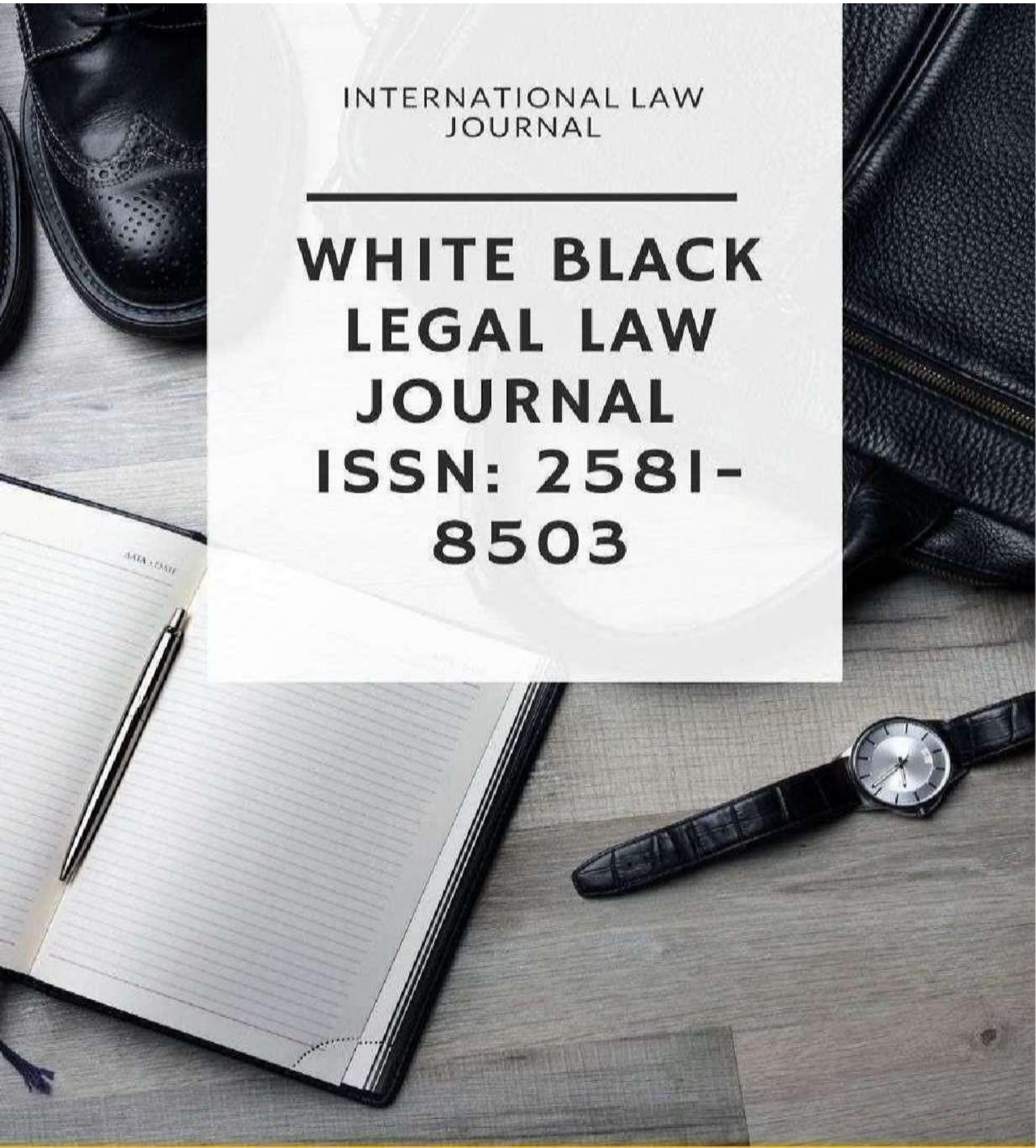

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DETERMINANTS AND TYPES OF TRADE MISINVOICING

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Abstract

Trade misinvoicing, or just misinvoicing, is the practice of falsely declaring or misrepresenting the entire value of a specific commercial transaction exchange to illegally transfer substantial sums of money over national borders. The trade-based money laundering method known as "sleight of hand" is carried out by the offenders using a falsely completed invoice that they present to customs. Among the many illicit financial outflows that international organizations track, trade misinvoicing is one of the most significant ones.[1] Falsified trade invoices create an annual gap of around US$800 billion in the value of global goods shipped, posing reputation, business, and compliance risks for banks involved in international trade. According to research conducted by Global Financial Integrity (GFI), a think tank specializing in tracking illicit cross-border financial flows, this discrepancy in the value of traded goods amounts to US$8.8 trillion over the past decade, with the gap reaching US$817.6 billion in 2017[2]. Global Financial Integrity (GFI) states that over- or under-invoicing in trade facilitates illegal activities such as tax evasion, capital flight, corruption, and money laundering. Additionally, this practice leads to significant revenue losses for customs departments in developing nations.

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[1] Herold Financial Dictionary, https://www.financial-dictionary.info/terms/trade-misinvoicing/ , (last visited Feb 20, 2024).

[2] Global Trade Review, https://www.gtreview.com/news/global/trade-misinvoicing-a-real-and-immediate-liability/ , (last visited Feb 20, 2024)

Introduction

Trade misinvoicing is a pervasive issue in international trade, with significant implications for economies, governments, and businesses worldwide. It involves the deliberate misrepresentation of the value, quantity, or quality of goods on invoices submitted to customs authorities. This practice can take various forms, including over-invoicing and under-invoicing, and is driven by a complex interplay of economic, regulatory, and institutional factors. Understanding the determinants and types of trade misinvoicing is crucial for policymakers, researchers, and businesses seeking to address this challenge effectively. [3]Trade misinvoicing is a complex phenomenon driven by a combination of economic, regulatory, and institutional factors. Addressing this challenge requires a comprehensive understanding of its determinants and types, as well as coordinated efforts to strengthen customs controls, enhance transparency, and improve international cooperation.

