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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 25.1.2024 amending Delegated Regulation (EU) 2015/2446 as regards decisions relating to binding information in the field of customs valuation and decisions relating to binding origin information

Delegations will find attached document C(2024) 255 final.

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COMMISSION DELEGATED REGULATION (EU) .../...

of 25.1.2024

amending Delegated Regulation (EU) 2015/2446 as regards decisions relating to binding information in the field of customs valuation and decisions relating to binding origin information

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC), delegates to the Commission the power to supplement certain non-essential elements of the UCC, in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU). The Commission exercised these powers by adopting, on 28 July 2015, Commission Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

Delegated Regulation (EU) 2015/2446 establishes provisions of general application to supplement the Code with a view to ensuring a clear and proper application of the UCC. It is regularly updated to take account of developments in legislation and of the deployment of the UCC IT systems and to clarify, when needed, the application of certain customs formalities.

The act aims at introducing in the Union customs legislation decisions relating to binding valuation information ('BVI decisions'), completing thus the already well-established legal and operational framework for issuing decisions relating to binding tariff classification information (BTI) and binding origin information (BOI), which has been in place since 1991 (BTI) and respectively 1996 (BOI)¹ and was further revised through the UCC in 2013.

Decisions relating to binding information (called 'advance rulings' at international level) aim at setting up a transparent and formal process whereby exporters and importers can apply for and obtain in advance, from the customs authorities, binding decisions on the customs treatment to be given to imported or exported goods. In the EU, a decision relating to binding information taken by one Member State is valid in all Member States, and binding on its holder as on the customs authorities. The main benefit of such decisions for the holder is the legal certainty that the operations covered by the decision will be treated by the customs authorities, at the moment of the importation or exportation of the goods, in accordance with that decision. The main benefit for the customs authorities is to pre-define with legitimate traders the correct treatment of those operations and thus to support risk management and contribute to the overall compliance and uniformity of customs operations throughout the EU.

The envisaged legal and operational framework for the BVI decisions is modelled on relevant aspects of the existing BTI and BOI decisions. For example, the time-limit for taking a BVI decision, its validity and cessation of validity, or its annulment or revocation is envisaged to be identical or - when appropriate - very closely synchronised with the existing provisions applicable to BTI and BOI decisions. In addition, where the correct and uniform determination of the customs value is not ensured, the taking of BVI decisions will be suspended, as in the case of BTI and BOI decisions where the correct and uniform tariff classification or determination of origin is not ensured. Therefore, as in the case of existing BTI decisions for tariff classification and BOI decisions for origin, BVI decisions will increase transparency, legal certainty, compliance and uniformity in customs valuation, to the benefit of economic operators, customs authorities and the financial interests of the Union. They will in addition meet international standard regarding advance rulings for customs purposes² and address a recommendation of the European Court of Auditors formulated in its 2017 Special Report on Import procedures³.

¹ See more details on the operation of BTI [here](#) and BOI [here](#).

² The use of 'advance rulings' as an instrument for trade facilitation and increased compliance is strongly supported at international level by the World Trade Organisation (WTO) Trade Facilitation Agreement (TFA) and World Customs Organization (WCO) revised Kyoto Convention. For example, Article 3 of the TFA sets an obligation for the WTO Members to issue advance rulings on tariff classification and origin, while in what

Taking into account the necessity of a modern, coherent IT management system for all the binding decisions in the Union and the fact that currently only the BTI decisions are managed through an IT system – i.e. the European Binding Tariff Information (EBTI), it is proposed that the management of the BVI decisions and, in parallel, of the BOI decisions will be supported as well by an IT system building on the existing EBTI system. Furthermore, in order to set out common data requirements for applications and decisions relating to binding valuation information, the Annexes A and B to Delegated Regulation (EU) 2015/2446 and respectively Annexes A and B to Implementing Regulation (EU) 2015/2447 will be amended accordingly through separate legal acts.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission carried out a consultation in line with the Common Understanding on Delegated Acts between the European Parliament, the Council and the European Commission.

