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NOTE

From:	Italian Delegation
To:	Customs Cooperation Working Party
No. prev. doc.:	17778/2/13 REV 2
Subject:	Action 7.7 "To analyse the problem of underevaluation from the point of view of the possible involvement of organised crime in this type of fraud, to evaluate existing tools and best practices to counter this phenomenon (legal/operational) and to propose adoption of new ones if needed" - Final Report

Delegations will find in the annex the revised version of the Final Report on Action 7.7 (To analyse the problem of undervaluation from the point of view of the possible involvement of the organized crime in this type of fraud, to evaluate existing tools and best practices to counter this phenomenon (legal/operational) and to propose adoption of new ones if needed. This report is sent for adoption by written procedure **with the deadline 10 April 2015**. The latest changes are highlighted in the annex in underlined text.

Background

The aim of Action 7.7 of the CCWP was to "analyse the problem of undervaluation from the point of view of the possible involvement of organised crime in this type of fraud, to evaluate existing tools and best practices to counter this phenomenon (legal/operational) and to propose adoption of new ones if needed".

To achieve that aim, every MS received a specific questionnaire prepared by delegates participating in Action 7.7. The draft questionnaire was discussed by delegates of the participating MS together with OLAF at a meeting held in Rome in April 2014.

The questionnaire about undervaluation dealt with three main areas:

1. cooperation among MS, between MS and third countries, and between MS and national administrations (revenue administration, law enforcement agencies);
2. risk analysis models used to tackle undervaluation, and how cases of undervaluation are considered under national law when discovered;
3. how many cases of undervaluation have been discovered, with a specific focus on organised crime.

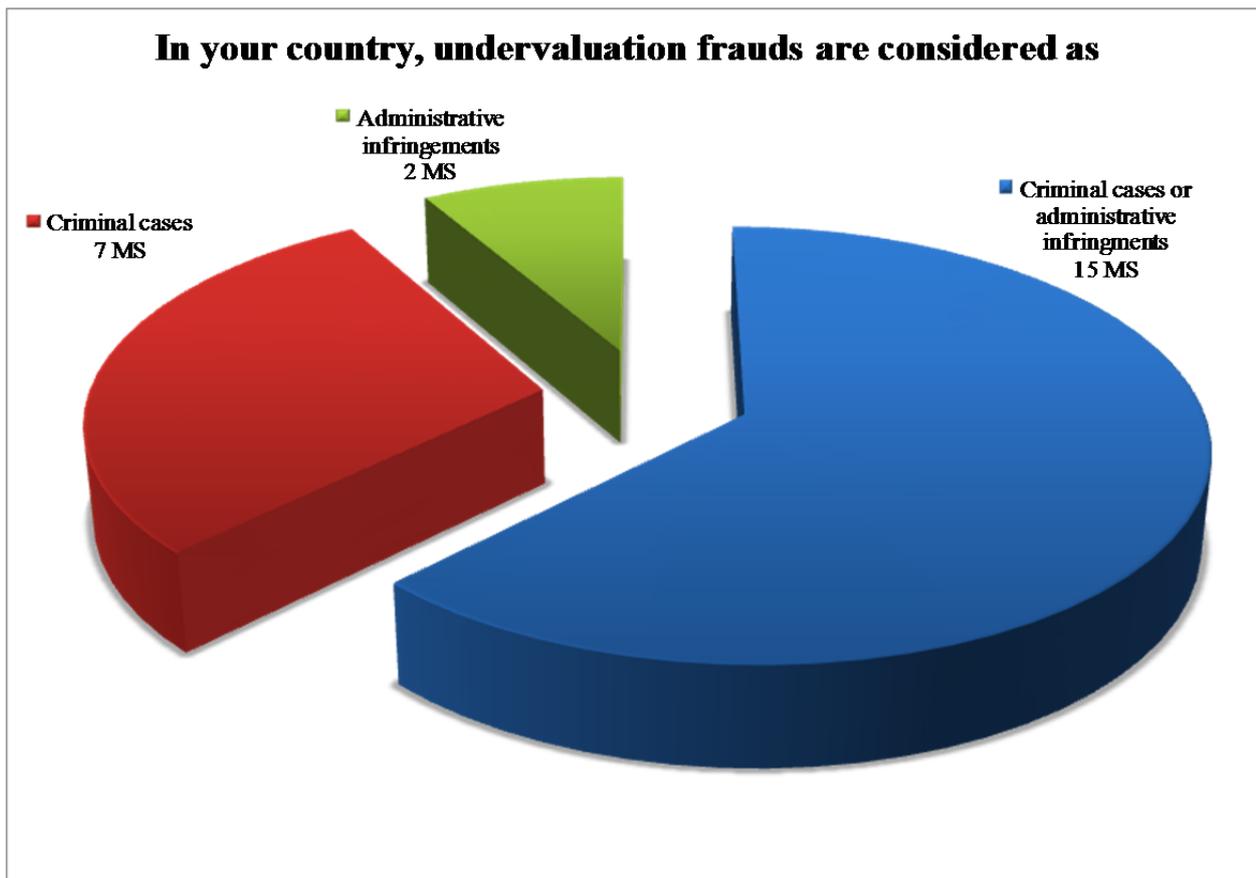
The initial results of the replies were presented at the CCWP meeting in June 2014. They are now presented here in more detail, also taking into account the results of JCO SNAKE, organised by OLAF, which were presented at the Mutual Assistance Committee meeting in November 2014.