Determinants of trade misinvoicing

The determinants of trade misinvoicing are diverse and reflect a complex interplay of economic, regulatory, and institutional elements that shape the occurrence and scale of misinvoicing in global trade. One key determinant is the level of corruption within a country, as corrupt practices can facilitate and incentivize misinvoicing schemes. Additionally, the effectiveness of customs controls plays a crucial role, as weak controls can make it easier for traders to manipulate invoices. The complexity of trade regulations is another factor, as overly complex rules can create opportunities for misinvoicing. Furthermore, the presence of tax incentives for exporters or importers can motivate misinvoicing to take advantage of these benefits. Understanding these determinants is essential for policymakers and researchers aiming to develop effective strategies to combat trade misinvoicing and its detrimental effects on economies and society. There are mainly four primary determinants of trade misinvoice :[4]

[3] Meenakshi Rishi, and James K. Boyce. "The Hidden Balance of Payments: Capital Flight and Trade Misinvoicing in India, 1971-1986." Economic and Political Weekly, vol. 25, no. 30, 1990, pp. 1645–48. JSTOR, http://www.jstor.org/stable/4396560. Accessed 5 Mar. 2024.

[4] Bhagwati, Jagdish N. "Alternative Theories of Illegal Trade: Economic Consequences and Statistical Detection." Weltwirtschaftliches Archiv, vol. 117, no. 3, 1981, pp. 409–27. JSTOR, http://www.jstor.org/stable/40438952. Accessed 5 Mar. 2024.

1. **Money Laundering**

Money laundering can be facilitated through trade misinvoicing, a process where the value of goods and services is deliberately misrepresented on invoices submitted to customs. This practice allows criminals to move illicit funds across borders, disguising their origin and integrating them into the legitimate economy.One way this works is through over-invoicing. A criminal organization might sell goods to a legitimate business in another country at an inflated price. The excess payment is then returned to the criminal organization through a complex web of transactions, making the illicit funds appear legitimate profits from trade.

