF.¹⁴ When using the FOB model, the customs authorities of the importing member state

⁸ Ibid

⁹ G. Turley, M. Maloney & F O'Toole, *Principles of Economics*, (3rd edn Gill & Macmillan 2006) 273.

¹⁰ Matsushita & Schoenbaum (n.5) 259

¹¹ Transfer pricing refers to the valuation of goods between related parties. See Article 9 of the OECD Model Tax Convention and the OECD Guidelines on Transfer Pricing.

<<http://www.oecd.org/ctp/transfer-pricing/>> accessed 10th January 2015

¹² Michael Lux, *Guide to Community Customs Legislation* (Editions Juridiques Bruylant 2001) 187.

¹³ International Chamber of Commerce, *Incoterms 2010 ICC Rules for the Use of Domestic and International Trade Terms* (ICC Publication 2010) 87.

¹⁴ Ibid 105.

calculate the applicable duty based upon the goods value only, whereas the CIF method is calculated by adding the transportation and freight insurance costs onto the goods value and then calculating the *ad valorem* duty rate.

The EU has adopted the CIF approach as the basis for calculation of customs values, whereas the US uses the FOB model for calculation of customs duties. Matsushita notes that the use of CIF as a valuation appraisal method in the US would be seen as unconstitutional under US law as 'Article 1 section 9 of the US constitution forbids a preference to the ports of one state over another and Article 1, section 8 requires import duties to be uniform throughout the united states'.¹⁵ The two appraisal methods widely used today in international trade may create advantages or disadvantages to either the buying or selling entity in an international trade transaction.

1.2 The Formation of Incoterms and their Use in Duty Appraisal

The phrase 'incoterms' derives from an abbreviation of 'International Commercial Terms'. The incoterms were first introduced in 1936,¹⁶ by the International Chamber of Commerce (ICC), an organisation founded in 1919 by a small group of like-minded industrialists, financiers and traders determined to create economic prosperity post world war one.¹⁷ The incoterms were first considered in 1921, and in 1923 a small number of terms were devised by a trade terms committee in conjunction with a committee of ICC members, who created the first six terms, which would later become the first set of incoterms rules.¹⁸ With the development of international laws, modes of transport and the increase in global trade practices, the incoterms have had to evolve to meet the needs of current commercial practices. Major developments in the incoterms rules include the 1980¹⁹ introduction of FCA in an abbreviation of Free Carrier.²⁰ The purpose of FCA was to create a point at which the reception of goods in a maritime

¹⁵ Matsushita & Schoenbaum (n.5) 264

¹⁶ International Chamber of Commerce, from 1936 to today: the Incoterms® rules <<http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/history-of-the-incoterms-rules/>> accessed 3rd February 2015.

¹⁷ International Chamber of Commerce, *The Merchants of Peace* <<http://www.iccwbo.org/about-icc/history/>> accessed 3rd February 2015.

¹⁸ *Ibid.*

¹⁹ International Chamber of Commerce (n.13) 87.

²⁰ *Ibid* 23.

contract was not the passing of the ship's rail. Traditionally, in the term FOB,²¹ the point at which the goods are deemed as delivered is when they pass over the ship's rail, hence freight on board the vessel. The use of FCA allowed for the delivery point to be an agreed point prior to the loading on board of the ship's vessel.

In 1990, the incoterms rules were upgraded to consider the ever-increasing use of technology to communicate information between parties to a contract. Previously managed through paper exchange, the introduction of Electronic Data Exchange (EDI) required the rules to be amended to factor in this advancement in technology.²² In 2000, further enhancements were introduced around the responsibilities of the parties in relation to customs clearance when using FAS,²³ and the clarification of loading responsibilities under the FCA term. The two incoterms most relevant to this paper are the concepts of CIF,²⁴ and FOB.²⁵ Both are explored in greater detail to outline their key features, and show how they have become the basis not only of the term of the international contract, but also the method of which duty appraisal is made by the customs authorities of the two trading blocks of the EU and the US. The two blocks use these two fundamentally different trade terms as the basis upon which to calculate duties levied on entry into their respective territories. A full set of the current incoterms and their key features can be found in Appendix A.

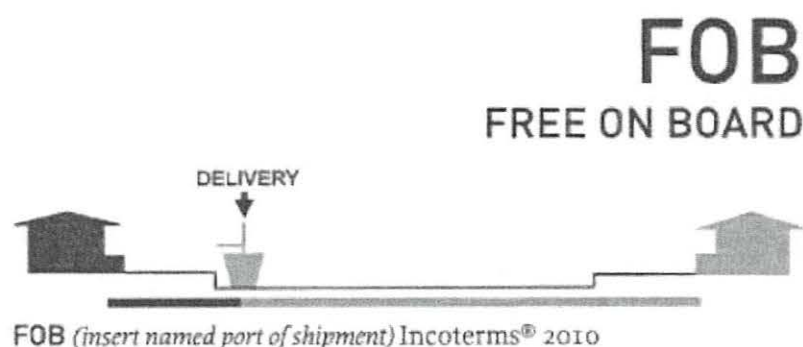


Figure 1: FOB Information Graphic (Source ICC Incoterms Rules 2010)

²¹ International Chamber of Commerce (n.13) 87.

²² Ibid

²³ International Chamber of Commerce (n.13) 79.

²⁴ International Chamber of Commerce (n.13) 105.

²⁵ International Chamber of Commerce (n.13) 87.

1.3 Freight on Board (FOB) Explained

The term FOB was designed for use with ocean or inland water methods of transportation. The model was described by J. Devlin as a flexible instrument,²⁶ used in ocean contracts. This view of a flexible contract was restated by L.J. Donaldson in the court of appeal case of *El Amria and the El Minia*.²⁷ When correctly used, the abbreviated term of FOB should be followed with a named location to ensure that there is no confusion around the location of loading onto a vessel. Initially, one might expect this to be an obvious point to agree in a delivery contract, but it can often be overlooked. Without naming the location of loading, the contract may well be open to interpretation if a dispute should arise. A simple example is that where the transportation may require the use of multiple vessels, perhaps an inland waterway transfer and then an ocean vessel. Without naming the location of loading, the point at which risk and responsibilities switch from buyer to seller might become unclear and disputed should any accident or damage occur to the goods in question. One party may interpret the contract terms of FOB to mean FOB first vessel or first port, whereas the other party to the contract may assume this to mean FOB ocean vessel or second port.

It is for this reason that naming the port of loading is an essential feature of the use of FOB in transportation of goods. The risk of loss or damage passes from the selling party to the buying party only when the goods are on board the vessel, and thus delivered as described in the rules associated with FOB contracts.²⁸ Once they are loaded onto the vessel, the buyer becomes responsible for all associated risk from that point onward in the transport of the goods, because delivery is executed once loaded on board the vessel at the named port.

An important feature of FOB is that the seller is responsible until the goods are on board the vessel and not just up to the port location. This means that the seller assumes the responsibility of engaging with a port loading company at a ship's terminal to oversee the loading of the goods onto the vessel.²⁹ It is believed that this concept is best suited to inland water transportation only, and not necessarily ocean transportation, since most ocean transportation comprises containerized freight, which is normally delivered at the

²⁶ *Pyrene Co Ltd v Scindia Navigation Co LTD*, (1954) 2 QB 402, 418.

²⁷ *El Amria and the El Minia* (1982) 2 Lloyds Rep 28 at 32.

²⁸ International Chamber of Commerce (n.13) 87.

²⁹ *Ibid.*

terminal. The FOB term clearly establishes the point at which responsibility switches from the buyer to the seller as the point at which the goods are loaded (therefore delivered) onto the vessel (in a named port), and consequently both parties to the contract have a clear expectation about the geographical point at which transfer of responsibilities and their associated costs will transfer between parties.

The FOB model carries additional responsibilities which are outlined within the official guidelines, and commonly understood so as not to be disputed in any contractual obligations.³⁰ The responsibilities around export clearance are an important feature with the use of any incoterm and with FOB the requirement to conduct the export clearance with the governing customs authorities; and the necessity to obtain any applicable export licences to transfer the goods out of the territory sit with the selling party.³¹ The very nature of the FOB contract implies that the method of carriage is to be ocean, and hence responsibilities around the packaging of goods can also be determined from the rules of an FOB contract.³²

Under FOB, the seller is responsible for producing the agreed goods, sufficiently packaged, upon the agreed vessel, at an agreed date, and for obtaining all necessary licences to export and conduct the export clearance process. The buyer becomes responsible for the actual transportation of the goods from the point of loading onto the vessel through to the delivery to the final destination in the recipient country. Along with the transportation of goods, the buyer is also responsible for the procurement of any necessary import licence, and for the completion of any customs clearance formalities on arrival into the country of final destination. This country of final destination can often be different to that of the seller or buyer parties to the contract. Under the FOB term, the buyer is responsible for the cost of obtaining contracts of insurance against loss or damage of the goods whilst in transit from the origin port to unloading at the final destination.

³⁰ International Chamber of Commerce (n.13) 87.

³¹ See the early case of *Brandt & Co v Morris & Co Ltd* (1917) that sets out the buyer's responsibility to obtain the necessary export licences under the FOB contract. In this case, the seller was deemed to have been in breach of contract for not obtaining the necessary licence in time.

³² An early case related to responsibilities of packaging related to an FOB contract can be seen in the 1922 case of *George Wills and Sons Ltd v Thomas Brown and Sons*, where the seller was held to be in breach of contract for the inadequate packaging of the goods that were subsequently spoilt during transit.

FOB Summary of Responsibilities

The following list is a summary of the main features of the FOB contract responsibilities. The transfer of risk passes when the goods are on board the vessel.

1. Warehouse Services (Seller)
2. Export Packing (Seller)
3. Export Clearance (Seller)
4. Loading at Point of Origin (Seller)
5. Inland Freight (Seller)
6. Port Receiving charges (Seller)
7. Forwarder Fees (Buyer)
8. Main Carriage (Buyer)
9. Charges in Foreign Port (Buyer)
10. Delivery Charges to Final Destination (Buyer)
11. Import / Customs Clearance (Buyer)
12. Customs Duties (Buyer)
13. Unloading Charges (Buyer)

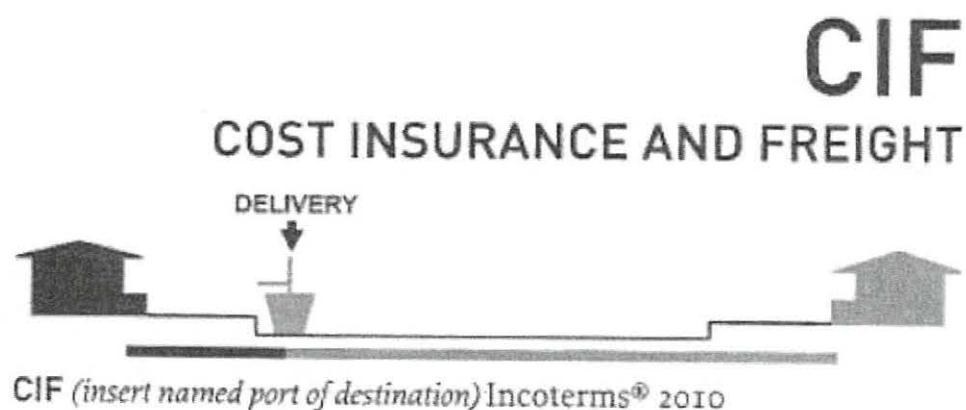


Figure 2: CIF Information Graphic (Source ICC Incoterms Rules 2010)

1.4 Cost Insurance and Freight (CIF) Explained

The term Cost Insurance and Freight (CIF) was also designed for use with ocean or inland water methods of transportation. As with FOB, the term CIF should be followed

with a named location to ensure there is no confusion around the location of loading onto a vessel, nor the port of final destination, since both play a role in the transfer of risk and cost under a CIF delivery contract.³³ In contrast with FOB, the point at which cost and risk transfer are separate locations under a CIF contract. FOB states the cost and risk transfer at point of loading onto the vessel at the named port, whereas the CIF term sees only the risk pass at this point.³⁴ First of all, the risk is considered to transfer from seller to buyer at the point when the goods are loaded onto the vessel for transportation. The cost will transfer at a later point because the seller is obliged to cover the costs of transportation from point of origin to the port of final destination, at which point costs then transfer from seller to buyer.

This is an important feature that is often omitted from contractual agreements through the misunderstanding of the various aspects of CIF terms. In such contracts, both the port of loading and the port of final destination should be named, as both will determine the point at which the risk passes (port of loading) and the costs pass (port of final destination). The CIF term requires the seller to contract for the insurance as well as the transportation. The seller is required to obtain insurance cover against the buyer's risk of loss or damage to the goods during the transportation to the destination port.³⁵ The seller is only required to obtain minimal insurance, so if buyers want to arrange for a higher level of insurance cover, they are obliged to expressly specify this within the terms of a contract, or they are entitled to make their own additional insurance arrangements.

Under CIF terms, the seller is responsible for producing the agreed goods, upon the agreed vessel at an agreed date, and obtain all necessary licences to export and complete the export clearance process. In addition the seller is required to contract for carriage from the port of loading to the port of final destination. Along with the transportation of goods, the seller is also responsible for ensuring that minimal obligations for insurance cover have been met in line with the ICC rules of CIF contracts. Upon arrival at the final port of destination, the buyer is responsible for obtaining any necessary import

³³ International Chamber of Commerce (n.13) 105.

³⁴ Ibid 106

³⁵ Ibid 106

licences and the associated costs for any required licences, permits and the customs clearance process, at the port of final destination.

CIF Summary of Responsibilities

The following list is a summary of the main features of the CIF contract responsibilities. The transfer of risk passes when the goods are on board the vessel. The notable difference between CIF and FOB is that the transfer of cost is at the later point of port of final destination, and the added expense of the procurement of insurance to meet minimal obligations. The notable differences between CIF and FOB are summarized in points 7 and 8, below.

1. Warehouse Services (Seller)
2. Export Packing (Seller)
3. Export Clearance (Seller)
4. Loading at Point of Origin (Seller)
5. Inland Freight (Seller)
6. Port Receiving Charges (Seller)

7. Forwarder Fees (Seller)
8. Main Carriage (Seller)
9. Charges in Foreign Port (Buyer)
10. Delivery Charges to Final Destination (Buyer)
11. Import / Customs Clearance (Buyer)
12. Customs Duties (Buyer)
13. Unloading Charges (Buyer)

1.5 Introduction of GATT

The GATT agreement was established in 1947.³⁶ Its origins stem from the desire to simplify international trade between countries by means of ‘substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis.’³⁷ A notable point to consider is that at the time of its inception, the primary focus on trade was on tangible goods rather than intangibles such

³⁶ GATT / WTO, <<https://law.duke.edu/lib/researchguides/gatt/>> accessed 3rd February 2015.

