

Joint Statement of concern on proposed Valuation Principles

October 2014

EU businesses call for a Union Customs Code that continues to support the global supply chain, economic recovery and innovation

The new Union Customs Code - portrayed by the European Commission as a « Modernised Customs Code » - will become applicable in May 2016. The European Commission's Taxation and Customs Union Directorate-General (DG TAXUD) is currently reviewing the second draft for the new Implementing Act for the Union Customs Code (UCC IA).

It is highly important for European businesses to benefit from existing customs valuation principles for the import of products into Europe in order to continue offering state-of-the-art products and technologies at a competitive price. To make it a truly effective and modern instrument, the Implementing Act should reflect business needs.

However, despite numerous recommendations filed jointly by a wide range of business organisations to the Commission over the past few years, several highly worrisome provisions are still included in the draft UCC IA, including the following:

- the elimination of the current possibility to use an earlier sale in a chain of sales as the basis for customs valuation (« first sale ») and the introduction of the obligation to use the « last sale » (even if from EU customs warehouses) for this purpose¹;
- overly broad language that risks the inclusion of all royalties and licence fees in the dutiable transaction value, even when these are not a condition of sale²;
- the inclusion of unsuccessful research & development costs in the customs value³; and
- the extension of the deadline for customs authorities to decide on applications for Binding Tariff Information (BTI) and Binding Origin Information (BOI) ⁴

The « **first sale** » principle gives traders the possibility to calculate customs duties based on the price of an earlier transaction in the chain of sales before entering the EU market if certain conditions are satisfied, notably that this clearly was a sale for export to the EU. Its removal and the imposition of a « last sale rule » will increase the customs duties to be paid (because the last sale will usually entail a higher price), and in turn also the costs to the consumers. The proposed changes will also lead to higher prices for semi-finished products. The proposed definition of the sale for export also has adverse effect on economic regimes, such as warehousing, because it will lead to the assessment of duties based on a sale inside the EU at the EU market price.

¹ Art. IA-II-3-02 (230-02-IA)

² Art. I A-II-3-10 (230-11-IA)

³ Art. IA-II-3-09 (230-10- IA)

⁴ Art. DA-I-2-10 (124-2-06-DA)

The current rules are fully in line with the EU's obligations under the WTO customs Valuation Agreement, which uses the concept of "sale for export" (and not "last sale"), and only allows royalties and licence fees to be dutiable when they are true condition for sale. Instead, the new draft further risks significantly expanding the amount of **royalties and licence fees** subject to customs duties by an overly broad interpretation of the « condition of sale » criterion triggering inclusion of such fees in the dutiable customs value. These changes may also spill over into third country valuation rules, potentially increasing duties levied there on imports from EU companies, which would of course further affect the global competitiveness of our businesses.

Unsuccessful R&D costs are not used for the production of goods. Currently, in line with the provisions of the WTO valuation agreement, such so-called "assists" must only be included in the customs value if they are necessary for the production of the imported goods. The Commission's proposal to include these costs would seriously expand the scope of R&D costs to be included in the customs value. ,

The extension of the **timeline for taking decisions on BTI and BOI** will increase the unpredictability for businesses even though innovation of course requires fast decision-making by definition.

All these changes would **hurt both large and small and medium-size enterprises** (SMEs) relying on import and export of goods for their business and reduce the competitiveness of European companies at a time of economic uncertainty. The additional costs would in some cases eventually be passed on to EU consumers. In many other cases importers will not be able to pass on these additional costs on due to market pressures, and will instead be forced to absorb them, thus reducing opportunities for further investments. This is inconsistent with the objectives which the EU is targeting and with the assertive Trade Policy Agenda proposed by the Commission for 2010-2015, aiming for a sustainable economic recovery through increased competitiveness of EU companies and lower prices for EU consumers.

We – the undersigned - note that the European Parliament has during its previous legislature (and even before the adoption of the UCC) supported business on some of its key concerns. Also, several Member States during a Trade Contact Group (TCG) meeting in July confirmed their preference to retain the possibility of using « earlier sales for export » as a basis for valuing imports.

These legitimate concerns by business, the European Parliament and various Member States cannot be ignored. We have urged the European Commission to take into serious consideration the compromise solutions that have been presented by several undersigned parties during the TCG consultations, either jointly or individually. We appreciate greatly the support of the Member States and Members of the European Parliament and we ask them to continue their efforts to obtain a positive customs framework for the European industry as time is running out to do so.

We note our continued commitment to remain available to discuss alternatives with you and of course with the European Commission.

The undersigned,

American Chamber of Commerce to the European Union (AmCham EU), European Branded Clothing Alliance (EBCA), EuroCommerce, European Express Association (EEA), European Retail Round Table (ERTT), European Semiconductor Industry Association (ESIA), DIGITALEUROPE, Federation of the European Sporting Goods Industry (FESI), Foreign Trade Association (FTA), Toy Industries of Europe (TIE),