Under-invoicing is another common tactic. Here, the criminal organization might export goods but declare a lower value on the invoice. The difference in value is then transferred back to the criminal organization, again disguising the origin of the funds.Trade misinvoicing is attractive to money launderers due to its relatively low risk compared to other methods. The movement of goods across borders is a legitimate part of global commerce, making it easier to disguise illicit financial flows. Furthermore, the sheer volume of international trade makes it difficult for authorities to detect every instance of misinvoicing. To combat trade misinvoicing for money laundering, countries need to strengthen their customs controls, enhance cross-border cooperation, and improve the transparency of financial transactions. These efforts can help disrupt the illicit financial flows that fuel criminal activities and threaten the integrity of the global financial system. [5]

2. **Evasion of Customs duties and taxes:**[6]

Trade misinvoicing is often used as a tool for directly evading taxes and customs duties. By manipulating the value of goods on invoices, individuals and companies can reduce the amount of taxes and duties they are required to pay, thereby increasing their profits. This practice can have significant impacts on government revenue and can also distort trade statistics and economic indicators.

One common method of tax evasion through trade misinvoicing is under-invoicing. In this scenario,

[5] Africa Centre for Energy Policy. "ILLICIT FLOWS: MEANING AND MEASUREMENT." ILLICIT FINANCIAL FLOWS AND THE EXTRACTIVE INDUSTRY IN GHANA, Africa Centre for Energy Policy, 2015, pp. 5–10. JSTOR, http://www.jstor.org/stable/resrep31198.5. Accessed 5 Mar. 2024.

[6] Swenson, Deborah L. "Tax Reforms and Evidence of Transfer Pricing." National Tax Journal, vol. 54, no. 1, 2001, pp. 7–25. JSTOR, http://www.jstor.org/stable/41789532. Accessed 5 Mar. 2024.

importers or exporters intentionally declare a lower value for goods on invoices submitted to customs. By doing so, they can reduce the amount of customs duties, value-added tax (VAT), and other taxes payable on the transaction. The difference between the true value of the goods and the invoiced value is then typically transferred through illicit channels, allowing the evader to benefit financially.

Over-invoicing is another tactic used to evade taxes and duties. In this case, the value of goods is intentionally inflated on invoices, leading to an overstatement of expenses or costs. This can be used to reduce taxable income, thereby lowering the amount of corporate income tax owed. Similar to under-invoicing, the excess payment is often funneled back to the evader through illicit means.[7]

The use of trade misinvoicing for tax evasion is not limited to a particular industry or country. It can occur in both developed and developing economies, and it can involve a wide range of goods and services. To combat this problem, countries need to strengthen their customs controls, improve their ability to detect misinvoicing, and enhance international cooperation. These efforts can help to protect government revenue, promote fair competition, and ensure the integrity of the global trade system.

3. **Claiming Tax Incentives from the state**

Over-reporting exports, also known as over-invoicing, can be used as a means to claim tax incentives or benefits that are tied to export activities. By inflating the value of exports on invoices, individuals and businesses can artificially increase their eligibility for these incentives, which are often based on the value or volume of exports.

One common form of tax incentive linked to exports is tax rebates or refunds on export-related taxes, such as value-added tax (VAT) or sales tax. In some countries, exporters are eligible to receive a refund of the VAT or sales tax paid on inputs used in the production of exported goods. By over-invoicing exports, exporters can inflate the amount of tax they claim to have paid on inputs, thereby increasing the amount of refund they receive.

Another form of tax incentive tied to exports is preferential tax treatment for export earnings. Some

[7] BROMLEY, MARK, et al. MEASURING ILLICIT ARMS AND FINANCIAL FLOWS: IMPROVING THE ASSESSMENT OF SUSTAINABLE DEVELOPMENT GOAL 16. Stockholm International Peace Research Institute, 2019. JSTOR, http://www.jstor.org/stable/resrep24428. Accessed 5 Mar. 2024.

countries offer reduced tax rates or tax holidays for income derived from exports. By over-reporting export earnings, businesses can increase the amount of income they claim to have earned from exports, potentially reducing their overall tax liability.[8]Over-reporting exports to claim tax incentives is not without risks. Tax authorities are increasingly using data analytics and risk assessment techniques to detect misinvoicing and other forms of tax evasion. Countries can combat this form of trade misinvoicing by implementing effective monitoring and enforcement mechanisms, as well as by promoting transparency and information sharing among tax authorities and customs agencies.