³⁷ Ibid.

as services, which became part of the agreement following the conclusion of the much later Uruguay round (1986 to 1993), signed in 1994.³⁸

Since its formation in late 1947, GATT became the basis upon which a set of rules was established for the vast majority of world trade between those participating member states. It is suggested that this period from 1948 to the early 1990s benefited from the highest growth rates ever seen in international trade.³⁹ Throughout this period, GATT was merely a provisional agreement, and not written into law, hence the potential for trade-related disputes was still a common reality within the spectrum of international trade.

The WTO reports that the original intention was to create an institution that would handle international trade as part of economic cooperation alongside the World Bank and the International Monetary Fund (IMF).⁴⁰ The aim of the first negotiations was to create the International Trade Organisation (ITO), which would be a subdivision of the United Nations (UN). The first draft of the ITO was said to be overly ambitious and stretched beyond the remit of what was seen as acceptable trade practices. More than 50 countries had taken part in the initial negotiations to establish the ITO, and the intent had been to officially launch it at the UN trade conference in Havana, Cuba in 1947. Although agreed in Havana in 1947, the ITO never came to fruition due to the failure to ratify its establishment in some countries. The refusal of the US to ratify the agreement effectively prevented any possibility of the ITO being created as an international organisation.

In parallel, some 15 nations had begun negotiations to agree to reduce and harmonize customs- tariffs related to trade imports,⁴¹ the intention being to counter the effect of protectionist measures that had been so prevalent during World War II. These 15 later grew to a total of 23 countries signed up to the agreement in June 1948. With the failed attempt to create any sort of governing organisation to manage international trade, the

³⁸ The Uruguay Round, <http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm> accessed 3rd February 2015.

³⁹ Ibid.

⁴⁰ The World Trade Organisation (n.38)

⁴¹ Ibid.

GATT agreement has become the basis of trade rules for the period of 1948 through to establishment of the WTO in January 1995.⁴²

1.6 GATT and Customs Valuation in 1947

The idea of effective methods for customs valuation is not a new phenomenon in international trade, and was a primary focus for the first issue of the *GATT*, published in 1947. Specifics of customs valuation were set out in Article VII of the first agreement,⁴³ but the focus in this early draft appears to have been fixed on establishing an aligned method to fair calculation, with specific text to call for the avoidance of arbitrary or fictitious values being used. Article VII subsection 2a specifically covers this point as:

2. (a) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

There appears to be little provision in this first version of the agreement to clarify specifics around methodology used to calculate duty payments. The agreement appears to be offering great flexibility for the participating members to be open to implementing various methods of duty appraisalment. The ambiguity provided with the agreement is further strengthened in the early version by the text set out in Article 8⁴⁴ subsection 3. Which sets out those parties to the agreement shall not impose substantial penalties for minor breaches of customs regulations.

3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

This first agreement appears pertinent to the era in which it has been formulated. Multilateral agreements post World War II may first look like a valiant effort to reduce or eliminate past measures interpreted as protectionist mechanisms, yet this early agreement appears to remain ambiguous enough to gain commitment from the signatory parties. The 1947 agreement simply sets out a framework of how goods values should be determined, without giving any focus to the concept of calculating the additional *ad*

⁴² Ibid.

⁴³ See Appendix C for the full text of Article VII (1947).

⁴⁴ Appendix C for the full text of Article VII (1947)

valorem taxes based upon those values. It is believed that this ambiguity may have been a necessary evil to form some common ground upon which to obtain commitment from the stakeholders to the agreement about how goods are to be valued for the purposes of revenue collection.

1.7 The Tokyo Round 1973-1979 and the Provision of Further Clarification on Valuation

The concept of customs valuation was considered further in the 1973 Tokyo round of trade negotiations, where an agreement on the implementation of Article VII was reached. The agreement sets out to recognize that valuation should not be used to combat dumping,⁴⁵ but importantly this round is the first time that provision is given to the concept of duty appraisement. Article 8.2 of the implementation agreement based upon Article VII of the GATT sets out that parties are free to determine the inclusion or exclusion of various additions when calculating the duty amount upon entry into the territory of the recipient member state:

2. In framing its legislation, each Party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:
 - (a) The cost of transport of the imported goods to the port or place of importation;
 - (b) Loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
 - (c) The cost of insurance.

It is believed that herein lies the key to the two established methods of duty appraisement that have become the norms in international trade today for purposes of duty appraisement methodology. The aforementioned concepts of FOB & CIF have opposing methods of calculation, with FOB omitting additions such as insurance and freight, and CIF including the additions of insurance and freight. Once again the ambiguity provided within the text does nothing to establish an aligned method of calculation, but merely sets out that it is for the individual party to determine and then establish this within the framework of the specific member's legislation.

Unbeknownst at the time, the provision of text to allow for individual members to determine the means of duty appraisement calculation may have created a sense of continued protectionism against domestic trade. This was done by allowing for

⁴⁵ Technical Information on Anti-dumping, <https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm> accessed 3rd February 2015.

additions to become a form of protectionism through the rise in costs of foreign goods related to the additions of freight and insurance, which were added into the overall costs of goods entering a nation's borders. This protective measure, allowed through flexibility in determining customs values, may well have offered a sense of protection to domestic markets at the time of the agreement, but in today's global environment the protectionism offered through this model leads to erosion of competitiveness, where manufacturing costs are higher as a direct result of the higher import costs associated with additions of freight and insurance being incorporated into the duty calculations.

The methodology adopted by the EU derives from the CIF model of appraisal, whereby the cost of transportation and insurance of goods in transit is added into the value at the point of entry into the union. The ability to increase the value of goods at point of import stems from the general agreement framework allowing member states to adopt varying methods. The US is one of a small number of global states which, through already existing legislation, is not able to adopt such terms, as to do so would impact upon the existing legislation that forms the basis of federal law between its member states.

1.8 The Uruguay Round 1986-1994 and the Provision of Further Clarification on Valuation

The Uruguay round of trade negotiations is reputed to be the largest trade negotiation of any kind in the history of global trade.⁴⁶ Though the negotiations covered a vast number of topics, the concept of valuation appears to have remained within the same scope as that outlined in the Tokyo agreement. The content of Article VII (Article 8.2 of the interpretation of Agreement of Implementation of Article VII) remained as first written in the earlier Tokyo agreement. The only mention of appraisal methodology is the repetition of the text clarifying that individual members retain the right to determine the methods upon which the duty is calculated through the addition or exclusion of transportation and insurance costs.

⁴⁶ The Uruguay Round, <http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm> accessed 3rd February 2015.

2. In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:
 - (a) The cost of transport of the imported goods to the port or place of importation;
 - (b) Loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
 - (c) The cost of insurance.

Further notes to each article in the agreement are provided for as supplementary information in the agreement, and a point worthy of note is that there are no additional notes offered for Article 8 paragraph 2. This is indicative that the inclusion of the allowance for countries to make their own determination as to the type of method they employ to calculate the customs duty on entry has been sufficient to date not to demand further clarification.

Since its formation in 1947, and through the various rounds of enhancements and further clarifications, the concept of valuation within the realms of the GATT appears to have only focused on the methods used to determine an items value for purposes of customs valuation. The overall aim of the agreement is to simplify trade and harmonize practices, yet this fundamental concept appears to have never been pushed to align methods used to calculate the actual duties payable on entry into any given territory.

The onus has always been on the shipper to ensure that goods are valued by correct widely- agreed means as set out in the GATT agreement, with little focus on the need for alignment across the method of collection of duties. Why then has this concept of harmonization not been pushed forward in any of the previous rounds of trade enhancements? It is believed that the reason for the lack of desire to push for change is simply that the CIF model creates a higher level of income for the recipient country that applies the CIF appraisalment method. The following basic example provides a basic breakdown to highlight the variants in revenue collection methods.⁴⁷

⁴⁷ Duty and tax calculation methods, <http://www.export.gov/logistics/eg_main_018140.asp> accessed 3rd February 2015.

CIF (Cost, Insurance, and Freight) is a pricing term indicating that the cost of goods, insurance, and freight are included in the quoted price. Duty is calculated by adding together all costs. See below for an example.*

Invoice Value	\$ 932.00
Insurance Paid	\$ 16.00
Freight Paid	\$ 52.00
Total CIF Value	\$ 1,000.00
Duty Charge @ 7% Rate	\$ 70.00
CIF + Duty Value	\$ 1,070.00
VAT Tax Charge @18%	\$ 192.60
CIF+ Duty + VAT Value	\$ 1,262.60

Figure 3: CIF Valuation Example

FOB (Free on Board) is a pricing term indicating that the cost of the goods, including all transportation and insurance costs from the manufacturer to the port of departure, as well as the costs of loading the vessel, are included in the quoted price. It should be noted that the Incoterm FOB applies only to shipments via sea or inland waterway transport. For the purpose of calculating duties and taxes for international shipments, the term FOB generally applies to the commercial invoice value, and does not include the cost of shipping and insurance. See below for example.*

FOB Value	\$ 932.00
Duty Charge @7%Rate	\$ 65.24
FOB + Duty Value	\$ 997.24
VAT Tax Charge @ 18% Rate	\$ 179.50
FOB + Duty + VAT	\$1,176.74

Figure 4: FOB Valuation Example

This basic example provides an overview of how the two methods differ. In this case, there is a rise of over 7% on the total CIF figure when measured against the FOB figure. Also worthy of consideration is the fact that the import VAT tends to be charged upon the customs value, thus CIF provides for a higher customs value for purposes of duty

calculation, and also creates a higher value upon which to calculate the import VAT. In Europe, the VAT law clearly states that import VAT is to be calculated upon customs values, not goods values, hence VAT is legally charged at the higher CIF value when entering the EU territory. Depending upon the incoterms used, this can mean that a much higher price is paid upon entry into the EU. Taking the commonly used term of DDP (Delivered Duty Paid),⁴⁸ when a US seller provides goods to an EU buyer using the terms DDP, this higher VAT cost is often unrecoverable, because the DDP terms often results in a carrier paying all applicable charges for the seller upon entry into the Union, and then charging the seller with a mark-up for the provision of service.

The carrier will have a local office and is therefore able to reclaim the VAT via normal VAT returns processes in place across the EU, whereas the seller based in the US will not be able to recover the associated VAT costs, so this is merely billed to the US supplier as an additional tax as part of the international trade transaction. The higher VAT amount is avoidable only when the US seller uses alternative terms such as DAP,⁴⁹ or utilises a locally registered entity within the EU to pay the VAT so as to be able to reclaim the VAT in full via VAT returns. Although not commonly known, the incoterms rules allow for the exclusion of VAT in the use of DDP terms. The use of DAP terms of VAT exclusion statements⁵⁰ is the only method for the US seller to avoid incurring the VAT costs that rise as a direct output of the CIF valuation appraisal methodology.

It is believed that the financial gains for the recipient nation stemming from the use of CIF is the primary driving force for the continued use of CIF appraisal, and the ambiguity of the GATT agreement allows individual members to the agreement to determine the method used to calculate duty upon import. One might assume that it would be an obvious choice to opt for the method that offers a higher level of income, and this is likely to be main reason why this method has stood the test of time. One might deduce that from a basic accountancy view the obvious benefit is that use of the CIF method offers superior financial gains when measured against the method employed using FOB appraisal. It is thought that this method may also be viewed as

⁴⁸ See Appendix A Incoterms Chart.

⁴⁹ Ibid.

⁵⁰ International Chamber of Commerce (n.13) 69.

a form of protectionism, and may act as a barrier to trade. Protective measures have been used since the earliest days of international trade, and appear to be ever present through the CIF appraisalment concept.

1.9 Conclusion

This chapter has introduced the concept of effective valuation methods applied to goods in international trade, and examined the development of use through the various rounds of discussions by the members of the WOT members. The valuation process is specifically relevant to the concept of applying levies in the form of indirect taxes upon entry into the territory of a customs zone. The chapter sets out the fundamental differences between these two methods as being the cost of transportation and insurance. In FOB, the main transportation and any insurance is the responsibility of the buyer, whereas in CIF, the cost of main transportation and insurance is to be covered by the selling party. The various rounds of discussions show that no consideration has previously been afforded to the concept of equity and fairness amongst members, with valuation discussions focusing primarily on establishing clear methods to value an item, but not in relation to calculation of *ad valorem* taxes on import.

The research does identify that ambiguity may have been the order of the day with the inclusion of provisions to ensure that members to the treaty will not impose penalties for omissions or mistakes in the customs processes. The analysis identifies the Tokyo round of 1973 to 1979 as the era in which the two primary methods have become the norms of international trade duty appraisalment. The Tokyo round introduced the text confirming that any decision around the inclusion or exclusion of transportation and insurance into the duty calculation is to be made by the recipient nation when framing its governing customs legislation. This is an indication of the times, that any attempt to frame methods within the agreement would have been contested, so it appears that the agreement has been reached by further ambiguity. The result is a treaty which lets the parties to the agreement determine their own methods locally. It is this critical text that allows countries to format import calculations on either an FOB (exclusion of transport and insurance costs) or a CIF (inclusion of transport and insurance costs). It is here that the opinion is given that protectionism was at the forefront of these negotiations, with the desire to keep the import costs higher as a means to protect the domestic activity of the nations involved.

Seen as the largest of all the rounds of trade negotiations, the Uruguay round of 1986 to 1994 appears to have had little or no influence on the actual duty appraisal methodology, with merely a repetition of the text confirming that members retain the right to determine the inclusion or exclusion of the additional costs of transportation and insurance. Here it is believed that the lack of any substantive development in this area is a by-product of treaty party member's ability to self-determine the methodology used for duty appraisal when framing its governing legislation. The ability to self-determine may well have suited the treaty members at the time of negotiation, but as time goes on, the framing of such legislation may well be unwittingly acting as a barrier to trade and investment and may hinder the ability for regions to interact in global trade in a fair and equitable manner. This dissertation now looks specifically at the US position and its governing legislation that determines the process of duty appraisal on imports into the territory of the US.

Chapter 2: A Comparative Analysis of the US and EU Legislation and Practice

2.1 The US Code of Federal Regulations

The US is one of a minority of countries worldwide that has adopted the FOB method of appraisal for the purposes of duty calculation on commercial goods entering its borders. The concept has the distinct feature of omitting the costs of carriage and insurance in the duty calculation process in an international trade transaction. This methodology takes the position that the *ad valorem* duty and any additional state taxes are calculated on the basis of the goods' value at point of loading onto the vessel for international transportation, without the specific additions of international transportation and insurance costs being factored into the calculation of duties and taxes upon entry.

