

**30/07/2018**

## **EXPLORATORY CONSULTATION**

### **Establishment in the EU of Decisions relating to binding information in the field of customs valuation**

#### **Consultation activities carried out**

This exploratory consultation is part of a wider set of activities carried out with the purpose of assessing the need, relevance, scope, feasibility and implications of a possible initiative for the establishment in the EU of a system of Binding Information in the field of customs valuation.

More specifically, the consultation aimed at gathering the stakeholders' view on:

- the level of interest in, and the need for, a possible initiative by the Commission, on the basis of the Union Customs Code, to establish a legal basis for Binding Value Information.
- the potential scope of Binding Value Information, identifying those elements (components) of the customs value of goods which could be covered by such decisions.

The consultation strategy focused on three main groups of stakeholders: Member States' customs administrations, businesses and other experts in customs valuation matters. The consultation was nonetheless open to all citizens.

#### **Participation**

The exploratory consultation was launched on 1<sup>st</sup> March 2018 and was closed on 8<sup>th</sup> June 2018. It was available in all official EU languages (except Gaelic).

The consultation was published on the general consultation website of the European Commission and has been advertised through announcement on the TAXUD public website and presented at the relevant fora, such as the Customs Expert Group and the Trade Contact

Group. There were a total of 200 replies to the consultation and 10 position papers uploaded along with the replies. Three contributions were received separately on mail.

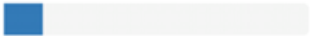

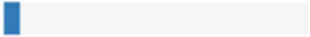
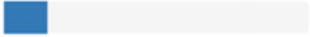
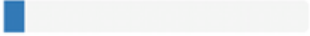
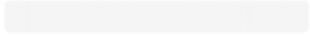
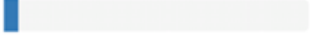
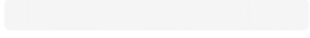
**CONSULTATION RESULTS**

**1. Description of the respondents**

The vast majority of contributions came from respondents based in the EU 28. Only 9 contributions from outside the EU have been submitted. The top 6 countries, based on the location of the respondent were: Germany (83 replies), Austria (16 replies), France (13 replies), Belgium and Poland (11).

Based on the language used for replying to the questionnaire, most of the respondents chose the English version (81 replies) followed by German (76 replies), Polish (8 replies), French (8 replies) and Spanish (6 replies).

**Table (1) Type of respondents to the public consultation**

		Answers	Ratio
Citizen		25	12.5 %
Business		115	57.5 %
Business association		10	5 %
Customs broker		28	14 %
Public authority		13	6.5 %
Academic		0	0 %
Other		9	4.5 %
No Answer		0	0 %

Based on the type of respondent, as can be seen in table (1) above, 115 replies came from businesses and 10 from business organizations such as trade associations, whereas 28 came from customs brokers. 13 replies came from public authorities and 25 from individuals.

The majority of businesses that replied to the survey were Large Enterprises with more than 249 employees (82 respondents). 118 of the business respondents import goods from Third Countries to the EU, and 21% of respondents operate with more than one customs administration.

## **2. The application of the valuation provisions**



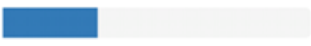
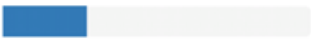
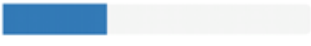

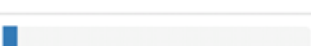
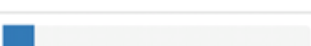
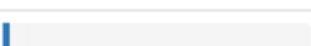
In this section the respondents were asked about difficulties encountered in the application of the valuation provisions.

Although more than 80% of the respondents stated that they had sufficient knowledge of the EU rules on customs valuation (28% rated their knowledge to be excellent, 46.5 % good and 16% satisfactory), several circumstances or situations were pointed out as a source of problems.

As shown in table (2) below, challenges are indicated across a wide range of elements, ranging from the complexity of the EU legislation (directly reflecting the World Trade Organization Agreement on customs valuation), to the growing phenomenon of complex or unusual commercial situations, including the recent changes in 'traditional' trade patterns.

A significant percentage of respondents (42.5%) also indicate non-uniform implementation of the legal provisions on customs valuation as a factor of difficulty. Finally, more than 60% of the respondents stress the need for expertise at the enterprise level and for guidance from the customs authorities.