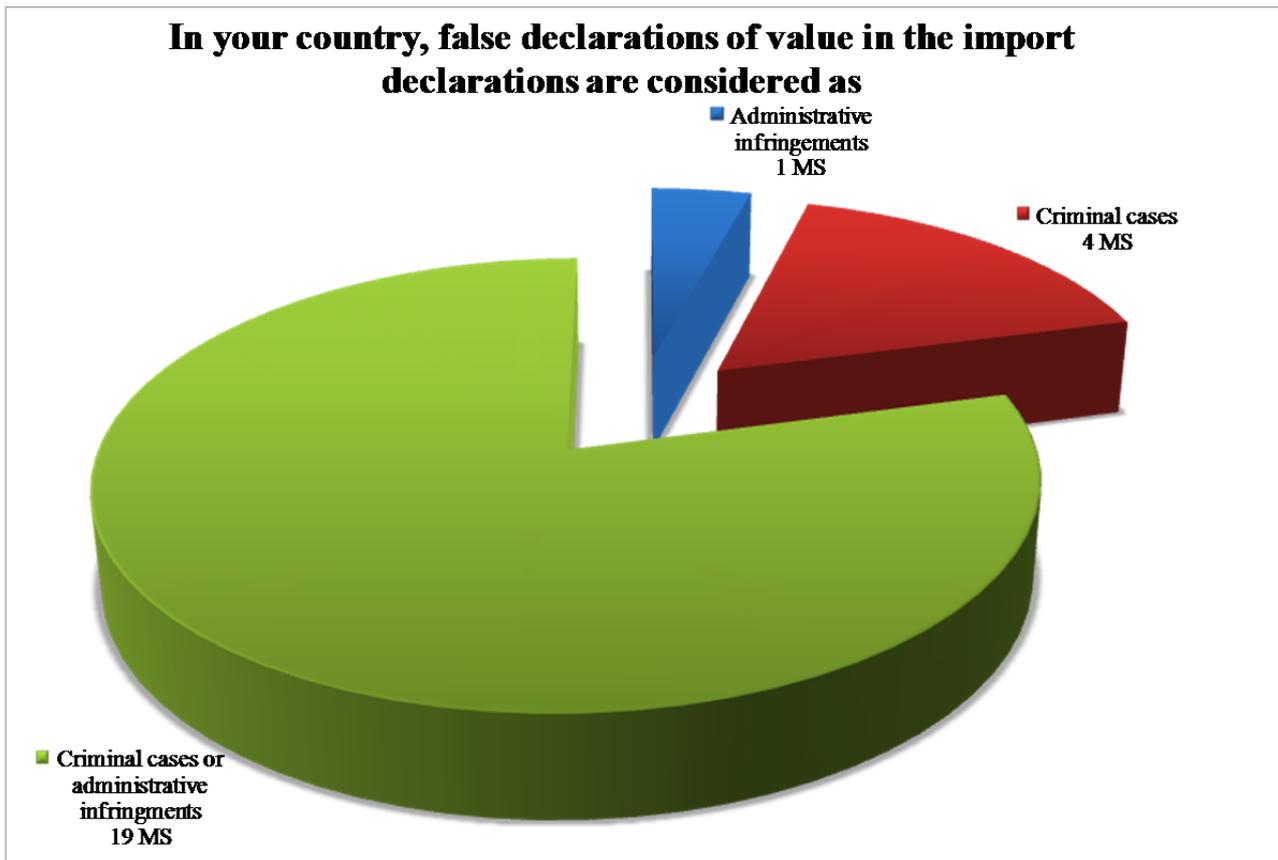
Analysis of replies to the questionnaire