As one of the world's largest trading nations, second only to the EU,⁵¹ the US imported more than 2079 Billion euro of commercial goods in 2013. The European Union exported in the region of 288 billion euro of goods to the US (2013)⁵² and the two trading blocks are now in advanced discussions on what is to be seen as the world's largest trade agreement, commonly referred to as the transatlantic trade and investment agreement (TTIP).⁵³ With two of the world's largest trading blocs entering into the biggest trade agreement of its kind the opposing methods are worthy of in-depth evaluation to assess whether they will impact upon trade practice between the two trade blocks.

The governing US legislation known as the Code of Federal Regulations (CFR)⁵⁴ is the permanent and general list of governing rules for the US, published in the Federal Register. The register is divided into 50 different sections known as titles, covering the broad range of areas governed by federal law. Each title also contains one or more

⁵¹ The European Commission, The EU position in world trade <<http://ec.europa.eu/trade/policy/eu-position-in-world-trade/>> accessed 9th March 2015.

⁵² The European Commission, Countries and Regions <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/>> accessed 9th March 2015.

⁵³ The European Commission, What is TTIP about, <<http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/>> accessed 9th March 2015.

⁵⁴ The Code of Federal Regulations, <<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>> accessed 9th March 2015.

volumes which are updated annually under a specific staggered calendar schedule.⁵⁵ Titles 1 through to 16 are updated on 1 January, with titles 17 through to 27 being revised at the start of the second quarter, on 1 April. The third quarter sees the revision of titles 28 through to 41, with 42 through to 50 being revised at the start of the fourth quarter of the year.

This staggered approach to continuous updates of legislation allows the legislators to remain current and adapt the legislation in a timely manner as necessary, to react to rapid change as may be required in some areas of law. These titles of law are substantive publications and will often be named after the relevant government agency responsible for the law contained within the title. Customs duties in the US fall within the remit of the US Customs and Border Patrol⁵⁶ agency. The specific legislation is known as Title 19 of the federal regulations (19 CFR Customs Duties).

2.2 Title 19 of the Code of Federal Regulations

Within title 19 of the CFR sits the specific criteria governing how the valuation of imported items is determined under US law. The law sets out to clarify that the import valuation is based upon transaction value of the goods themselves, and also provides for what may be included as part of transaction value. Chapter 4, subtitle III, part 1, Subpart a (1401a), provides that imported merchandise shall be appraised based upon transaction value which is described as being the price actually paid or payable for the merchandise when sold for exportation to the United States,⁵⁷ plus what is known as additions. Additions are clarified as being packing costs incurred by the buyer; the value as appropriate of any assists,⁵⁸ any royalties or licence fees related to the imported merchandise,⁵⁹ the specific elements being summarized as the price actually paid or payable. This is further clarified as being the total payment, excluding any costs charges or expenses incurred for transportation, insurance and any services related to the

⁵⁵ Ibid.

⁵⁶ US Customs and Border Protection, <<http://www.cbp.gov/about/history>> accessed 9th March 2015.

⁵⁷ Cornell University Law School, Legal Information Institute, <<https://www.law.cornell.edu/uscode/text/19/1401>> accessed 9th March 2015.

⁵⁸ Gordon Lee, Customs Law "Assists" -- A Trap for the Unwary, <<http://www.nossaman.com/CustomsLawAssist>> accessed 9th March 2015.

⁵⁹ Ibid.

international transportation of the merchandise from the country of export to the place of importation into the US.

This part of the legislation is the key element to an FOB type appraisal methodology which sets to exclude transportation and insurance costs from an import appraisal, for purposes of calculating duties and taxes at point of import, which may be any one of the customs ports of the US. Within this section of title 19 specific criteria sets out to clarify the ability to reduce the transaction value subject to specific criteria, including transportation and insurance costs. The laws specific to customs valuation for purposes of import into the US are clear. Items are appraised based upon the price paid for them and not the price paid for them inflated by the cost of transport and associated insurance up to the point of entry into the US.

The legislation sets out that where clearly identifiable, the costs of transportation and insurance can be deductive to obtain the actual price paid or payable. From a practical operational perspective, this means that when goods are being appraised by customs on entry, the cost of insurance and transportation will be deducted from the calculation only where they are clearly specified on the commercial documentation used for import clearance. Where a shipment contains only a final value, yet the incoterms used indicate that the price and contract terms are inclusive of delivery and / or insurance, it will only be possible to deduct these from the final value if they are clearly stated on the invoice.

When not clearly stated, there is no clear means of truly establishing the costs of transport or insurance, and as such they cannot be deducted from the final appraisal. Attempting to deduct costs not clearly outlined becomes, at best, a practice of estimates and leads to valuation discrepancies and further complications. It is believed that the governing legislation as written is clear and concise and sets out the grounds upon which the value can be determined, what is included, what is excluded and the grounds upon which the exclusions can be accepted.

2.3 Legislation Impacting upon Interstate Trade

It is conjectured that the US has taken the position of FOB as the model upon which to conduct import valuation appraisal because of the need for interstate equity and fairness, and the need for reciprocity in trade is coded into the fundamental basics of the

US founding laws. The US constitution of the late 1700s, which came into force upon ratification in most states in 1787,⁶⁰ sets out:

Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

As written, Article 1 section 8 of the US constitution⁶¹ clearly sets out that the member states will implement taxes in a uniform manner, so as to avoid discrimination against one another in the operation of collection of tax revenues. The concept of uniformity across the states is an essential element in the consideration of which import appraisal method can be used. Under the FOB model employed by the US, the valuation at point of entry into the territory includes only the price paid for the items, and not the additions of the insurance and transportation costs that would be included in a CIF type appraisal method.

Here one can note that the inclusion of transportation and insurance costs would lead to variants in the total values applied at point of entry, which would ultimately result in disparity of the appraisements subject to where the point of entry into the US occurs; and this is in direct conflict with the position set out in Article 1 section 8 of the constitution requiring uniformity of applied taxes. Using the FOB appraisal method ensures that the application of import duties is uniform across the 50 states. The CIF method would lead to inconsistencies, as landlocked states would bear higher costs than those coastal locations under a CIF model.

The US has 360 commercial ports in operation today,⁶² across the 50 member states. If one considers how a CIF appraisal method would be applied using an inland port versus a coastal port, the result would be irregularity across the value of goods entering the territory. As an example, consider the inland customs port of Wichita, Kansas versus that of Boston, Massachusetts. The cost of transportation from Europe to Boston on the east coast is considerably less than the much greater distance of Europe to Wichita,

⁶⁰ The White House, <<http://www.whitehouse.gov/our-government/the-constitution>> accessed 12th April 2015.

⁶¹ Cornell University Law School, Legal Information Institute, The Constitution, <<http://www.law.cornell.edu/constitution/article1>> accessed 12th April 2015.

⁶² American Association of Port Authorities, <<http://www.aapa-ports.org/Industry/content.cfm?ItemNumber=1032>> accessed 12th April 2015.

Kansas. This increased journey would result in much higher fuel costs, raising the overall cost of transportation and higher insurance costs, depending on the method of transport used.

An important consideration here is that today airfreight would allow for direct transport from one location to the other, whereas dating back over 100 years ago airfreight was not an option, so to arrive at an inland port such as Wichita Kansas would have required multimodal transport, including ocean and road, leading to higher cost and higher risk. The result of this would mean that the port of Boston would benefit because, as a coastal port, it would become much cheaper to import the goods into the US at the lower CIF value than the higher CIF value applied inland.

The use of CIF as an appraisal method merely creates the competitive advantage for the coastal region because of the lower variables being factored into the value calculation at point of import. It is concluded that the use of CIF as an appraisal methodology would be in direct conflict with the US constitution, and would create inequity in the valuation process across member states, thus resulting in coastal states gaining the competitive advantage over those landlocked states.

2.4 Additional Considerations in US Legislation

Where the constitution sets out the rules around the level application of imposts and duties across the member states, there are a number of other legislative factors that add to the clarity around equity and fairness of interstate trade. A review of US legislative matters related to the application of duties and taxes must consider the dormant commerce clause,⁶³ the import export clause,⁶⁴ and the commerce clause,⁶⁵ all of which can be considered as contributing to the concepts of equity and reciprocity in interstate dealings, and the need for an FOB appraisal methodology for imports from outside

⁶³ National Paralegal, The Dormant Commerce Clause, <http://nationalparalegal.edu/conLawCrimProc_Public/CongressionalPowers/DormantCommerceClause.asp> accessed 12th April 2015.

⁶⁴ US Legal, Definitions, The Import Export Clause <<http://definitions.uslegal.com/i/import-export-clause/>> date accessed 12th April 2015.

⁶⁵ Cornell University Law School, The Commerce Clause, <http://www.law.cornell.edu/wex/commerce_clause> accessed 12th April 2015.

the territory of the US borders, so as to comply with the laws of the land and avoid discriminatory trade practices.

2.5 The Import Export Clause

USCS Const. Art. I, § 10, Cl 2,⁶⁶ known as the import export clause, is related to the concept of territorial taxation and sets out the requirements to maintain standardization in foreign commercial relations, preventing the diversion of revenue generated by imports and maintaining harmony through the prevention of coastal ports taxing goods passing into other landlocked states. Although not widely cited, the clause reserves the right for Congress to implement import or export taxes, and as such this ability is reserved for the Federal Congress, which means that local states are not in a position to implement any form of taxation that may impact the reserved rights of Congress to implement taxes. This means that a state cannot introduce a state-wide tax that is unique to that state unless approved by Congress. The case of *Molloy v Virgin Islands* (2007)⁶⁷ is a recent example citing the import export clause and unfair taxation applied by a US member state territory.

It is considered that under a CIF duties and taxes appraisal model, the state of import would be in breach of the import export clause because it would raise the cost of the goods by adding in the insurance and freight into the final calculation, and hence if selling to another state, the price would naturally rise, which could then be challenged by another state as being an unfair tax that hampers competitiveness across the US states. Although rarely raised in challenges, it does add to the overall position of the US ensuring equity across its member states, and creates a model of reciprocity across interstate trade.

⁶⁶ Ibid.

⁶⁷ In August 2005, Molloy relocated from Virginia to the Virgin Islands and brought two automobiles with him. When the vehicles arrived in the Virgin Islands, Molloy was required to pay a Virgin Islands personal use tax of \$2,067.60 for both vehicles. He then imported construction materials and was required to pay a personal use tax of \$297.53 on those materials. Molloy claimed his right to a refund of these taxes, and challenged the Virgin Islands' personal use tax under both the Commerce Clause and the Import-Export Clause. On July 25, 2007, the District Court of the Virgin Islands struck down the Virgin Islands' personal use tax under the Commerce Clause of the United States Constitution. As a result, the court ordered the government of the Virgin Islands to refund to Molloy the personal use tax he paid. Although Molloy challenged the personal use tax under both the Commerce Clause and the Import-Export Clause, the court did not reach the Import-Export Clause issue. Source <http://www.americanbar.org/publications/tax_lawyer_home/7_stern.html> accessed 12th April 2015.

2.6 The Commerce Clause

Article 1, Section 8, Clause 3 of the US constitution, referred to as the commerce clause,⁶⁸ provides the powers to Congress to regulate commerce with foreign nations and amongst the states and the Indian tribal lands. When written, the clause would have applied to only a small number of states, but today stretches across all 50 US states as a primary element of the governing constitution. This clause reserves certain powers to the Federal Government, which effectively trumps state law if the state law impacts upon the position of equity and fairness amongst the member states. Put simply, this means that a state wishing to interact with a foreign company is subject to federal law as well as state law, so a state cannot enter into agreements that benefit the state if in direct conflict with the federal laws.

The power held by the federal government is such that the state entering into a business transaction with a foreign party could not do so at the expense of the other member states. Considering this approach in the concept of duty appraisal methodology, it would mean that a coastal state could not introduce any laws affording the coastal state a competitive advantage over those landlocked member states. With this in mind, a coastal region could not take it upon itself to implement a CIF appraisal method, because use of CIF would be in direct conflict of the constitution, which requires a level playing field across member states; in addition, the introduction of such methods by a state could be overruled by the federal government, referring to Article 1 section 8 of the constitution.

If, for example, the CIF model of duty appraisal was applied on goods entering into the state, the coastal states would have a competitive advantage over landlocked states because the import costs at a coastal state would be lower than those of a landlocked state when considering the lower fuel /transportation costs factored into duty calculation. In addition, depending upon the origin source of the goods, costs to the coastal states would also be inconsistent because the cost of supply from Europe to the east coast would be much lower than the cost of goods from Europe into a west coast state.

⁶⁸ The Commerce Clause (n.65).

2.7 The Dormant Commerce Clause

The dormant commerce clause relates to the implications of the commerce clause. It is specific to the concept of prohibition of a state's ability to pass legislation that creates discrimination against, or creates an excessive burden to, another member state.⁶⁹ This clause ensures that a state does not have the power to introduce concepts that would create unfair advantages against other states. It is suggested that the dormant commerce clause 'provides that the exclusive power granted to Congress through commerce clause, implies a negative consequence'.⁷⁰

The negative consequence is a restriction prohibiting a state from passing legislation that improperly discriminates against interstate commerce. Therefore, the dormant commerce clause limits the power individual states to legislate on such matters. Dormant commerce clause is not an express clause in the U.S. Constitution. It is, rather, a doctrine developed by the U.S. Supreme Court. The dormant clause doctrine is also known as negative commerce clause.⁷¹

2.8 The European Union Community Customs Code and VAT

The Community Customs Code (CCC) is described as the community customs law implemented across the entirety of the 28 EU member states,⁷² created to replace numerous acts of customs law across multiple jurisdictions, and aimed at increasing transparency across the customs territory of the EU.⁷³ Compliance with the requirements of the CCC is a mandatory feature of EU membership. The CCC was established through council regulation (EEC) No 2913/92 of 12 October 1992,⁷⁴ and came into force as of 1 January 1994, awarding member states just over a year to prepare for compliance with the new code.

The main purpose of the code is to align member states in a range of customs matters, including general provisions on people's rights and obligations, basic provisions

⁶⁹ Ibid.

⁷⁰ The Dormant Commerce Clause (n.63)

⁷¹ *Zenith/Kremer Waste Sys. v. Western Lake Superior Sanitary Dist.*, 572 N.W.2d 300 (Minn. 1997).

⁷² The European Union, Member States, <<http://en.strasbourg-europe.eu/member-states,3322,en.html>> accessed 12th April 2015.

⁷³ EUR LEX, Access to European Law, http://europa.eu/legislation_summaries/other/111010_en.htm > accessed 12th April 2015.