**Table (2) Factors of difficulties when determining the customs value**

		Answers	Ratio
Complexity of the EU legislation		89	44.5 %
Complex or unusual commercial situations		118	59 %
Changing commercial situations		61	30.5 %
Need for expertise at enterprise level		54	27 %
Need for guidance from authorities		67	33.5 %
Non-uniform implementation of the legal provisions		85	42.5 %
Other		9	4.5 %
There are no major obstacles		20	10 %
No Answer		4	2 %

Surprisingly, the majority of respondents consider the level of difficulties when determining the customs value, either on the basis of the transaction value method or on basis of the other valuation methods, to be quite challenging (respondents consider the level of difficulty as "medium" or "high").

Stakeholders were also asked to indicate which sources they use to seek guidance and /or advice on customs valuation matters (multiple replies were allowed). Among the 'open' sources, the most chosen sources are the EU guidance (like for instance that available on the TAXUD website) and Member States' guidance, respectively indicated by 62.5% and 54% of the respondents. As regards other sources, 48.5% of the respondents indicated they consult customs and tax advisors.

It is interesting to note, that, concerning the quality of the guidance/advice obtained (both from public authorities and private consultants), the majority of respondents judged it as not fully satisfactory or even insufficient to dispel doubts and problems (in 33% of cases concerning advice from customs authorities and 31.5 % of cases for guidance sources (like for instance EU and WCO guidance)).

### **3. Interest in a system of binding information decisions on customs valuation**

Respondents were first asked to indicate whether they are aware of the already existing frameworks for binding information decisions in the EU (currently covering tariff and origin matters).


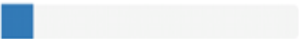
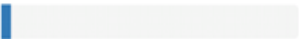
These questions were put with the purpose of evaluating the degree of awareness about the scope of binding information in general, and about the opportunity offered and the obligation raised by the operation of such systems.

A large majority (92.5%) of respondents indicated they are aware of the existence of such decisions in the EU, and almost 60% of respondents are holders of such decisions (46.5% of them are holders of Binding Tariff Information decisions, 2.5% are holders of Binding Origin Information decisions and 8.5% are holders of both).

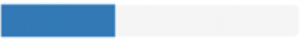
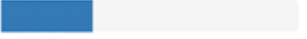
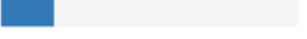
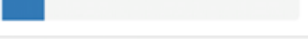
On this basis, the following replies gain even more relevance for the analysis of the replies to the exploratory consultation.

As shown in table (3) below, stakeholders showed great interest in a possible system of binding information decisions on customs valuation in the EU.

**Table (3) Are respondents interested in binding information decisions on customs value in the EU?**

		Answers	Ratio
Yes		173	86.5 %
No		21	10.5 %
No Answer		6	3 %




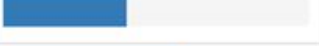


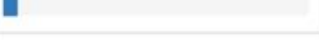
**Table (4) How respondents rate the importance of binding information decisions on customs value in the EU?**

		Answers	Ratio
Essential		76	38 %
Necessary		61	30.5 %
Helpful		35	17.5 %
No Answer		28	14 %

In addition, as shown in table (4) above, a significant percentage (68% altogether) of respondents rate a system of binding value information in the EU as essential or necessary.

As regards the possible advantages that might be given by the implementation of a system of binding information on valuation, respondents expect it above all to provide legal certainty and avoidance of disputes. Compliance assurance (59% of respondents) was also underlined as well as a level playing field and uniform application of the relevant rules (40% and 60% of respondents respectively), and a very high percentage of respondents (71.5%) see a benefit in the avoidance of disputes with customs authorities. Table (5) below summarizes the answers given on this specific point.