First of all, only six MS have an ad hoc unit that deals with undervaluation. In the national legislation of most MS, cases of undervaluation are considered either as criminal cases or as administrative infringements, depending on a number of factors such as VAT and duties lost, fake documents and the presence of criminal proceedings.

Regarding cooperation, which is one of the key aspects of the mandate, most MS frequently share information within the EU and with third countries. Cooperation within the EU is mostly achieved using mutual administrative assistance and the Naples II Convention, on a case-by-case basis. Cooperation between MS and third countries primarily takes the form of administrative assistance, although it should be stressed that seven MS answered that they do not ask third countries for information.

Regarding cooperation with national revenue administrations, ten MS said that they rarely share information with those administrations. Ensuring that customs and revenue administrations cooperate in the fight against undervaluation can be seen as important for the future because customs smuggling through undervaluation continues in the supply chain and also causes huge losses in tax revenue. Moreover, 13 MS have not signed any agreements with other law enforcement agencies on tackling undervaluation.



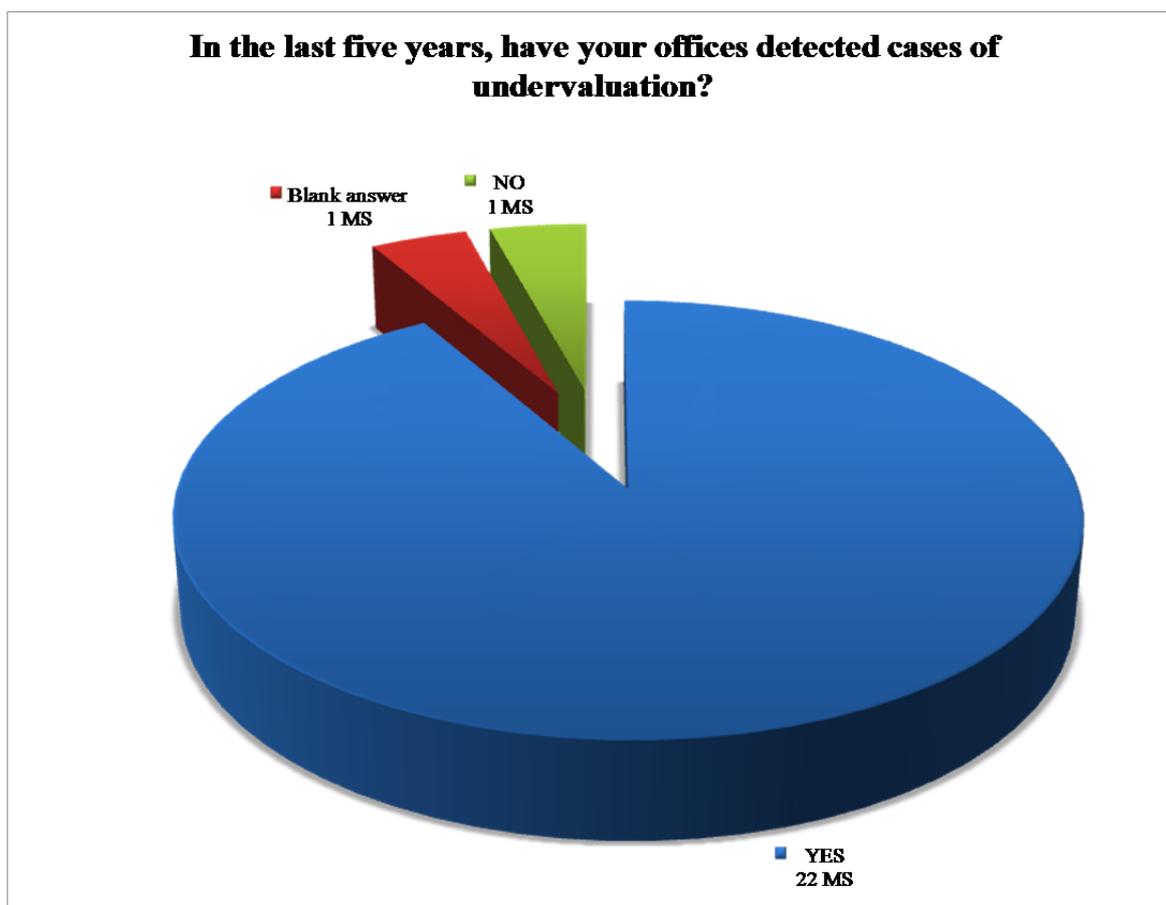


Regarding the general risk analysis system for tackling undervaluation, MS declared that they use risk profiles which select low-value consignments, check the means of payment at import and in post-clearance controls and, in suspicious cases, ask for guarantees. However, even though China is considered the highest risk in terms of the origin of undervaluation, most MS do not check the average value declared at import for goods flowing from China, although they monitor possible distortions in flows. Most MS answered that regimes 40 and 42 are the most affected by undervaluation cases.

That means that some MS have perhaps not implemented sufficient measures to identify "risky threshold values" leading to "targeted" physical and documentary checks, and that control selections in those countries – where there is no specific operational model in place – may represent only a fraction of the actual number of cases within the same "framework of risk".

Question 23 of the questionnaire focused on the possible relation between import declarations and intra-community acquisitions. Here, 14 MS said that they have not seen a decrease in import declarations with China as the country of origin or an increase in acquisitions.