⁷⁴ EUR LEX, Access to European Law, Community Customs Code <http://eur-lex.europa.eu/search.html?type=expert&qid=1433685946053>> accessed 12th April 2015.

governing trade in goods such as import and export duties, customs valuation, origin and tariff classification. Lux highlights that the CCC reference to goods includes only tangible items and not intangible items such as services, and knowhow.⁷⁵ This concept of intangibles in the field of customs valuation has created challenges for the community rules on valuation, as it can prove difficult to clarify the true value of an intangible item. It is opined that the treatment of intangible items in relation to customs valuation and assists will be further complicated by the growth in IP sales and intangible items sold through cloud technology. This advancement in technology, coupled with opposing valuation methods between the EU and US, may be contentious a issue in future trade disputes, and may lead to further complications in the negotiations of the TTIP.

The implementing provisions of the CCC are set out in a single act under Commission Regulation (EEC) No 2454/93 of 2 July 1993.⁷⁶ The purpose of the act is to centralize implementing provisions which had previously been spread across a range of legal instruments across the member states. The centralisation was seen as a method of simplification of the rules and the implementing requirements. It is considered that the age of the CCC and the implementing provisions contribute to the establishment of the CIF model as a basis for customs value appraisalment in the EU.

The aforementioned US legislative acts date back to the very creation of the US, which, over time has implemented numerous laws to ensure equity and fairness across its member states. The CC has been established for less than 30 year, and has had experienced minor changes since its inception. It is thought that a major element considered in the drafting of the code was protectionist in nature through the inclusion of insurance and transportation costs into the customs valuation process. The drive to collect higher taxes levied against imported goods as a measure to protect against the domestic markets being decimated by cheaper imported goods is a basic protectionist measure which may have been fit for purpose at the time. However, such protectionist measures may have been somewhat short sighted, and may actually be detrimental to the trade performance of the EU in more modern times.

⁷⁵ Guide to Community Customs Legislation (n12).

⁷⁶ EUR LEX, Access to European Law, Provisions Implementing the Community Customs Code, <http://europa.eu/legislation_summaries/customs/111010b_en.htm> accessed 12th April 2015.

Use of CIF valuation methods as a protectionist measure merely inflates the cost of goods and creates an element of double taxation. It is opined that the method of adding in the insurance and transportation costs into a final valuation for customs duties and VAT taxation is in itself simply a form of double taxation. Depending on the incoterm used in a transaction, the recipients may find themselves paying a vendor for insurance costs, which is a service subject to VAT, and then on payment of import duties and taxes they are again taxed on the same service when paying an *ad valorem* percentage duty rate and VAT, based on inflated customs values which have the additions of insurance and transportation costs at the point of entry into the relevant EU member state.

Worthy of further consideration is why double tax agreements are developed to ensure that personal income is not taxed in two territories under specific scenarios. However, the concept of double taxation in trade flows has become an accepted practice because of age-old traditionalist measures of protectionism in VAT intake. The concept of the TTIP, explored further in the next section, is to eliminate trade between the parties to the agreement. Nevertheless, EU legislation creates inequality amongst member states and produces a form of double taxation. Whilst the concept of double taxation is not in itself an illegal practice, it is suggested that it creates a non-technical barrier to trade, which contradicts the overall objective of the TTIP to remove trade barriers.

An observation here is that the CCC sets out the rules to ensure all member states follow the same process and procedure, yet the very establishment of the standard set of rules creates internal competition across the EU member states where supply decisions by trading nations are made based on geographical decisions. The supply from the US to a Western European member state such as Ireland is thus a cheaper landed cost than that of an Eastern European member state such as Poland. This is because of the extended transportation costs associated with a greater distance, which also increases insurance costs for longer transit periods. Subject to a number of permeable factors such as incoterms, residency and tax structure, trading partners to the EU may be influenced by operational factors created by the CIF appraisal methodology of the CCC.

2.9 Customs Valuation Aspects as Written in the Community Customs Code

The CCC addresses valuation from Article 28 to 39 inclusive,⁷⁷ setting out the core purpose of the chapter provisions from Article 28, stating that the provisions of the chapter shall determine customs value for the purposes of applying the customs tariff of the European Communities and its non-tariff measures. The non-tariff measures are also considered by what might be deemed an ambiguous catch-all statement, asserting the provisions of any other community legislation covering specific fields relating to trade in goods. It is opined that this covers the concept of justifying the intertwining of customs legislation and VAT legislation in relation to the import valuation concepts employed in a CIF type valuation appraisalment.

Articles 29 through 31 of the CCC deal first and foremost with the methods of valuation which appears principally based on the WTO rules on valuation,⁷⁸ with the methodology of valuation being based upon transaction value.⁷⁹ Article 32 is the section of the CCC that deals with customs value additions. It is here within Article 32 one can observe the elements of the legislation that covers the additions of transport and insurance into the valuation methodology, under section 1(e) of the text.

Article 32

- 1) In determining the customs value under Article 29, there shall be added to the price actually paid or payable for the imported goods:
 - a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (i) Commissions and brokerage, except buying commissions,
 - ii) The cost of containers which are treated as being one, for customs purposes, with the goods in question,
 - (iii) The cost of packing, whether for labour or materials;
 - (b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export

⁷⁷ Council Regulation COUNCIL REGULATION (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992R2913:20070101:EN:PDF>> accessed 12th April 2015.

⁷⁸ World Trade Organisation, Valuation Rules, Technical Information, <https://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm> accessed 12th April 2015.

⁷⁹ Ibid.

of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

- (i) Materials, components, parts and similar items incorporated in the imported goods,
- (ii) Tools, dies, moulds and similar items used in the production of the imported goods,
- (iii) Materials consumed in the production of the imported goods,
- (iv) Engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

- e) (i) the cost of transport and insurance of the imported goods, and
- (ii) Loading and handling charges associated with the transport of the imported goods to the place of introduction into the customs territory of the Community.

Source: <http://eur-lex.europa.eu> (April 2015)

The CCC further provides, in Article 33, that transportation costs from point of entry into the EU to final destination are excluded from the customs valuation, provided they are shown separately from the price actually paid or payable. Whilst the legislation sets out to ensure that transportation and insurance costs are factored into the appraisal methodology, there are a number of anomalies to consider that blur the lines of what is or is not acceptable. Most notable is that the insurance costs are added in from point of export to place of arrival at final destination. There is no clear guidance in the legislation as written.

The next point to consider relates to transportation factors. Separate sections of the CCC cover the inclusion (Article 32) and the ground for exclusion of transport costs (Article 33), yet neither of these elements as written is fit for purpose in modern trade transactions. Most organizations operate using global insurance policies and no longer opt for single insurance premiums per movement of goods. Hence it becomes almost impossible to provide a correct insurance cost for a singular transaction. It is opined that

the CCC, as written, may have been based upon dated trade practices, whereby an insurance figure cost would have been established on a case-by-case movement of goods from one region to another. The transportation concepts are another element whereby dated methods may have been the driving considerations for the text as written.

The majority of trade transactions today are made with customs invoices typically quoting one price and referring to one incoterm. With transportation being handled by a third party, and daily fluctuation in fuel prices and other factors, it becomes impossible to provide separate prices on a commercial or proforma invoice at the point of creating the document for use in an international transaction. The result is that in most cases the cost of transportation and insurance is not clearly known at point of dispatch, and thus not provided on documentation to present to a customs authority in the EU upon arrival into the territory. It is suggested that one of the most common causes of delay of goods passing through customs clearance processes to date is that valuation aspects such as customs offices seek verification on transportation and insurance costs because these costs either contribute to the inflation of the goods value, or the inflation of the VAT amount due for collection as a direct attribute of VAT being calculated on customs values as opposed to actual goods values.

2.10 VAT Legislation and Customs Valuation

An analysis of the EU legislation on customs valuation methodology would not be complete without the inclusion of the VAT directive and its relationship with the customs valuation concept. To see how the customs value has become the cornerstone of the VAT calculation on imports, one must analyse the text of the EU VAT directive known as Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.⁸⁰ The concept of customs value as the basis of VAT calculation was first introduced in the 6th VAT directive of 1977, under Article 11.b1,⁸¹ and has remained the basis for VAT calculation on imports to this day. The modern VAT code covers taxable amounts in title VII chapter 4 under Article 78 stating:⁸²

⁸⁰ EUR Lex, Access to European Law, Common system of value added tax (VAT) (the VAT Directive) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l31057>> accessed 12th April 2015.

⁸¹ European Commission, European Union Level, <http://ec.europa.eu/taxation_customs/customs/customs_duties/declared_goods/european/index_en.htm> accessed 12th April 2015.

⁸² Ibid.

The taxable amount shall include the following factors:

- (a) Taxes, duties, levies and charges, excluding the VAT itself;
- (b) Incidental expenses, such as commission, packing, transport and insurance costs, charged by the supplier to the customer.

For the purposes of point (b) of the first paragraph, Member States may regard expenses covered by a separate agreement as incidental expenses.

It is opined that the concept of customs valuation as the basis for calculating VAT has become an essential element of the European VAT practice, evident by its encoding into the European directive. Whilst the use of such methods to calculate income VAT on imports provides Europe with the maximum intake possible linked to importation of goods, it may also act as a negative factor in the attractiveness of Europe as a location in which to do business. The next section considers how dated methods impact upon modern trade practice.

2.11 The European Union – One Recipe Creating Different Tastes of the Pie Depending on Location

The TTIP⁸³ between the EU and US is expected to be the largest FTA to date between two of the world's largest trading nations. It is opined the CIF appraisalment concept will further fuel Intra-EU competition between member states, as landed cost of goods becomes a key focus of US suppliers. The FTA further considered in the next chapter aims to reduce barriers to trade between the two blocks through a range of measures, one of which is the reduction or elimination of customs duties on entry into either destination. Consider as a case in point the supply lane of the US into Europe. As a commodity, duty rate is reduced or removed, the perception being that the trade barrier is reduced or removed, and in theory contributes to a lower cost of supply and improved volumes of trade between the two treaty members.

The VAT will still be based upon customs value, which under EU VAT law,⁸⁴ and the CCC includes the costs of transportation and insurance, thus vigilant US traders may likely base supply decisions factoring in geographical locations. This may be further

⁸³ European Commission, Transatlantic Trade and Investment Partnership, <<http://ec.europa.eu/trade/policy/in-focus/ttip/>> accessed 12th April 2015.

⁸⁴ Common system of value added tax (n80).

exacerbated by new measures introduced in the revised act to be titled UCC, in 2016,⁸⁵ which will enable AEO members⁸⁶ to centralize the customs clearance and settlement of VAT in one member location for goods entering any of the 28 member states. It is suggested that this creates advantages to EU member states that have favourable VAT rates, and VAT deferment regimes such as Sweden⁸⁷ or the Netherlands,⁸⁸ which allow importers to have more favourable cash flow through deferring VAT on entry into the community until a subsequent sale. The outcome of such legislative positioning will be that the ability to attract foreign direct investment (FDI) will be influenced by an individual member state's geographical location and its VAT regime offerings such as deferment programmes.

It is surmised that in contrast to the FOB model implemented in the US, the CIF model appears to create internal competition across EU member states as geographic elements and individual legislative policies on VAT deferment programmes will impact upon the competitiveness of individual EU member states relative to overall landed costs of imports. The CCC and the VAT directive ensure that EU member states apply the same methodology in valuation appraisal and taxation at point of import, but they do not govern individual VAT programmes and deferment schemes. Whilst the EU VAT legislation⁸⁹ aims to create a one-size-fits-all approach to VAT collection, it does still afford member states the ability to set individual VAT rates, and individual VAT programmes, thus creating internal competition through the ability of states to offer varying levels of VAT on import, coupled in some cases with VAT deferment programmes as identified herein. This results in some member countries becoming naturally more attractive points of entry into the EU market.

⁸⁵ European Union Customs Code

http://ec.europa.eu/taxation_customs/customs/customs_code/union_customs_code/index_en.htm accessed 12th April 2015

⁸⁶ European Commission, Authorised Economic Operator AEO,

http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/aeo/index_en.htm accessed 12th April 2015.

⁸⁷ Mac Berlin, Tax News, Sweden Introduces New Rules for Import VAT, <<http://www.taxand.com/taxands-take/news/sweden-introduces-new-rules-import-vat>> accessed 12th April 2015.

⁸⁸ Avalara, VAT Live, <<http://www.vatlive.com/country-guides/netherlands/netherlands-import-vat-deferment/>> accessed 12th April 2015.

⁸⁹ Common system of value added tax (n80).

Decisions to establish manufacturing locations in Europe by US firms as an output of the TTIP may be further influenced by individual state programmes. It is opined that the most cost-effective locations, offering lower import VAT and a deferment programme to aid cash flow, will succeed over those offering less commercial attractiveness in terms of trade policy and VAT programmes. It is surmised that the introduction of new rules within the 2016 implementation of the UCC will further fuel the competition as member states quickly develop trade programmes to cover the centralized customs clearance programme, coupled with an effective VAT deferment programme to aid commerce through ease of cash flow for the importing commercial entities.

2.12 Conclusion – Two Opposing Methods, Two Outcomes, Promote Equity or Promote Interstate Competition

Chapter 19 of the CFR offers clear guidance on the concept of import valuation. Within this chapter is clear provision that the model of valuation is based upon transaction value, which is described as being the cost of goods plus and additions. The governing legislation as set out in CFR 19 gives clear guidance on valuation determination, its inclusions and also provision for exclusions, and how such exclusions must be clearly defined. Along with Chapter 19, there are a number of other legislative factors that have been considered, such as the means by which interstate activity is governed, all aimed at promoting equity and fairness amongst the US states.

It is suggested that the FOB methodology is a critical element by which to maintain equity and reciprocity within interstate trade as required since the foundation of the US legislation, as set out in Article 1 section 8 of the constitution. It is considered that the inclusion of additional taxes coming from any inclusion of transportation and insurance into an import appraisalment would ultimately result in disparity in levels of taxation across states, and would not be compliant with the requirements set out in the constitution. The use of CIF is highlighted in this chapter as being in direct conflict with the basic requirements of the constitution, and hence not legally acceptable for use in the US.

Along with establishing that a CIF model would be unconstitutional, the chapter has examined additional legislation that contributes to the need for equity and reciprocity amongst the states of the US. The import export clause has been considered, to show how it contributes to the fundamentals of the constitution by ensuring requirements to maintain standardization in foreign commercial relations through the prevention of one state being able to tax goods passing through to another state. The analysis concludes that the use of CIF model for duty appraisalment would also be in breach of the conditions set out in the import export clause along with the constitution.