4. Dodging capital controls

Dodging capital controls is a significant driver behind trade misinvoicing, particularly in developing countries where such controls are more common. Capital controls are restrictions imposed by governments to regulate the flow of capital into and out of the country. These controls are often used to stabilize the economy, protect the currency, or prevent capital flight.

Trade misinvoicing can be used as an illegal method to bypass these capital controls. For example, if a country imposes restrictions on the amount of foreign currency that can be brought into the country, an individual or business might use trade misinvoicing to over-invoice exports. By inflating the value of exports on invoices, they can receive more foreign currency than is allowed under the capital controls. This excess foreign currency can then be used for various purposes, such as investing overseas or paying off foreign debts. [9]Similarly, individuals or businesses looking to move money out of a country with strict capital controls might use trade misinvoicing to under-invoice exports. By declaring a lower value for goods on export invoices, they can receive payment in foreign currency outside of the official channels. This allows them to bypass the capital controls and move money out of the country illicitly.

Capital controls are often implemented by developing countries to protect their economies from destabilizing flows of capital. However, trade misinvoicing undermines these controls and can lead to significant economic distortions. To combat this issue, countries can strengthen their monitoring

[8] Findley, Michael G., et al. "Evaluation Strategies for Global and National Measures Against Illicit Financial Flows." Global Governance to Combat Illicit Financial Flows: Measurement, Evaluation, Innovation, Council on Foreign Relations, 2018, pp. 30–37. JSTOR, http://www.jstor.org/stable/resrep21429.5. Accessed 5 Mar. 2024.

[9] International Crisis Group. "CUSTOMS EVASION." BOSNIA'S PRECARIOUS ECONOMY: STILL NOT OPEN FOR BUSINESS, International Crisis Group, 2001, p. Page 35-Page 38. JSTOR, http://www.jstor.org/stable/resrep46023.8. Accessed 5 Mar. 2024.

and enforcement mechanisms, as well as improve transparency and information sharing among relevant agencies.

Types of Trade Misinvoicing

Import overinvoicing

Import overinvoicing involves deliberately inflating the value of goods imported into a country on official documents, such as invoices and customs declarations. This practice can be used for various illicit purposes, including tax evasion, circumventing import restrictions, and obtaining foreign exchange at more favorable rates.[10] One of the main reasons for import overinvoicing is to evade taxes. By inflating the value of imports, businesses can fraudulently claim higher expenses, reducing their taxable income and ultimately paying less tax. Import overinvoicing can also be used to circumvent import restrictions or quotas imposed by governments. By overstating the value of goods, importers can exceed the limits set by authorities without being detected.[11]

Another motive for import overinvoicing is to obtain foreign exchange at a more favorable rate. In countries where there are multiple exchange rates or strict controls on foreign currency transactions, importers may overinvoice imports to acquire foreign exchange at a more favorable rate than the official one. This can provide them with a financial advantage, but it is illegal and can have serious consequences. Import overinvoicing is a form of trade misinvoicing that can have significant negative impacts on economies. It can lead to revenue losses for governments, distort trade statistics, and undermine the competitiveness of domestic industries. To combat import overinvoicing, governments need to strengthen their customs controls, enhance transparency in trade transactions, and improve coordination among relevant agencies.

Export Underinvoicing

Export under-invoicing involves deliberately declaring a lower value for goods on export invoices than their actual value. This practice is used to reduce the amount of customs duties, taxes, and other fees paid by the exporter, thereby increasing their profits. Export under-invoicing can take various

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[10] Chang, Juin-jen, and Ching-chong Lai. "Collaborative Tax Evasion and Social Norms: Why Deterrence Does Not Work." Oxford Economic Papers, vol. 56, no. 2, 2004, pp. 344–68. JSTOR, http://www.jstor.org/stable/3488830. Accessed 5 Mar. 2024.