**Table (5) Expected advantages from a system of binding information decisions on customs value in the EU**

		Answers	Ratio
Legal certainty		162	81 %
Avoidance of disputes		143	71.5 %
Compliance assurance		118	59 %
Level playing field throughout the EU		80	40 %
Uniform application of the law in the EU		120	60 %
Other		9	4.5 %
No Answer		9	4.5 %

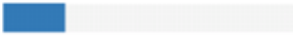
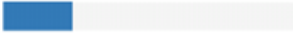
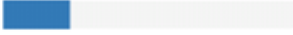






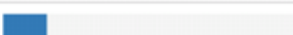

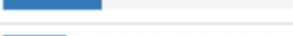
**4. Scope for a possible system of binding information decisions on customs valuation**

As regards the possible scope of binding information decisions on customs valuation, respondents were asked to indicate on the one hand which elements of the customs value should in their opinion be covered by binding information decisions on customs valuation, and on the other hand whether there are elements of the customs value which should not be covered by such decisions.

As shown in table (6) below (respondents were authorized to select one or more elements) most or all of the relevant elements (as listed in the Questionnaire) for the determination of the customs value were indicated to be considered in the scope of binding information decisions.

Central elements include the issues related to the determination of royalties and licence fees. Various aspects of price paid or payable are identified, including issues relating to transfer price practices. Also the issue of assists (goods and services used for the production of the goods and provided by the buyer to seller) was indicated by a significant percentage of respondents.

**Table (6) Elements of the customs value to be covered by binding information decisions on customs value**

		Answers	Ratio
Price paid or payable		41	20.5 %
Sale for transaction value purposes		46	23 %
Conditions and Considerations		45	22.5 %
Discounts and price adjustments		74	37 %
Transfer Pricing		106	53 %
Other elements referred to the price		34	17 %
Royalties and licence fees		110	55 %
Assists (goods and services used in the production of the imported goods provided free of charge or at a reduced price by the importer)		82	41 %
Proceeds (further payments to the seller from subsequent resale of the goods)		29	14.5 %
Other elements to be added to the price		66	33 %
Elements not to be included in the transaction value		42	21 %
No Answer		12	6 %

As regards the second question (are there elements which should NOT be covered by such decisions) only a minority of respondents (7.5%) estimates that some elements of the customs value should not be covered by binding information decisions.

**5. Operation of a system of binding information decisions on customs valuation**

Respondents were asked to express their opinion on whether (and how) issued decisions on binding information on valuation should be made available to the public, and also on some aspects related to the validity, the ceasing of validity and the revocation of such decisions.

As regards the aspect of publicity, a clear majority of respondents (85%) is in favour of publishing these decisions (except confidential data, like references to companies, trade

partners, etc.). Among them, 62% of respondents consider the EU website the most suitable tool for their publication.

In relation to the validity of the decisions, respondents were in practice invited to express a preference between a fixed validity period and a variable period. The majority of replies (59.5%) go in the direction of the fixed validity period for certainty in medium/long term planning, although 28.5% of respondents prefer not to have such fixed period. While no reasons were provided, this may be due to concerns about the possibility of taking into account factors like price fluctuations, changes in legal framework conditions etc.

Finally, concerning revocation and cease of validity of the decisions, a clear majority is in favour of the standard approach already followed in the EU with reference to binding information in tariff and origin matters – i.e. that the decisions should be revoked when the contractual terms of the commercial transaction on which they are based have been subject to changes, and cease to be valid when they are not or no longer compatible with the jurisprudence of the European Court of Justice.

## **6. Final remarks**

The responses to this exploratory Public Consultation provided a significant contribution to the ongoing work in assessing the need, relevance, scope, feasibility and implications of a possible initiative for the establishment in the EU of a system of binding information decisions in the field of customs valuation.

A main finding of this exercise is that a vast majority of respondents are interested in binding information decisions in relation to customs valuation in the EU and are considering them as essential or necessary. Over two thirds of respondent considers the implementation of such decisions as very important for legal certainty and avoidance of disputes during the customs clearance process.

The answers received indicate preference for wide scope decisions – i.e. to include most or all elements relevant for the calculation of the customs value. In addition, the practical operation of a possible system for the valuation decisions should be modelled on relevant aspects of the existing rules and procedures in force concerning the operation of the current EU system for binding information decisions on tariff and origin matters.



In the view of the findings of this exploratory consultation, the Commission services will consider the next steps and will further consult with the Member States' customs administrations on a possible initiative, based on the Union Customs Code, to establish a legal basis for a Binding Value Information Decisions system in EU. Such a proposal would involve the normal steps for such an initiative, including where possible quantified estimates on the impact and proportionality of possible solutions to the problems identified.

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