Further consideration is awarded to the commerce clause and its ability to offer certain powers to the Federal Government. These additional powers allow the Federal Government to trump any state legislation where such state legislation is seen to have breached the position of equity and fairness amongst the US member states. This allows federal government to overrule such matters by referring back to Article 1 section 8 of the constitution. The dormant commerce clause is also considered as an element of US legislation that impacts upon the ability of individual states to implement laws that might hamper the requirement of equity and fairness across member states.

Overall US legislation sets out clear guidelines around the need for harmonization across member states in trade practises. The chapter has offered insights into how these legislative elements all contribute to the requirement of an FOB model of appraisalment for valuation at point of entry into the US. The laws appear to be well founded and focused upon the continuity of equity and reciprocity in line with the governing constitution of the United States. These governing laws clearly show that the CIF model would be unconstitutional and create barriers to trade through inequality amongst the US states in trade practises. In contrast the Community Customs Code (CCC) of the European Union has elements that act in direct opposition of the US concepts of equity and fairness and appear to promote competition between member's states for trade through one set of rules with differing practises across the EU members such as the VAT deferment schemes.

The legislation is specific to tangibles (physical imports) and gives no consideration to intangibles (non-physical imports) as highlighted by Lux. The concept of intangible items is set to become a more frequent element of customs transactions, as

technological advances see an increased use of technology to transfer and sell goods for commercial use. The concept of protectionism has been considered as a driver of the policy employed by the EU, and the age of the policy itself may give some clue as to its founding basis, whereby the strategy at the time of its inception was to protect domestic trade through the use of non-technical barriers to trade in the form of maximizing the possible tax take on an imported item to protect against cheaper imported goods damaging domestic output. This strategy of protectionism through the use of non-technical barriers may be outdated and be detrimental to the overall performance of European trade.

The research considers that the outcome of the CIF model is merely a method of double taxation detrimental to trade overall. The consideration coming from customs and tax strategy is that investment could be hampered as FDI decisions become driven by individual member state tax practices and geographical locations, which impact the overall landed cost of goods into the EU. The analysis of the EU legislation has also highlighted what the author considers to be inadequacies in policy when considered against actual commercial practices, highlighting such issues as the inability of organisations to have a firm grasp on transportation and insurance costs to indicate these as separate figures on commercial documentation.

VAT legislation has also been considered in this research due to its direct relationship with customs value methodology. The research suggest that though the concept of VAT calculations offers the EU a higher taxable amount on importation, it may also have a negative impact on the attractiveness of the EU as a place to establish commercial activities such as manufacturing locations. Within this chapter, consideration has also been given to the TTIP trade agreement between the US and EU, and how this might be impacted by customs valuation methodology and the concept of VAT based upon customs valuation. Individual member states' ability to establish VAT rates and deferment programmes is also considered as a factor affecting how tax and customs policy might influence foreign direct investment.

Further consideration is given to the fact that the harmonisation of customs legislation and the addition of the ability for individual member states to set specific policy may actually be creating internal competition, as member states act to encourage investment

through offering VAT schemes to aid cash flow related to the importation of goods into its territories. Overall, the concept of CIF as a method of customs valuation and its inclusion in the communities' VAT legislation is indicative of the focus of revenue collection. The legislation may well have been fit for purpose and aligned to strategy of the EU at the time of its inception, but it may prove problematic when the Union aims to increase trade through foreign direct investment and the establishment of trade agreements such as that of the TTIP.

Chapter 3: The Transatlantic Trade and Investment Partnership (TTIP) One Trade Deal, Two Methods of Valuation Appraisal

The TTIP is essentially an intended free trade agreement between the US and the EU. It is described as a deal to remove barriers to trade between the US and EU, and is intended to make trade for companies from both regions to gain access to one another's respective markets, covering a range of market sectors including but not limited to pharmaceuticals, cars, energy, finance, chemicals, clothing and food and drink.⁹⁰ The origins of the TTIP stem from an EU-US summit of November 2011, which established a working group to analyse how trade partnerships between the two trade blocks could best be encouraged to drive growth and address barriers to trade. It is opined that this development followed frustration at the lack of trade progress in the Doha round of trade talks of the WTO.⁹¹

The EU describes the TTIP as a trade investment agreement under negotiation between the EU and its largest trade partner the US, to address red tape, restrictions on investment and customs duties, all of which are said to be barriers to trade between the two parties.⁹² The agreement is aimed at addressing three specific areas overall. These include market access, trade rules and enhanced cooperation between trade regulators of both the EU and US.⁹³ Specific to this research is the intended focus on customs duties, which included in the agreement, are thus considered as a barrier to trade between the two regions. The intent is clearly stated as being the removal of trade barriers through the agreement of a trade partnership between the two blocks. What is not considered within the remit of the agreement is that the removal of customs duties between the two trade blocks is not as clear-cut as one might expect.

⁹⁰ BBC News, The EU-US Trade Deal Explained, <<http://www.bbc.co.uk/news/uk-politics-30493297>> accessed 16th June 2015.

⁹¹ Ibid.

⁹² European Commission, <http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/questions-and-answers/index_en.htm> accessed 16th June 2015.

⁹³ Ibid.

3.1 The EU position on Alignment of Customs Rules in the TTIP

In its initial draft proposal, tabled for discussion in the rounds of March and May 2014, the EU set out the various elements for discussion and intended alignment between the two blocks. The EU position seeks alignment on data and documentation; use of information technology; uniformity of documentation; the process around releasing goods from customs; customs brokers expedited shipments; facilitation and simplification around the rules of *de minimis*⁹⁴ transit and transshipment; fees and charges; electronic payments; re-entry of goods after repair; pre-shipment inspections; risk management; post clearance audits; advanced rulings; penalties, and appeals. The draft also sets out the requirement for both parties to adhere to international standards, and calls for both groups to make all processes and procedures available on the internet.⁹⁵ At first glance, one might consider this quite a comprehensive list of customs-related matters called for alignment by the EU, in what is to be the world's largest trade agreement.

Notably absent from the draft text is the concept of customs valuation, or any reference to alignment of processes between the two blocks on valuation methods. The carefully crafted text merely appears to call for alignment with international standards, but does not go far enough to specifically focus on the methodology applied in relation to customs values. The call for alignment to standards can be considered as ensuring that both parties follow the rules set out in the WTO agreements, which, as explored earlier in this research, do not go far enough as to focus on valuation methods, but simply set out that member states are free to determine the methodology used to calculate customs values. With both blocks using alternative valuation methods, entering into an intended agreement to push for harmonization, one has to consider how the variants in value determination will impact upon the actual ability to achieve equity and reciprocity with trade facilitation, which is the overall intention of the TTIP.

⁹⁴ US Customs and Border Control, De Minimis, <<http://www.cbp.gov/trade/nafta/guide-customs-procedures/other-instances-confer-origin/deminimis>> accessed 16th June 2015.

⁹⁵ European Union, Textual Proposal, <http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153027.pdf> EU proposed text made public January 2015> accessed 16th June 2015.

3.2 Same Rules, Different Results

The TTIP aims to increase trade through the removal of trade barriers citing specifically customs duties.⁹⁶ It is opined that customs duties is merely one part of a two pronged non- technical barrier to trade, encompassed in the overall customs valuation process. The agreement focuses on the tariff barrier (*ad valorem* customs duty) but gives no consideration to the non-tariff barrier (alignment on customs valuation methodology and rules). It is suggested that the second prong of the barrier is that of valuation appraisalment methodology. The research has shown that the EU and US have two opposing methods of customs valuation, resulting in the transportation and insurance values being factored into the appraisalment process for duty and taxes calculation on entry into the EU, thus creating a higher taxable amount upon entry into the EU. One might expect that the introduction of a trade agreement, and the removal of customs duties, would create a level playing field between the two trade nations of the EU and US. The opposing methods will likely not contribute to equity and reciprocity in trade facilitation and may act as a barrier to trade.

Whilst it is premature to predict the final text of the TTIP, it is opined that as written, the current proposal submitted by the EU will result in a strategic advantage for the EU, while not affording the same level of gain for the US. EU supplied goods to the US will be imported into the US at the actual cost of goods, whereas in contrast, US goods entering Europe will still be artificially inflated because the VAT calculation based on customs value, means the inclusion of transportation and insurance costs into the final amount to be taxed. This means that the US origin goods still face the valuation barrier that is not in place for EU origin goods to the US.

Two specific features create the variant in the output of any agreement between the parties. The first of these is the EU position on VAT legislation which is based on the customs value, and the second is the concept of the CIF valuation appraisalment methodology. As written, any agreement to align processes by removal of a customs duty will only remove part of the trade barrier and will still see the valuation methods between the two parties disconnected. The overall result will be that US goods entering Europe will be based upon goods value, plus transportation, plus insurance, whereas the

⁹⁶ The EU-US Trade Deal Explained (n90).

same goods travelling in the opposite trade route will enter the US based upon a value of the actual goods only. What this does is allows EU origin goods to enter the US duty free and to be taxed at import on levels based upon the true goods values, whereas the opposite is the case for goods entering the EU from the US. These goods will enter at a zero ad-valorem customs duty rate, but still be subject to import VAT at the inflated goods value due to the inclusion of transportation and insurance costs to inflate the taxable amount on entry into the trade block.

3.3 Reciprocity in Trade Facilitation Creating a Win-Win for Both Parties

Another major free trade agreement already in existence for the US is the North America Free Trade Agreement (NAFTA),⁹⁷ which is a trade agreement between the US, Mexico and Canada. This existing trade agreement ensures alignment between the US and Mexico on customs valuation methodology. Mexico uses the CIF method of customs valuation appraisalment for all imports unless the origin of the goods is in the US. The NAFTA agreement sees the processes aligned when the supply route is direct between the two trading blocks. For all non- US origin goods, Mexico applies the CIF appraisalment method, and for US origin goods it applies the FOB methodology.⁹⁸ The result is that transportation and insurance costs are only added into the import value when the origin is not the US. This creates reciprocity between the US and Mexico, in that neither nation adds in the additional costs into the import value upon entry. The output of such parity is that the goods coming from the US will be subject to lower import values (cost to Mexico) than those of non-US origin goods. This position encourages trade between the two, as it can be more cost-effective to source from the partner of an FTA than a non-party to the agreement.

Alignment between the EU and US on customs valuation appraisalment methods might look something like the NAFTA agreement with Mexico, whereby imports into Europe would continue to be appraised using the CIF value methodology for non-US origin

⁹⁷ Office of the United States Trade Representative, North America Free Trade Agreement (NAFTA), <<https://ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta>> accessed 16th June 2015.

⁹⁸ Santander Trade Portal, Import Customs Procedures in Mexico, <<https://en.santandertrade.com/international-shipments/mexico/customs-procedures>> accessed 16th June 2015.

goods, with the FOB methodology applied in the case of any US origin goods. This concept of full reciprocity in the customs process would not only create alignment through the elimination of customs duties, but might also create competitive advantage for both blocks when considered against other trade blocks. The overall result for the EU will create a reduction in coffers as the VAT amounts would be calculated upon the actual transaction value, minus the inflationary additions of transportation and insurance costs associated to the CIF model. Currently the EU import SAD form⁹⁹ does not separate the additions of insurance and transportation costs so the true amount of mark-up on the importation value at point of entry is not easily reportable. With this in mind, any alignment in valuation methodology would result in the reduced VAT collection for the EU territory, but the actual reduction may not be easily calculated as it is not captured in the import process currently.

3.4 Conclusion

The TTIP is essentially an intended free trade agreement between the US and the EU, described as a deal to remove barriers to trade between these two parties. The origins of the TTIP stem from an EU-US summit of November 2011, aimed at improved trade between the two trade blocks. What is not considered within the remit of the agreement, is that the removal of customs duties between the two trade blocks is not as clear cut as one might expect. In its initial draft proposal tabled for discussion in the rounds of March and May 2014, the EU set out the various elements for discussion and intended alignment between the two blocks. It is opined that the likely omission of this concept as a topic is a signal that there is little intent to align this concept within the framework of the TTIP.

It is suggested that using alternative valuation methods within the one agreement will not be sufficient to enable both parties to avail of the same level of benefit from the agreement itself. The removal of the *ad valorem* duty will result in lower costs for the EU into US, but will not offer the same level of cost reduction for the US goods bound for Europe. This section of the research has shown that the removal of customs duties charges does not result in the expected level playing field for both parties to the agreement because of the use of varying customs valuation methodologies. The existing NAFTA agreement might be a treaty worthy of further consideration by both the EU

⁹⁹ See appendix D, European Union Single Administration Declaration Form.

and US, to see how the alignment of valuation appraisal methods can be applied by careful monitoring of goods origin rules. Overall, in alignment between parties there has to be some impact in the creation of equity across the treaty members. The expected impact through alignment would be a reduction in the VAT collection on US origin goods if the EU aligned to an FOB method of appraisal as part of the TTIP framework, though the reduced VAT may be offset by the increased supply of goods and investment into the EU region from the US.

Chapter 4: An Industry Analysis – Ask the Audience

4.1 The EU Industry Analysis on CIF Duty Appraisal

As part of this academic research, industry experts from a broad spectrum of associated job functions were invited to participate in a short survey specific to the importation processes of their regions in both the EU (Appendix E) and the US locations (Appendix F). The surveys were conducted via LinkedIn and opened up to trade law and compliance specialist members. In Europe, 28 respondents from various EU member states provided information via a range of open questions.

The first question put to the group was around the concept of obtaining the value for transportation costs to enable the calculation of duties and taxes under the CIF appraisal framework. Contrasting responses ranged from the use of a formula to obtain a value, to contacting the seller to obtain a cost of transportation. The most common method of obtaining the transportation costs appears to be by contacting the carrier (32% of respondents). Additional commentary confirmed that the transportation costs are assessed further, based upon the incoterms used in the transaction. In relation to the collection of insurance values for the purpose of adding into the customs values, 30% of respondents indicated the use of a formula to calculate insurance costs based on the goods value. A total of 19% of respondents indicated that the incoterms drive an assumption that the insurance cost has been factored into the invoice value, and hence no need for a further addition.

Those participants who indicated the use of a formula were all aligned with the response that the formula is calculated on the goods value without any additions. One respondent

indicated that an accepted formula is based on 0.5% of the goods and transportation (C+F), while another indicated a formula of (C+F +10%), which is a vast difference from 0.5 %. This concept of use of formulas shows an inconsistency across the EU members regarding how the insurance is calculated to add into the final import value for customs purposes.