[11] Dillon, Sara. "Tax Avoidance, Revenue Starvation and the Age of the Multinational Corporation." The International Lawyer, vol. 50, no. 2, 2017, pp. 275–328. JSTOR, https://www.jstor.org/stable/26415648. Accessed 5 Mar. 2024.

forms, such as declaring a lower quantity or quality of goods, misrepresenting the price per unit, or undervaluing the goods themselves. [12]One common motivation for export under-invoicing is to evade taxes and duties. By declaring a lower value for exports, exporters can reduce their tax liability, as taxes are typically calculated based on the declared value of the goods. This practice can result in significant revenue losses for governments, particularly in developing countries where tax revenues play a crucial role in funding public services and infrastructure development.

Export under-invoicing can also be used to circumvent foreign exchange controls or to disguise the transfer of funds across borders. In countries with strict capital controls, exporters may under-invoice exports to receive payment in foreign currency outside of the official channels. This allows them to bypass restrictions on the movement of capital and access foreign currency at more favorable exchange rates. Overall, export under-invoicing represents a significant challenge for governments and tax authorities, as it undermines the integrity of the customs system, reduces government revenue, and distorts trade statistics.

Import Underinvoicing

Import underinvoicing, a type of trade misinvoicing, occurs when importers intentionally state a lower value for goods on customs documents and invoices. This tactic is commonly employed to avoid paying full customs duties, value-added tax (VAT), and other import-related taxes. Importers use underinvoicing to decrease their tax obligations and increase their profits. By declaring a lower value for imported goods than their actual value, importers can reduce the amount they pay in taxes and duties. This practice can lead to substantial revenue losses for governments and distortions in trade data and economic indicators. Import underinvoicing can also be utilized to bypass import restrictions or licensing requirements.[13] By understating the value of goods, importers can avoid triggering specific regulatory thresholds or requirements, enabling them to import goods that would otherwise be prohibited or restricted. This can result in the smuggling of banned goods or the violation of trade regulations, undermining the effectiveness of government policies and regulations. To address import

[12] BAUER, SIBYLLE, and MARK BROMLEY. “Challenges and Good Practices in Detecting,Investigating and Prosecuting Export Controlviolations.” DETECTING, INVESTIGATING AND PROSECUTING EXPORT CONTROL VIOLATIONS: European Perspectives on Key Challenges and Good Practices, Stockholm International Peace Research Institute, 2019, pp. 7–22. JSTOR, http://www.jstor.org/stable/resrep20061.8. Accessed 5 Mar. 2024.

[13] Meenakshi Rishi, and James K. Boyce. “The Hidden Balance of Payments: Capital Flight and Trade Misinvoicing in India, 1971-1986.” Economic and Political Weekly, vol. 25, no. 30, 1990, pp. 1645–48. JSTOR, http://www.jstor.org/stable/4396560. Accessed 5 Mar. 2024.

underinvoicing, governments can implement several measures. These include strengthening customs controls, enhancing the transparency of import transactions, and improving cooperation with international partners. Additionally, governments can increase penalties for underinvoicing and raise awareness about the adverse effects of this practice to deter importers from engaging in fraudulent activities.

Export Overinvoicing *[14]*

Export over-invoicing, a form of trade misinvoicing, occurs when the value of goods exported is deliberately overstated on invoices. This practice can be driven by various factors, including tax incentives, capital flight, and money laundering.[15]One reason for export over-invoicing is to claim tax incentives or benefits offered by governments to exporters. By inflating the value of exports, exporters can exaggerate their export earnings, which may entitle them to tax rebates, exemptions, or other preferential treatment. This allows them to reduce their tax liabilities or receive refunds for taxes paid on inputs used in the production of exported goods.

Another motivation for export over-invoicing is to facilitate capital flight. In countries with strict capital controls or unstable currencies, individuals and businesses may seek to move funds offshore by over-invoicing exports. By receiving payment for exports at the inflated value, they can effectively transfer money out of the country in a disguised form, bypassing the restrictions on capital outflows. [16]Export over-invoicing is also used as a method for money laundering. By over-invoicing exports, criminals can generate illicit funds that appear to be legitimate income from trade.[17] The excess payment for the inflated exports is often routed through complex networks of transactions to obscure its origin, making it difficult for authorities to trace and identify the illicit funds.[18] Overall, export

[14] de Colle, Simone, and Ann Marie Bennett. "State-Induced, Strategic, or Toxic? An Ethical Analysis of Tax Avoidance Practices." Business & Professional Ethics Journal, vol. 33, no. 1, 2014, pp. 53–82. JSTOR, http://www.jstor.org/stable/44074823. Accessed 5 Mar. 2024.