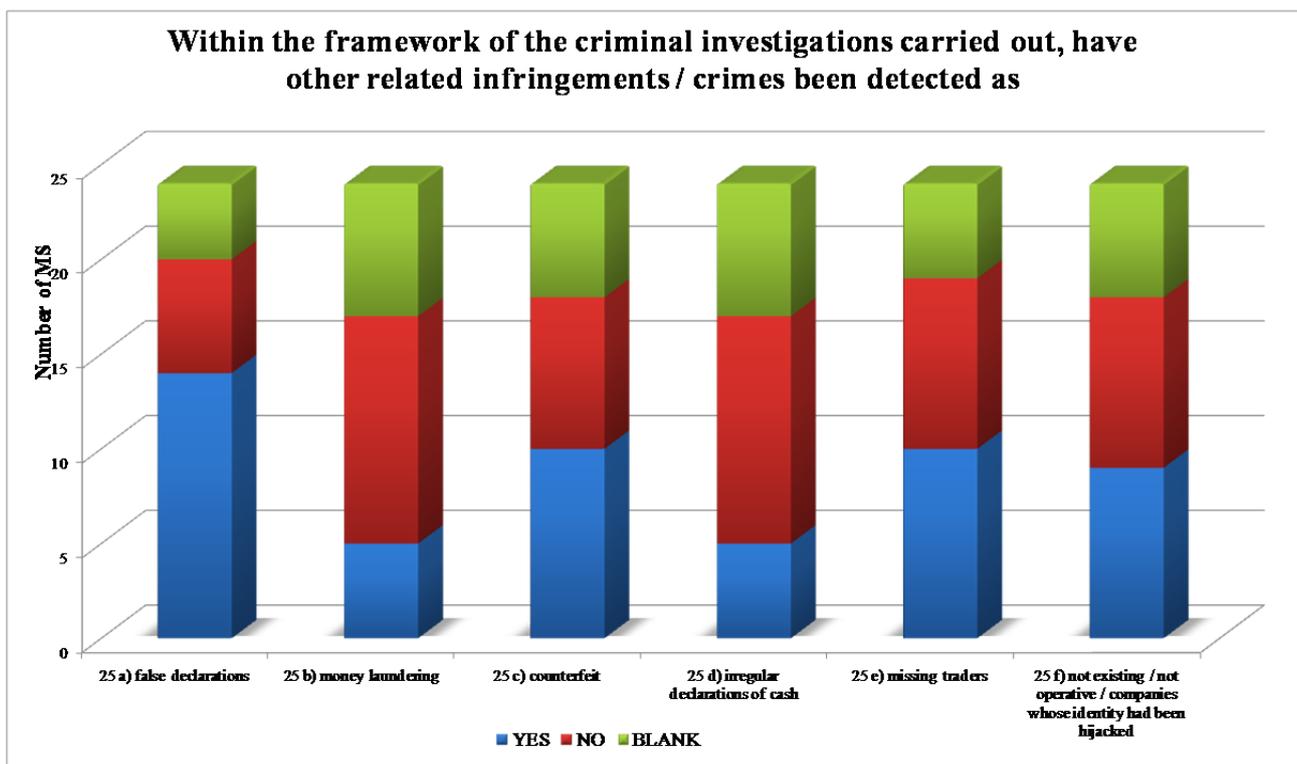
The second part of the questionnaire focused on undervaluation cases. Twenty-two MS declared that they have encountered undervaluation cases, one MS declared it did not encounter undervaluation cases and another MS did not reply to the question. Questions regarding how many undervaluation cases have been detected and if these cases were criminal or not have been answered only by 10 MS (the other 14 MS left the answer space blank).