Calculation of duty amounts across multiple invoice items was also considered in the research, to assess how tariffs are applied across multiple lines on a commercial invoice, the aim being to identify how the total duty rate includes the transportation and insurance costs. A total of 70% of respondents indicated that the duty amount is calculated line by line, to ensure a correct rate based upon an item's tariff classification code. A total of 14% of respondents indicated that the freight and insurance cost is added into one specific line item as part of the overall calculation. One respondent highlighted the concept of highest cost line acceptable for use:

You can either add the freight to the line item which is burdened with the highest amount of duty or add the proportionate amount which has to be calculated.

When questioned on the value declaration process, and how the values are provided on the customs entry form, respondents offered varying methods, with 46% stating that they provide two separate values, one for freight, and one for insurance. A total of 25% of respondents confirmed the provision of one additional value amount, which consisted of both transport and insurance, with 17% confirming that one value is provided which contains goods, transportation and insurance, all encompassed into one.

European participants were questioned on what they consider to be the biggest challenge with the concept of additions of transportation and insurance into the total valuation for customs purposes. A total of 20% of respondents indicated the issue of knowing which line item to charge the freight and insurance against, whilst 56% of respondents indicated that this did not create any challenge.

When questioned on the concept of import valuation process for items that are duty free, several respondents indicated the VAT requirements and that the transport and insurance still need to be factored in to obtain a final goods value for VAT purposes,

which is due immediately upon entry into the EU. In relation to the use of an FOB type model, participants were asked whether the use of an FOB methodology would simplify the import process. A total of 39% of respondents indicated that this would simplify the process, whilst 25% disagreed. One respondent highlighted that the use of FOB may result in lower cost and taxes, but does not result in an easier customs clearance process for the applicant performing the clearance. Further commentary provided by the participants indicated that there are inconsistencies in processes across the EU member states. A total of 50% of the total EU respondents indicated that alignment between the US and EU would be of benefit to trade processes.

4.2 The US Industry Analysis on FOB Duty Appraisalment

The US model of FOB requires just the goods value to be used to calculate duties on entry, so the first question put to US participants was based on how freight charges are excluded when indicated on a commercial or proforma invoice. A total of 42% of respondents indicated that deductions are only permitted when clearly identifiable. The same question was put to the group based upon insurance values with similar results. A total of 28% identified that deductions were not permitted, whilst 35% stated that deductions were not permitted if the value was not clearly stated.

In relation to formulas used to obtain insurance values, 35% of respondents indicated that a formula can be applied to the goods value to obtain an insurance value, whilst 58% indicated that no deduction is allowed. One respondent offered a further insight into this concept, stating:

In the past, the formula was \$0.5 / hundred value of goods. US customs in the last several years has disregarded this formula and is no longer applicable.

On the process of applying duty to multiple line items on entry into the US, there was a unanimous response, with 100% of respondents confirming that the duty is calculated line by line to obtain a % value per commodity. This response rate indicates that when there is no requirement to add in transportation and insurance, the process of allocating actual duty rates becomes easier to achieve as each item has a tariff code, and no additional items need to be factored in.

When asked how deductions are reported in the customs declaration, there appear to be conflicting responses, with 14% indicating that no deduction is permitted, though US customs law allows for deductions as long as the values are clearly stated. A total of 50% indicated the provision of separate figures to show the transportation and any insurance deducted, whilst 28% indicated that one value is provided, which is a total of transportation and insurance. A total of 50% of participants indicated that the FOB methodology does not create any specific challenges, whilst 28% indicated that the FOB method can be a challenge when an invoice indicates that freight and insurance are included in the total price. US participants were questioned on whether the US still records the transportation costs for statistical purposes, with 64% of respondents indicating that this is an element recorded, though it has no impact on the duty value calculation process.

The question as to whether the use of a CIF model would benefit the US offered some valuable insights into the challenges the method creates. One respondent indicated that CIF creates more complexity, whilst others noted the increased cost to import as a direct result of the use of CIF. An additional comment was that CIF will increase the supply chain costs and also the cost of supply chain security programmes. On the issue of whether the conflicting methods of FOB and CIF create any challenges in relation to the two trade blocks, 35% of respondents indicated that this would create issues, with 42% stating that the mix would not create issues. One participant summarised the challenges and the impact of a CIF model as follows:

The primary difference between these two models is how they affect the final cost against which the duty rate is applied. The CIF model is effectively prejudicial against longer distance imports because the freight cost will be added into the value which then is compounded by the duty rate. This is a net effect of being a trade barrier. The end result is not to affect trade mechanics but to instead affect trade profitability calculations, which I believe is the goal.

Until recent decades, all countries wanted some trade barriers in place. One way to do this was to use the most advantageous cost basis for the duty calculation, i.e. use the CIF cost instead of the FOB cost. Add in that the VAT cost is charged on the CIF + duty cost and this is another compounding factor to restrain imports. For daily operations, this is just another accounting concern. For economic considerations, this inhibits competition.

4.3 Conclusion

The industry survey conducted in both the US and the US shows that both elements have their advantages and disadvantages in terms of day-to-day trade transactions. The most notable feature of each model is that the CIF appraisalment creates challenges for the trade professional in relation to establishing true values to calculate the total figure for import purposes. The ability to harmonize the process across 28 member states is evident, with a varying range of responses indicating that different approaches are taken in different locations. On the US side, the challenges are opposite in nature: the challenge is created when trying to obtain values to deduct transport and insurance costs from the final calculation, though this is made easier with clear legislation stating that, if a value is not clearly given, then it cannot be deducted from the final value for customs purposes. The final commentary provided by one participant on how the CIF model hampers trade is a fitting statement, and it is opined that the feedback given here is consistent with findings throughout this research paper.

Chapter 5: Conclusion – Which Valuation Appraisal Methodology is Best Suited for the European Union in Modern International Trade?

This research sets out the fundamental differences between the two valuation appraisal methods adopted in international trade as being the inclusion or exclusion of the cost of transportation and insurance into any final calculation. The various rounds of WTO discussions show that no consideration has previously been given to the concept of equity and fairness amongst members, with valuation discussions focusing primarily on establishing clear methods to value an item, but not in relation to the impact of cost when calculating *ad valorem* taxes on import into the destination country.

The research suggests that ambiguity may have been the order of the day, with the inclusion of provisions within the WTO rules to ensure that members to the treaty will not impose penalties for omissions or mistakes in the customs processes. This concept of ambiguity is further demonstrated within the Tokyo round of discussions, where the text has been amended to clarify that it is the right of a member state to determine whether or not to adopt an FOB or CIF appraisal method when framing its legislation. It is suggested that this is a clear sign that a push for one method for all parties would not have been successful in establishing agreement across all treaty members. It is here that the opinion is given that protectionism was at the forefront of these negotiations, whereby there was a desire to keep the import costs higher as a means to protect the domestic activity of the nations involved.

The ability to self-determine the method to be employed may well have suited the treaty members at the time of negotiation, but as time goes on, the framing of such legislation may well be unwittingly acting as a barrier to trade and investment, and hindering the ability for regions to interact in global trade in a fair and equitable manner. The inability of the WTO to obtain unanimous agreements on numerous topics has led to a rise in individual free trade agreements being developed, such as that of the EU and US under the TTIP framework. It is through these free trade agreements that we start to see

complexities in alignment, whereby two parties, both WTO members, are employing opposing methods of customs duty appraisalment.

The initial ambiguity of the WTO valuation agreement now creates further challenges in the drive to promote trade due to opposing laws being developed to suit the needs of each host nation. This dissertation has shown that the US legislation aims to protect the concept of equity and reciprocity amongst member states, whereby EU legislation aims to protect domestic activity for the overall zone, yet fails to protect members from being exposed to internal competition created by VAT legislation and demographics.

The comparative analysis between the US framework and the EU legislation provides two clear positions. The first, that of the US, is that any attempt to employ a CIF type model would be in direct conflict with the constitution, and numerous other legislative measures aimed at promoting equity and fairness amongst the member states. In stark contrast to this, the second finding, that of the EU position, requires CIF to be used to ensure that costs of insurance and freight are added into the cost for valuation at point of entry into the EU. The customs valuation is also written into VAT law as the basis upon which to calculate VAT, and this critical point suggest that this is merely a protectionist measure aimed at ensuring maximum collection of revenues in the form of taxation upon entry into the Union. It is opined that within the EU itself, these laws create competition amongst member states, whereby the VAT law is European wide, yet individual member states set the individual country rates and determine whether or not to employ VAT deferment programmes which are a major attraction to non EU member countries when looking to establish locations (FDI) within Europe to import commodities.

The US model employing the FOB methodology is a critical element by which to maintain equity and reciprocity within interstate trade as required since the foundation of the US legislation, as set out in Article 1 section 8 of the constitution. It is opined that the inclusion of transportation and insurance into an import appraisalment would ultimately result in disparity in levels of taxation across states, and would not be compliant with the requirements set out in the constitution.

The TTIP is essentially an intended free trade agreement between the US and the EU, described as a deal to remove barriers to trade between the US and EU. What is not considered within the remit of the TTIP agreement is that the removal of customs duties between the two trade blocks is not as clear cut as one might expect. In its initial draft proposal, tabled for discussion in the rounds of March and May 2014, the EU set out the various elements for discussion and intended alignment between the two blocks. It is suggested that the likely omission of this concept as a topic is a signal that there is little intent to align on this concept within the framework of the TTIP. It is conjectured that using alternative valuation methods within the one agreement will not be sufficient to enable both parties to avail of the same level of benefit from the agreement itself. The removal of the *ad valorem* duty will result in lower costs for the EU into US, but will not offer the same level of cost reduction for the US goods bound for Europe.

The existing NAFTA agreement might be a treaty worthy of further consideration by both the EU and US, to see how the alignment of valuation appraisal methods can be applied by careful monitoring of goods origin rules. Overall, in seeking alignment between the two parties, there has to be some impact in the creation of equity across the treaty members, and the expected impact through alignment would be a reduction in the VAT collection on US origin goods, if the EU aligned to an FOB method of appraisal as part of the TTIP framework. What is not identified is how this might impact upon trade overall, and it is opined that the reduced VAT intake might be offset by the increased supply of goods and investment into the EU region from the US.

The industry survey conducted in both the EU and the US has shown that both elements have their advantages and disadvantages in terms of day-to-day trade transactions. The most notable feature of each model is that the CIF appraisal creates challenges for the trade professional in relation to establishing true values to calculate the total figure for import purposes. The ability to harmonize process across 28 member states is evident, with the varying range of responses indicating that different approaches are taken in different locations. On the US side, the challenges are opposite in nature, and the challenge is created when trying to obtain values to deduct transport and insurance costs from the final calculation, though this is made easier with clear legislation stating that if a value is not clearly given, then it cannot be deducted from the final value for customs purposes.

In aiming to address the primary research question: 'Which Valuation Appraisal Methodology is Best Suited for the European Union in Modern International Trade?' The research has identified that CIF methodology currently employed in the EU may have been driven by the need for protectionism through non-technical barriers to trade, and as a means of protecting the domestic activity of the European member states. The FOB model employed by the US ensures equity and fairness amongst its member states and, along with various supporting legislative measures, ensures that internal competition amongst member states is not promoted in any way through import related tax policies. Overall, it is opined that the method of FOB valuation appraisal is best suited to the EU and would also drive the concept of equity and reciprocity within the TTIP. It is considered that this would make the EU a more attractive location for foreign direct investment, as the cost of imports would reduce under the FOB appraisal methodology.

Bibliography

Table of Cases

Brandt & Co v Morris & Co Ltd [1917].

El Amria & the El Minia [1982] 2 Lloyds Rep 28 at 32.

George Wills and Sons Ltd v Thomas Brown and Sons.

Pyrene Co Ltd v Scindia Navigation Co LTD [1954] 2 QB 402, 418.

Zenith / Kremer Waste Sys. v Western Lake Superior Sanitary Dist., 572 N.W.2d 300 [Minn. 1997].

Books

International Chamber of Commerce, *Incoterms 2010 ICC Rules for the Use of Domestic and International Trade Terms* (ICC Publication 2010).

Lux, M. *Guide to Community Customs Legislation* (Editions Juridiques Bruylant 2001).

Matsushita M. & Schoenbaum T.J. *The World Trade Organisation, Law, Practice and Policy* (2nd edn Oxford University Press 2006).

Turley, G., Maloney M. & O'Toole, F. *Principles of Economics*, (3rd edn Gill & Macmillan 2006).

Web based Articles and Research

American Association of Port Authorities, < <http://www.aapa-ports.org/Industry/content.cfm?ItemNumber=1032>> accessed 12th April 2015.

American Bar Organisation,
<http://www.americanbar.org/publications/tax_lawyer_home/7_stern.htm> accessed 12th April 2015.

Avalara, VAT Live, <http://www.vatlive.com/country-guides/netherlands/netherlands-import-vat-deferment/>> accessed 12th April 2015.

BBC New, The EU-US trade deal explained <<http://www.bbc.co.uk/news/uk-politics-30493297>> accessed 16th June 2015.

Cornell University Law School, Legal Information Institute,
<<https://www.law.cornell.edu/uscode/text/19/1401a>> accessed 9th March 2015.

Cornell University Law School, Legal Information Institute, the Constitution
<http://www.law.cornell.edu/constitution/articlei>> accessed 12th April 2015.

Cornell University Law School, The Commerce Clause,
<http://www.law.cornell.edu/wex/commerce_clause> accessed 12th April 2015.

Council Regulation (EEC) No 2913/92 of 12 October 1992
Establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1), <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992R2913:20070101:EN:PDF>> accessed 12th April 2015.

Duty and Tax Calculation Methods, <http://www.export.gov/logistics/eg_main_018140.asp>
accessed 3rd February 2015.

EUR LEX, Access to European Law,
<http://europa.eu/legislation_summaries/other/111010_en.htm> accessed 12th April 2015.

EUR Lex, Access to European Law, Common System of Value Added Tax (VAT) (the
VAT Directive), <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l31057>>
accessed 12th April 2015.

EUR LEX, Access to European Law, Community Customs Code, <<http://eur-lex.europa.eu/search.html?type=expert&qid=1433685946053>> accessed 12th April 2015.

EUR LEX, Access to European Law, Provisions Implementing the Community
Customs Code, <http://europa.eu/legislation_summaries/customs/111010b_en.htm> accessed 12th
April 2015.

European Commission, <http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/questions-and-answers/index_en.htm> accessed 16th June 2015.

European Commission, Authorised Economic Operator AEO,
<http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/aeo/index_en.htm>
accessed 12th April 2015.

European Commission, European Union Level,
<http://ec.europa.eu/taxation_customs/customs/customs_duties/declared_goods/european/index_en.htm>
accessed 12th April 2015.

European Union, Textual Proposal,
<http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153027.pdf EU proposed text made public
January 2015> accessed 16th June 2015.