[15] Findley, Michael G., et al. "Evaluation Strategies for Global and National Measures Against Illicit Financial Flows." Global Governance to Combat Illicit Financial Flows: Measurement, Evaluation, Innovation, Council on Foreign Relations, 2018, pp. 30–37. JSTOR, http://www.jstor.org/stable/resrep21429.5. Accessed 5 Mar. 2024.

[16] International Crisis Group. "CUSTOMS EVASION." BOSNIA'S PRECARIOUS ECONOMY: STILL NOT OPEN FOR BUSINESS, International Crisis Group, 2001, p. Page 35-Page 38. JSTOR, http://www.jstor.org/stable/resrep46023.8. Accessed 5 Mar. 2024.

[17] BROMLEY, MARK, et al. MEASURING ILLICIT ARMS AND FINANCIAL FLOWS: IMPROVING THE ASSESSMENT OF SUSTAINABLE DEVELOPMENT GOAL 16. Stockholm International Peace Research Institute, 2019. JSTOR, http://www.jstor.org/stable/resrep24428. Accessed 5 Mar. 2024.

[18] Dillon, Sara. "Tax Avoidance, Revenue Starvation and the Age of the Multinational Corporation." The International Lawyer, vol. 50, no. 2, 2017, pp. 275–328. JSTOR, https://www.jstor.org/stable/26415648. Accessed 5 Mar. 2024.

over-invoicing can have significant economic consequences, including reduced government revenue, distortion of trade statistics, and increased vulnerability to financial crimes. Combatting this practice requires strengthening customs controls, enhancing transparency in trade transactions, and improving international cooperation to detect and deter trade misinvoicing schemes.[19]

Conclusion

Trade misinvoicing is a complex phenomenon with significant implications for economies and societies worldwide. It is driven by a variety of factors, including corruption, weak customs controls, complex trade regulations, tax incentives, and capital controls. These factors interact in complex ways, creating opportunities for individuals and businesses to engage in fraudulent activities such as tax evasion, money laundering[20], and capital flight. The effects of trade misinvoicing are far-reaching and can have serious consequences. It undermines government revenue, distorts trade statistics, reduces the competitiveness of domestic industries, and fosters a culture of corruption. Additionally, trade misinvoicing can hinder economic development by reducing the resources available for public services and infrastructure projects. To combat trade misinvoicing, policymakers and researchers must work together to understand its determinants and develop effective strategies to address them. This includes strengthening customs controls, improving transparency in trade transactions, and enhancing international cooperation. By taking these steps, countries can reduce the incidence of trade misinvoicing and protect their economies from the detrimental effects of this illicit practice.[21]

[19] Bhagwati, Jagdish N. "Alternative Theories of Illegal Trade: Economic Consequences and Statistical Detection." Weltwirtschaftliches Archiv, vol. 117, no. 3, 1981, pp. 409–27. JSTOR, http://www.jstor.org/stable/40438952. Accessed 5 Mar. 2024.

[20] Africa Centre for Energy Policy. "ILLICIT FLOWS: MEANING AND MEASUREMENT." ILLICIT FINANCIAL FLOWS AND THE EXTRACTIVE INDUSTRY IN GHANA, Africa Centre for Energy Policy, 2015, pp. 5–10. JSTOR, http://www.jstor.org/stable/resrep31198.5. Accessed 5 Mar. 2024.

[21] BAUER, SIBYLLE, and MARK BROMLEY. "Challenges and Good Practices in Detecting,Investigating and Prosecuting Export Controlviolations." DETECTING, INVESTIGATING AND PROSECUTING EXPORT CONTROL VIOLATIONS: European Perspectives on Key Challenges and Good Practices, Stockholm International Peace Research Institute, 2019, pp. 7–22. JSTOR, http://www.jstor.org/stable/resrep20061.8. Accessed 5 Mar. 2024.