Member States and all other relevant stakeholders have been duly involved and constantly consulted on the draft provisions.

The Commission consulted Member States on the draft text through regular meetings of the Commission's group of experts (Customs Expert Group, CEG) and consulted the business community via its stakeholder body (the Trade Contact Group – TCG). A joint meeting with Member States' experts and the Trade Contact Group, and written consultations with Member States and Trade Contact Group members were carried out in the framework of the 11th CEG - Valuation Section (December 2021-April 2022).

The Commission has actively considered all comments received during this consultation exercise, and, to the greatest extent possible, included them in the version provided herewith.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for this Regulation is contained in the delegation of power provided for in Articles 24(c) and (g) and 36(b) of the UCC.

concerns valuation (an area considered in general more complex than the tariff classification and origin), the WTO Members are “encouraged” to provide for advance rulings. Several countries around the world – i.e. the United States of America, Canada, Japan, China, South Korea, Australia, New Zealand etc. - are already issuing all three categories of advance rulings (tariff classification, origin and valuation).

³ https://www.eca.europa.eu/Lists/ECADocuments/SR17_19/SR_CUSTOMS_EN.pdf

COMMISSION DELEGATED REGULATION (EU) .../...

of 25.1.2024

amending Delegated Regulation (EU) 2015/2446 as regards decisions relating to binding information in the field of customs valuation and decisions relating to binding origin information

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code⁴, and in particular Article 24, points (c) and (g), and Article 36, point (b), thereof,

Whereas:

- (1) Article 33(1) of Regulation (EU) No 952/2013 requires customs authorities, subject to certain conditions, to take decisions relating to binding tariff information ('BTI decisions') and decisions relating to binding origin information ('BOI decisions').
- (2) Article 35 of Regulation (EU) No 952/2013 requires, in specific cases, the customs authorities to take decisions relating to binding information with regard to other factors referred to in Title II of that Regulation. The value of goods for customs purposes, referred to in Title II, Chapter 3, of Regulation (EU) No 952/2013, constitutes one of those other factors, not being yet subject to decisions relating to binding information.
- (3) Decisions relating to binding valuation information ('BVI decisions') should be introduced in the customs legislation to increase transparency, legal certainty, compliance and uniformity in customs valuation, to the benefit of economic operators, customs authorities and the financial interests of the Union.
- (4) In order to ensure consistency among different types of binding information, to the extent possible, the provisions pertaining to BVI decisions should be aligned with the provisions of Regulation (EU) No 952/2013 and of Commission Delegated Regulation (EU) 2015/2446⁵ pertaining to BTI and BOI decisions.
- (5) Article 10 of Delegated Regulation (EU) 2015/2446 should be amended to make BVI decisions subject to the same exception to the right to be heard as those applicable to BTI and BOI decisions under Article 22(6) of Regulation (EU) No 952/2013.
- (6) A new Article 18a should be introduced into Delegated Regulation (EU) 2015/2446, to identify customs valuation as a case for decisions relating to binding information, to define the material scope of such decisions, to indicate situations in which an application for a BVI decision is not to be accepted, and to establish their binding character with respect to both the customs authorities and the holder of the decision, as well as their period of validity, through provisions similar to the ones applicable to BTI and BOI decisions, pursuant to Article 33 of Regulation (EU) No 952/2013.

⁴ OJ L 269, 10.10.2013, p. 1.