European Commission, Transatlantic Trade and Investment Partnership,
<<http://ec.europa.eu/trade/policy/in-focus/ttip/>> accessed 12th April 2015.

European Union Customs Code,
<http://ec.europa.eu/taxation_customs/customs/customs_code/union_customs_code/index_en.htm>
accessed 12th April

GATT / WTO, <<https://law.duke.edu/lib/researchguides/gatt/>> accessed 3rd February 2015.

Gordon Lee, Customs Law "Assists" – A Trap for the Unwary,
<<http://www.nossaman.com/CustomsLawAssist>> accessed 9th March 2015.

International Chamber of Commerce, <<http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/history-of-the-incoterms-rules/>> accessed 3rd February 2015.

International Chamber of Commerce, from 1936 to today: the Incoterms® rules
International Chamber of Commerce, *The merchants of Peace*,
<<http://www.iccwbo.org/about-icc/history/>> accessed 3rd February 2015.

Mac Berlin, Tax News, Sweden Introduces New Rules for Import VAT
<<http://www.taxand.com/taxands-take/news/sweden-introduces-new-rules-import-vat>> accessed 12th April 2015.

National Paralegal, The Dormant Commerce Clause,
<http://nationalparalegal.edu/conLawCrimProc_Public/CongressionalPowers/DormantCommerceClause.asp> accessed 12th April 2015.

Office of the United States Trade Representative, North America Free Trade Agreement (NAFTA), <<https://ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta>> accessed 16th June 2015.

Organisation for Economic Co-operation and Development, Model Tax Convention and the OECD Guidelines on Transfer Pricing, <<http://www.oecd.org/ctp/transfer-pricing/>> accessed 12th April 2015.

Santander Trade Portal, Import Customs Procedures in Mexico,
<<https://en.santandertrade.com/international-shipments/mexico/customs-procedures>> accessed 16th June 2015.

The Code of Federal Regulations,
<<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>> accessed 9th March 2015.

The European Commission, Countries and Regions,
<<http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/>> accessed 9th March 2015.

The European Union, Member States, <<http://en.strasbourg-europe.eu/member-states,3322,en.html>> accessed 12th April 2015.

The European Commission, The EU Position in World Trade
<<http://ec.europa.eu/trade/policy/eu-position-in-world-trade/>> accessed 12th March 2015.

The European Commission, What is TTIP about, <<http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/>> accessed 9th March 2015.

The Uruguay Round, <http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm> accessed 3rd February 2015.

The White House, <<http://www.whitehouse.gov/our-government/the-constitution>> accessed 12th April 2015.

US Customs and Border Control, De Minimis, <<http://www.cbp.gov/trade/nafta/guide-customs-procedures/other-instances-confer-origin/deminimis>> accessed 16th June 2015.

US Customs and Border Protection, <<http://www.cbp.gov/about/history>> accessed 9th March 2015.

US Legal, Definitions, The Import Export Clause, <<http://definitions.uslegal.com/i/import-export-clause/>> accessed 12th April 2015.

World Trade Organisation, Technical Information on Anti-dumping, <https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm> accessed 3rd February 2015.

World Trade Organisation, Technical Information on Customs Valuation, <http://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm> accessed 10th January 2015.

World Trade Organisation, Valuation Rules, Technical Information, <https://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm> accessed 12th April 2015.

Appendices

Appendix A Incoterms Guide



Guide to the Incoterms[®] 2010 Rules

INCOTERMS[®] 2010 Rules

The Incoterms[®] 2010 rules* (International Commercial Terms) were developed by the International Chamber of Commerce (ICC) as a uniform set of rules to clarify the costs, risks and obligations of buyers and sellers in international commercial transactions. Because they address issues relating to import and export, Incoterms[®] 2010 rules are most appropriate for use in international shipping; they are, however, used for U.S. domestic shipping as well.

Incoterms[®] 2010 rules are periodically revised and multiple versions are available for use by contracting parties. The Incoterms[®] 2010 rules became effective January 1, 2000, and remain in effect. The Incoterms[®] 2010 rules are effective as of January 1, 2011.

Refer to the ICC Web site at www.iccwbo.org/Incoterms/id3040/index.html for information about these terms and their definitions, which are copyrighted by the ICC.

Note: Although the new Incoterms[®] 2010 rules became available for use as of January 1, 2011, Incoterms[®] 2000 rules continue to be available. It is incumbent upon contracting parties to determine which term they want to use and to designate the version being applied.

For some time Incoterms[®] rules have consisted of 13 terms. Incoterms[®] 2010 rules eliminate four of the previously-existing terms (**DDU, DES, DEQ and DAF**) and add two new terms (**DAT and DAP**), resulting in a total of 11 terms. The new version is made available for both domestic and international use; contracting parties should, however, review the applicability of these terms to the domestic environment prior to applying them.

The terms are structured to increase incrementally the obligations (control, risk and cost) on one party while decreasing the obligations of the other, depending on the specific term chosen. Each term clarifies which party is responsible for:

- Inland freight (transportation within the origination country)
- Forwarder selection
- Export clearance
- Carrier selection and scheduling
- International freight
- Import clearance
- On-carriage (transportation within the destination country)


Delivery occurs (and *risk of loss* transfers) at the point designated by the term selected. Transfer of *title* is NOT covered by any of the Incoterms[®] 2010 rules and must be separately specified by the parties.

Incoterms[®] 2010 rules can be divided into two groups – multi-modal (available for multiple forms of transport, including land, air and waterway transportation) and single mode (applicable only to waterway transportation). The terms in each group are listed on page 2 in order of increasing responsibility for the seller (and correspondingly decreasing responsibility for the buyer). So, for example, using the term EXW makes the seller responsible only for making the goods available at its own premises; delivery occurs and risk of loss transfers at that point. When the term DDP is used, the seller becomes responsible for everything except on-carriage where the location for delivery is not the buyer's actual location. DDP is the only Incoterms[®] rule that makes the seller responsible for import clearance.

Buyers in the United States who are likely to be familiar with delivery terms defined within Articles 2 and 2A of the Uniform Commercial Code (UCC) should pay particular attention to the overlap in the use of certain terms/abbreviations between the Incoterms® 2010 rules and the UCC. “Free on board” (F.O.B.), “free alongside” (F.A.S.) and “C.I.F.” are all used in the UCC, but their definitions there are much different from the definition of the same terms in the Incoterms® 2010 rules. Under the Incoterms® 2010 rules all three of the overlapping terms (FOB, FAS and CIF) fall into the “single mode” group, meaning they can only be used for waterway transportation. Under the UCC only F.A.S. is limited to use with a vessel.

Numerous publications and seminars are available through the International Chamber of Commerce (<http://store.iccbooksusa.net/> or <http://www.iccbooks.com/Home/Home.aspx>) as well as from other organizations explaining in depth the application of both the Incoterms® 2000 rules and Incoterms® 2010 rules.

TERM – DEFINITION	
The multi-modal (available for multiple forms of transport, including land, air and waterway transportation) terms are:	
<input checked="" type="checkbox"/> – Unchanged in Incoterms® 2010 rules	<p>Ex works (EXW) named place (seller’s location) – An Incoterms® rule under which the price that the seller quotes applies only at the point of origin. The buyer takes possession of the shipment at the point of origin and bears all costs and risks associated with transporting the goods to the destination. This Incoterms® rule is regarded as the most open-ended. There is generally nothing specific regarding delivery and there is a mutually convenient pickup time for exporter and importer agreed upon. Used for any mode of transport.</p> <p><i>See Also</i> Incoterms® rules <i>Compare:</i> Delivered Duty Paid</p>
<input checked="" type="checkbox"/> – Unchanged in Incoterms® 2010 rules	<p>Free Carrier At (FCA) named place (seller’s country) – An Incoterms® rule under which seller delivers goods, cleared for export, to the buyer-designated carrier at a named location. Used for any mode of transport. Seller must load goods onto the buyer’s carrier. The key document signifying transfer of responsibility is receipt by carrier to exporter.</p> <p><i>See Also:</i> Incoterms® rules</p>
<input checked="" type="checkbox"/> – Unchanged in Incoterms® 2010 rules	<p>Carriage Paid To (CPT) named place of destination – An Incoterms® rule used for any mode of transportation. Buyer assumes title and risk of loss when goods are delivered to the carrier. Seller pays shipping to destination. CPT delivery takes place when the exporter hands over goods to the carrier. The exporter is given bill of lading or equivalent document (air waybill, sea waybill, multi-modal bill of lading).</p> <p><i>See Also:</i> Incoterms® rules <i>Compare:</i> Carriage and Insurance Paid To</p>
<input checked="" type="checkbox"/> – Unchanged in Incoterms® 2010 rules	<p>Carriage Insurance Paid (CIP) named place of destination – An Incoterms® rule under which seller delivers goods to seller-designated carrier, pays cost of carriage to named destination and must obtain insurance to cover buyer’s risk of loss in transit. Buyer bears risk of loss and any additional costs after seller’s delivery to carrier, protected by seller’s insurance. Used for any mode of transportation; same as CPT, but seller pays for insurance and names buyer as beneficiary.</p> <p><i>See Also:</i> Incoterms® rules <i>Compare:</i> Carriage Paid To</p>
<input checked="" type="checkbox"/> – Eliminated in Incoterms® 2010 rules	<p>Delivered Duty Unpaid (DDU) named place of destination – An Incoterms® rule under which seller bears the risk and expense of getting the goods to a named destination, but excluding duties, taxes and other official charges payable on import. Some variations on DDU are possible if the seller is to pay some of the import charges. Delivery takes place when the exporter places goods at the disposal of the importer in city of delivery. There is no corresponding transportation document, although a bill of lading is usually used. Used for any mode of transportation. Same as Delivered Ex Quay (DEQ), except that the buyer and seller can specify delivery of the goods to a warehouse or other destination point. Seller must arrange for ground transport in the buyer’s country. Buyer bears responsibility for import customs duties.</p> <p>This term is defined in the Incoterms® 2000 rules. It has been eliminated in the Incoterms® 2010 rules, but the Incoterms® 2000 rules can still be used by contracting parties if they so agree.</p> <p><i>See Also:</i> Incoterms® rules</p>

#4	COMPLETE	 <p> Collector: EUResearchquestions (Web Link) Started: Monday, December 15, 2014 7:55:09 AM Last Modified: Monday, December 15, 2014 7:58:34 AM Time Spent: 00:03:24 </p>
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PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Compliance Manager
Q2: Please provide your EU Location	Denmark
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Assume this is factored into the goods value based upon the incoterms provided and make no addition
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	Assume this is factored into the goods value based upon the incoterms provided and make no addition
Q5: If a formula is used to calculate the insurance value do you	<i>Respondent skipped this question</i>
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By dividing the freight and insurance values across each line item then calculate final dutiable amount by line
Q7: How do you show the different values for additions in the SAD entry	Provide one total value that includes, goods plus freight plus insurance
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	<i>Respondent skipped this question</i>
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	<i>Respondent skipped this question</i>

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process	No
Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU	Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations
Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)	Harmonization between the two methods would benefit trade processes between the EU and US

#5



COMPLETE

Collector: EUResearchquestions (Web Link)
Started: Monday, December 15, 2014 8:44:57 AM
Last Modified: Monday, December 15, 2014 8:51:44 AM
Time Spent: 00:06:46

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Compliance Manager
Q2: Please provide your EU Location	Netherlands
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	By contacting the carrier (if different to import broker)
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	By using a formula
Q5: If a formula is used to calculate the insurance value do you	Apply the formula to the goods value (listed item value)
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By calculating each line item and then adding freight and insurance value into one specific line item
Q7: How do you show the different values for additions in the SAD entry	Provide two separate values for the freight and insurance costs
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	None of the above
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	No

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

Other (please specify)
Bad question as there is no option to choose between the 2 mentioned. Changing incoterms do not simplify nor complexes the process as there are multiple possible additives such as royalties, TP agreements in case of inter-company prices (CIT issue) etc.


Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Other (please specify)
Ag9ian; Changing incoterms do not simplify nor complexes the process as there are multiple possible additives such as royalties, TP agreements in case of inter-company prices (CIT issue) etc.

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Other (please specify)
No use as calculation Customs value is no rocket science if you look at it from a bare legal perspective

#6 **COMPLETE**



Collector: EUResearchquestions (Web Link)
Started: Monday, December 15, 2014 9:06:44 AM
Last Modified: Monday, December 15, 2014 9:17:51 AM
Time Spent: 00:11:06

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Compliance Manager
Q2: Please provide your EU Location	UK
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Other please comment further below Our broker is usually an arm of teh carrier sohas access to freight rates applied. In rare circumstances UK Customs provide figures and calculations for all freight modes to be used where no other evidence is available. Including certain inland charges for VAT etc.
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	Other (please specify) We have global goods in transit insurance. The percentage is hardcoded into our custom software to calculate based on the C&F prices plus 10%. Broker cannot alter this rate and it declares on everything we import.
Q5: If a formula is used to calculate the insurance value do you	Other (please specify) C&F +10%
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	Other (please specify) Data returned by HMRC in the UK gives a full breakdown. Assuming (a big assumption!) the HS and Oriin are corect then the duty rate will be accurate. We do not calculate ourselves. We do perform post import verifications and we do check HS and COO.
Q7: How do you show the different values for additions in the SAD entry	Other (please specify) Two separate values are required to be declared by UK Customs software (CHIEF). However UK Customs would accept one value if there was a worksheet attached showing the breakdown / calculation.

Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice

Other (please specify)
N/A but as the importer we control what is declared by our brokers (not the norm I would add) and there is normally no problem in any of this - the data is usually readily available and is readily declared on the customs import entry.

Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes

Yes

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

Other (please specify)
I don't think it would make a lot of difference in the UK - as someone who has worked in Customs, Logistics and as a manufacturer / Importer / Exporter this has never been an issue in the UK. Using an FOB value has obvious benefits in reduced duty/tax costs but in terms of time/cost saving for import brokerage there is very little to be had.


Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Respondent skipped this question

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Other (please specify)
I think it only works if FOB is the norm (i.e. pushing FOB into the EU). Pushing the CIF requirement on the USA would inevitably lead to more confusion and work. I honestly don't expect any alignment any time soon.