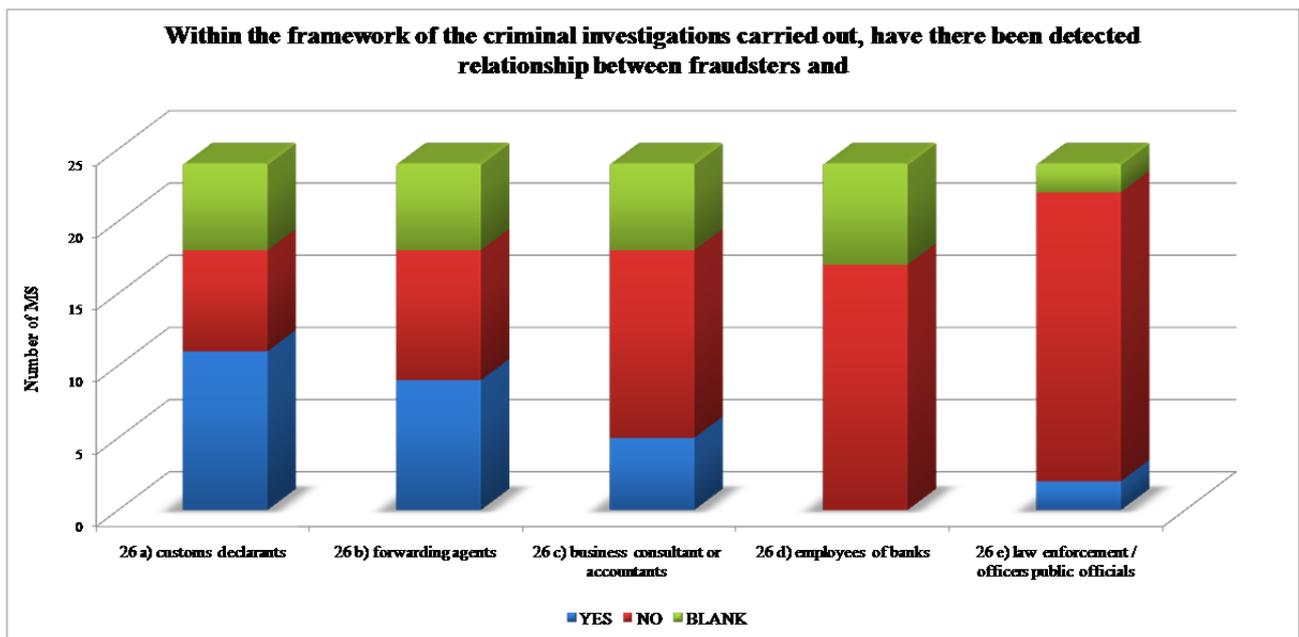


Going more in depth, eight Member States have detected undervaluation cases with criminal relevance and three have detected undervaluation cases with criminal relevance involving organised crime. Data on undervaluation cases with criminal relevance should be read taking into account several factors:

- the lack of data collected at national level or differences in willingness to share data;
- differences in national legislation (whether undervaluation is treated as a criminal offence or not);

False declarations, counterfeit and missing traders are the infringements connected most frequently with undervaluation. In this sense, 14 MS have found false declarations, while 9 MS have not; 10 MS have found counterfeit, while 8 Member States have not; 10 MS have found missing traders, while 9 Member States have not. Regarding professional operators, 11 MS replied that customs declarants were involved in cases of undervaluation, while 7 MS have replied that this was not the case. Moreover, 9 MS have found forwarding agencies involved in criminal investigation of undervaluation.





Conclusions

The fact that 22 MS declared that they have encountered undervaluation cases and that during JCO SNAKE, over a one month period, OLAF and the participating customs authorities detected more than 1,500 containers where the declared customs value was heavily undervalued can confirm that undervaluation fraud has a European dimension. Undervaluation implies:

- the loss of millions of euros in budget resources for the Union, in terms of duties, VAT and related income tax, increased by the effects of black market mechanisms. As shown during JCO SNAKE, whose operative phase lasted one month, EU and national authorities prevented losses of over €80 million in customs duties;
- damage to fairness on the EU market due to the infiltration of thousands of companies committing customs and tax violations in key sectors of European trade, primarily affecting commodities such as clothing, textiles, footwear, bags and fabrics;
- the circulation of illicit financial resources by means of untracked payments or by using cash couriers to physically move capital across borders;