#7 **COMPLETE**



Collector: EUResearchquestions (Web Link)
Started: Monday, December 15, 2014 9:09:12 AM
Last Modified: Monday, December 15, 2014 9:18:57 AM
Time Spent: 00:09:45

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Compliance Manager
Q2: Please provide your EU Location	UK
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Other please comment further below The freight costs are usually on the airwaybill or bill of lading or are invoiced by a third party. If the costs cannot be found then the Customs broker will find a rate from a carrier. This is usually ok in most MS but in some of the EU Eastern countries their Customs are a bit more specific about what evident they require.
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	Other (please specify) Goods do not have to be insured so based on the Incoterms is the 'I' insurance is not in the term then the assumption is that the goods are not insured which is perfectly acceptable. If there is just one price for CIF then the individual costs do not have to be separated out.
Q5: If a formula is used to calculate the insurance value do you	Apply the formula to the goods value (listed item value)
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By dividing the freight and insurance values across each line item then calculate final dutiable amount by line
Q7: How do you show the different values for additions in the SAD entry	Other (please specify) Depending on how the costs are presented on the invoice either of the above could be used.
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	<i>Respondent skipped this question</i>

Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes

Other (please specify)
Yes, either though there maybe no Customs duty due there is likely to be Import VAT (Tax)

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

yes

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Other (please specify)
As mentioned above some Eastern EU countries are more strict about what evidence they will accept when the costs are not included on the invoice.

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Other (please specify)
I don't feel that the opposing methods create any challenges as there are the processes to deal with the cost but it would be a lot easier if the FOB valuation was introduced in the EU.

#8

COMPLETE



Collector: EUResearchquestions (Web Link)
 Started: Monday, December 15, 2014 9:48:42 AM
 Last Modified: Monday, December 15, 2014 9:54:33 AM
 Time Spent: 00:05:51

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Law Specialist
Q2: Please provide your EU Location	Germany
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Other please comment further below Organisational solution necessary that correct and complete freight invoice is available at time of importation - which is a real challenge !
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	By using a formula
Q5: If a formula is used to calculate the insurance value do you	Apply the formula to the goods value (listed item value)
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By dividing the freight and insurance values across each line item then calculate final dutiable amount by line
Q7: How do you show the different values for additions in the SAD entry	Provide two separate values for the freight and insurance costs
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	Other (please specify) Information must be available at time of importation
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	Yes

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

Other (please specify)
YES, definitely. freight invoices are not required at time of importation.


Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Other (please specify)
Customs valuation is not executed identically throughout the member states - this is a result of a study done by PWC on behalf of the European commission !!!

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Other (please specify)
I am in favour of harmonisation with a clear priority to the FOB - method. It is easier to manage, it excludes security fees from customs valuation (for which we have to pay duties here) and it would reduce the duties to be paid (a good compensation for the costs and efforts arising by supply chain security measures).

#9 **COMPLETE**



Collector: EUResearchquestions (Web Link)
 Started: Monday, December 15, 2014 10:17:25 AM
 Last Modified: Monday, December 15, 2014 10:26:35 AM
 Time Spent: 00:09:09

PAGE 1: The CIF Duty appraisement process for EU customs entries

Q1: Please provide your job function	Trade Compliance Manager
Q2: Please provide your EU Location	Germany
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Other please comment further below If the invoice and our system is stating CIF we will not add costs. If the invoice/System is stating CFR we add Insurance costs (fix % because we have an policy for all our transports). If the invoice is stating FOB or EXW we will add the actual transport costs (we are freightpayer) and insurance costs.
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	By using a formula, Other (please specify) We do have an general insurance policy for all our products
Q5: If a formula is used to calculate the insurance value do you	Apply the formula to the goods value (listed item value)
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By dividing the freight and insurance values across each line item then calculate final dutiable amount by line
Q7: How do you show the different values for additions in the SAD entry	Provide two separate values for the freight and insurance costs
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	None of the above

Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes

Yes

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

Other (please specify)
in this case you have to extract the transport/insurance costs if you have CIF delivery and only transport costs if CFR is stated. In general the import duty will be lower as the import duty (mostly) is calculated over the value.

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Harmonization between the two methods would benefit trade processes between the EU and US

#10

COMPLETE



Collector: EUResearchquestions (Web Link)
 Started: Monday, December 15, 2014 11:25:38 AM
 Last Modified: Monday, December 15, 2014 11:30:40 AM
 Time Spent: 00:05:01

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Customs Clearance Import / Freight Agent
Q2: Please provide your EU Location	Sweden
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	By contacting the carrier (if different to import broker)
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	By using a formula
Q5: If a formula is used to calculate the insurance value do you	Apply the formula to the goods value (listed item value)
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By dividing the freight and insurance values across each line item then calculate final dutiable amount by line
Q7: How do you show the different values for additions in the SAD entry	Provide one additional value which includes freight and insurance
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	Calculating the additional freight cost
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	Yes

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

Other (please specify)
Both methods have its' challenges depending of the Incoterms used. Therefore it sill not simplify nor complicate the clearance process.

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Harmonization between the two methods would benefit trade processes between the EU and US

#11

COMPLETE



Collector: EUResearchquestions (Web Link)
 Started: Monday, December 15, 2014 12:35:03 PM
 Last Modified: Monday, December 15, 2014 12:47:22 PM
 Time Spent: 00:12:19

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Law Specialist
Q2: Please provide your EU Location	Belgium
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Other please comment further below air freight: formula in Annex 25 CCIP postal freight: Art. 165 CCIP other: as declared and possibly controled
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	Assume this is factored into the goods value based upon the incoterms provided , Other (please specify) as declared and possibly controled
Q5: If a formula is used to calculate the insurance value do you	<i>Respondent skipped this question</i>
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	Other (please specify) divided by weight
Q7: How do you show the different values for additions in the SAD entry	Provide two separate values for the freight and insurance costs
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	None of the above
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	Other (please specify) you forgot the Import VAT aspect

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

Other (please specify)
I don't know what type of problems are related to fob customs valuation


Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Other (please specify)
there are more difficult problems around customs valuation than cif or fob, e.g. royalties

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

I am only involved in EU Customs entries

#12 **COMPLETE**



Collector: EUResearchquestions (Web Link)
Started: Monday, December 15, 2014 12:38:17 PM
Last Modified: Monday, December 15, 2014 12:51:18 PM
Time Spent: 00:13:00

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Compliance Manager
Q2: Please provide your EU Location	Spain
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	By contacting the seller / shipper
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	By contacting the seller
Q5: If a formula is used to calculate the insurance value do you	Apply the formula to the goods value (listed item value)
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By dividing the freight and insurance values across each line item then calculate final dutiable amount by line
Q7: How do you show the different values for additions in the SAD entry	Provide one additional value which includes freight and insurance
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	Knowing which line item to apply the additions too Calculating the freight and insurance if it is not listed
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	No

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

yes

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Harmonization between the two methods would benefit trade processes between the EU and US

#13

COMPLETE



Collector: EUResearchquestions (Web Link)
 Started: Monday, December 15, 2014 2:18:44 PM
 Last Modified: Monday, December 15, 2014 2:21:20 PM
 Time Spent: 00:02:35

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Law Specialist
Q2: Please provide your EU Location	Ireland
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Other please comment further below By reference to the AWB of manifest
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	By using a formula
Q5: If a formula is used to calculate the insurance value do you	Apply the formula to the goods value (listed item value)
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By dividing the freight and insurance values across each line item then calculate final dutiable amount by line
Q7: How do you show the different values for additions in the SAD entry	Provide two separate values for the freight and insurance costs
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	None of the above
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	No

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process


yes

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Harmonization between the two methods would benefit trade processes between the EU and US

#14		<p>COMPLETE</p> <p>Collector: EUResearchquestions (Web Link) Started: Monday, December 15, 2014 7:23:29 PM Last Modified: Monday, December 15, 2014 7:31:53 PM Time Spent: 00:08:23</p>
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PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Other (please specify) import-export & trade compliance specialist in Switzerland, EU is not only the European Union, but exists also *Switzerland, Lichtenstein, Norway, Island, ...*, for point 2 should at least have set *other countries*
Q2: Please provide your EU Location	Italy
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Assume this is factored into the goods value based upon the incoterms provided and make no addition
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	Assume this is factored into the goods value based upon the incoterms provided
Q5: If a formula is used to calculate the insurance value do you	<i>Respondent skipped this question</i>
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	Other (please specify) all depend of the incoterm... if incoterms D... then nothing to add
Q7: How do you show the different values for additions in the SAD entry	Provide one additional value which includes freight and insurance
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	None of the above

Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes

Other (please specify)
all depend the incoterm... customs is asking for F or C incoterms to add the transport costs to the main position

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

Other (please specify)
FOB is not any more to be use !!!!!

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Other (please specify)
all depending on the incoterms that are used

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Other (please specify)
US should stop doing anything else as the rest of the world Incoterms 2010 have been ratified by most of the countries, it can be used by USA too.... FOB doesn't mean anything and can only be used in the sea travel but not intermodal...

#15



COMPLETE

Collector: EUResearchquestions (Web Link)
 Started: Tuesday, December 16, 2014 8:15:43 AM
 Last Modified: Tuesday, December 16, 2014 8:21:13 AM
 Time Spent: 00:05:29

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Compliance Manager
Q2: Please provide your EU Location	Italy
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	By contacting the carrier (if different to import broker)
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	By using a formula
Q5: If a formula is used to calculate the insurance value do you	Apply the formula to the goods value (listed item value)
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By dividing the freight and insurance values across each line item then calculate final dutiable amount by line
Q7: How do you show the different values for additions in the SAD entry	Provide one total value that includes, goods plus freight plus insurance
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	None of the above
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	Yes

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

yes

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Harmonization between the two methods would benefit trade processes between the EU and US

#16

COMPLETE



Collector: EUResearchquestions (Web Link)
 Started: Tuesday, December 16, 2014 6:05:12 PM
 Last Modified: Tuesday, December 16, 2014 6:42:37 PM
 Time Spent: 00:37:24

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Trade Law Specialist
Q2: Please provide your EU Location	Germany
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Other please comment further below you have to submit an invoice of the carrier ! In exceptional cases you can provide the carriers tariff. Otherwise the costs will be estimated until you provide the previously mentioned documents.
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	By using a formula, Other (please specify) 0,5% of the c&F value will be accepted as a norm.
Q5: If a formula is used to calculate the insurance value do you	Other (please specify) 0,5% of the c&f value will be accepted as a norm.
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	Other (please specify) a) freight: you can either add the freight to that line article which is burdened with the highest amount of duty or add the proportionate amount which has to be calculated by the basis the freight contact provides. b) insurance: like a) or 0,5% clause (but never less than real payed) c) the price of the goods must be the invoice price ALSO IN SPECIAL CASES you can ask to classify all goods under that HTS Tarriff Codes providing the highest Import duties
Q7: How do you show the different values for additions in the SAD entry	Provide two separate values for the freight and insurance costs

Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice

Other (please specify)
A missing freight invoice is very seldom, because the importer knows that he has to submit it to proof the freight. For insurance see above (0,5% clause). So there is no challenge in the calculation because it is normal work.

Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes

Other (please specify)
No, but a SAD is also not to provide.

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process

No

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Other (please specify)
No, both parties know their trade. Importers and exporters will consider it in their contracts as well as in their calculation. The IT will also provide methods of calculation

#17

COMPLETE



Collector: EUResearchquestions (Web Link)
 Started: Wednesday, December 17, 2014 9:21:59 AM
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 Time Spent: 00:09:23

PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Customs Clearance Import / Freight Agent
Q2: Please provide your EU Location	France
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	By contacting the seller / shipper
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	It is not added if not provided
Q5: If a formula is used to calculate the insurance value do you	<i>Respondent skipped this question</i>
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By calculating each line item and then adding freight and insurance value into one specific line item
Q7: How do you show the different values for additions in the SAD entry	Provide two separate values for the freight and insurance costs
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	None of the above
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	Yes

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process


No

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

Harmonization between the two methods would benefit trade processes between the EU and US

<p>#18</p> 	<p>COMPLETE</p> <p>Collector: EUResearchquestions (Web Link) Started: Wednesday, December 17, 2014 9:53:39 AM Last Modified: Wednesday, December 17, 2014 10:05:24 AM Time Spent: 00:11:44</p>
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PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Customs Clearance Import / Freight Agent
Q2: Please provide your EU Location	Romania
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	Other please comment further below A freight invoice should be provided, or the importer will have to demonstrate that the cost of freight is included in the value of goods shown in the proforma (by mails with the exporter/sender and with a copy of the export customs declaration, in which should be mentioned a term of delivery which included freight expenses).
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	It is not added if not provided
Q5: If a formula is used to calculate the insurance value do you	<i>Respondent skipped this question</i>
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By dividing the freight and insurance values across each line item then calculate final dutiable amount by line
Q7: How do you show the different values for additions in the SAD entry	Provide two separate values for the freight and insurance costs
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	None of the above

Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes

Other (please specify)

The answer is yes, but I want to explain it. Not only that the customs value is changing, but in Romania VAT is paid in the moment of the import, so, even if the duties are zero, the VAT reflects the customs value (freight and insurance included).

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process


yes

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU

Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB)

I am only involved in EU Customs entries

#19		<p>COMPLETE</p> <p>Collector: EUResearchquestions (Web Link) Started: Monday, December 22, 2014 10:20:02 AM Last Modified: Monday, December 22, 2014 10:23:51 AM Time Spent: 00:03:48</p>
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PAGE 1: The CIF Duty appraisalment process for EU customs entries

Q1: Please provide your job function	Customs Officer
Q2: Please provide your EU Location	Netherlands
Q3: When a commercial / proforma invoice does not contain a value for freight charges, how is the freight cost calculated to add to the final import value on the SAD?	It is not added if not provided
Q4: When a commercial / proforma invoice does not contain a value for insurance costs, how is the insurance value calculated to add to the final import value on the SAD?	It is not added if not provided
Q5: If a formula is used to calculate the insurance value do you	Apply the formula to the goods value (listed item value)
Q6: When a commercial invoice / proforma invoice contains multiple line items, with multiple HTS Tariff Codes all containing different import duty rates, how is the final duty amount calculated	By calculating each line item and then adding freight and insurance value into one specific line item
Q7: How do you show the different values for additions in the SAD entry	Provide two separate values for the freight and insurance costs
Q8: As a customs clearance broker what do you see as the biggest challenge with the process of adding freight and insurance into a declaration when it has not been provided on the shipment invoice	None of the above
Q9: If a shipment contains only zero rated products with no need to calculate a duty amount do you still add the freight and insurance costs in for statistical purposes	Yes

Q10: Do you think an FOB type model for duty calculation would simplify the import clearance process or create more complexity around the customs clearance process yes

Q11: Please feel free to add any additional comment around the import clearance process related to the calculation of duty on entry into the EU Nothing further to add - it is a straight forward process to add freight and insurance into duty calculations

Q12: Do you think that the opposing methods of FOB and CIF create any challenges for your business in relation to trade between the two trading blocks of the EU (CIF) and the US (FOB) I am only involved in EU Customs entries