- the presence of organised crime in the management of huge flows of under-invoiced goods originating in China, due to the possibility of earning high profits (with low risk of being discovered), financing illicit activities and laundering illicit gains.

At the same time, analysis of the questionnaire highlighted significant differences as regards the sensitivity of instruments used by customs to tackle undervaluation, because:

- most countries carry out checks on the declared value both at the time of import and in the post-clearance audit but, although China was indicated as the major third-country risk for under-invoicing, many MS reported that they do not specifically monitor the average value of at-risk goods imports of Chinese origin;
- most countries do not perform any analysis on flow distortions between MS and do not link flows distortions and transfer of cash from one EU country to another

Recommendations

In addition to those shown by PCA "Discount" and JCO SNAKE (i.e. on the high risk of "MS shopping" and the importance of cooperation with China), the results of the analysis point to the need for further steps, such as:

- adopting selective and logical priorities for monitoring flows at greater risk of fraud and monitoring distortions of flows in a more efficient way;
- exploring possibilities and ways to strengthen information exchange with third countries such as China;
- improving cooperation between customs and tax authorities in all MS affected by undervaluation so as to increase cooperation in the fight against fraud with own resources, tax evasion and money laundering;
- improving cooperation between customs and law enforcement agencies involved in hindering the interests of organised crime in international trade;

- to reinforce the cooperation and accelerate the obtaining of requested information from risk states (third states) and also from MS which are the entry points of import of goods through MAA and Naples II Convention with aim to fight effectively against evasion of customs and duties.
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