⁵ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

- (7) Article 6(1) of Regulation (EU) No 952/2013 requires that all exchanges of information, such as declarations, applications or decisions, between customs authorities of Member States and between economic operators and customs authorities of Member States, and the storage of that information, as required under the customs legislation, be made by using electronic data-processing techniques. Articles 19(3) and 21 of Delegated Regulation (EU) 2015/2446 should be consequently deleted due to the envisaged inclusion of BOI applications and BOI decisions into the electronic system referred to in Article 21 of Commission Implementing Regulation (EU) 2015/2447⁶ as amended.
- (8) Article 20 of Delegated Regulation (EU) 2015/2446, which provides for extended time-limits to take BTI and BOI decisions where the taking of those decisions is suspended because the correct and uniform tariff classification or determination of origin is not ensured, should be extended to the taking of BVI decisions where the taking of those decisions is suspended because the correct and uniform determination of the customs value is not ensured.
- (9) A new Article 20a should be introduced into Delegated Regulation (EU) 2015/2446 to make BVI decisions subject to provisions on the management of such decisions similar to those which are provided for in Article 34 of Regulation (EU) No 952/2013 for BTI and BOI decisions.
- (10) In order to ensure the coherent application of the BVI decisions, including in what concerns their management through an electronic system this Regulation should apply from the same date that the electronic system referred to in Article 21 of Implementing Regulation (EU) 2015/2447 has been deployed.
- (11) The provisions of this Regulation pertaining to the elimination of the exception to the use of electronic data-processing techniques for the exchange and storage of information concerning applications for BOI decisions and respectively BOI decisions, should apply from the date of deployment, for the purposes of those decisions, of the electronic system referred to in Article 21 of Implementing Regulation (EU) 2015/2447.
- (12) Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/2446 is amended as follows:

- (1) in Article 10, the following point (e) is added:
- ‘(e) where it concerns a decision referred to in Article 18a(1).’;
- (2) in Title 1, Chapter 2, Section 2, Subsection 3, the following Article 18a is inserted:

⁶ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

Decisions relating to binding valuation information

(Article 35 of the Code)

1. Customs authorities shall, upon application, take decisions relating to binding valuation information ('BVI decisions'), providing the appropriate method of customs valuation or criteria, and the application thereof, to be used for determining the customs value of goods under particular circumstances.

Such an application shall not be accepted in any of the following circumstances:

- (a) where the application is made, or has already been made, at the same or another customs office, by or on behalf of the holder of a decision in respect of goods under the same circumstances determining the customs value;
- (b) where the application does not relate to any intended use of the BVI decision or any intended use of a customs procedure.

2. BVI decisions shall be binding, only in respect of the determination of the customs value of the goods:

- (a) on the customs authorities, as against the holder of the decision, only in respect of goods for which customs formalities are completed after the date on which the decision takes effect;
- (b) on the holder of the decision, as against the customs authorities, only with effect from the date on which he or she receives, or is deemed to have received, notification of the decision.

3. BVI decisions shall be valid for a period of three years from the date on which the decision takes effect.

4. For the application of a BVI decision in the context of a particular customs procedure, the holder of the decision shall be able to prove that the goods in question and the circumstances determining the customs value correspond in every respect to the circumstances described in the decision.'

(3) Article 19(3) is deleted;

(4) in Article 20(1), the first subparagraph is replaced by the following:

'Where the Commission notifies the customs authorities that the taking of a decision relating to binding information is suspended in accordance with Article 34(10), point (a), of the Code, for BTI and BOI decisions, or in accordance with Article 20a(7), point (a), for BVI decision, the time-limit for taking the decision referred to in Article 22(3), first subparagraph, of the Code shall be further extended until the Commission notifies the customs authorities that the correct and uniform tariff classification, determination of origin or determination of customs value is ensured.';

(5) the following Article 20a is inserted:

Management of decisions relating to binding valuation information

(Article 35 of the Code)

1. A BVI decision shall cease to be valid before the end of the period referred to in Article 18a(3) in the following cases:

(a) where the adoption of a legally binding act of the Union renders a BVI decision non-compliant with that act, from the date of application of that act;

(b) where a BVI decision is no longer compatible with Article VII of the General Agreement on Tariffs and Trade, the 1994 Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on Customs Valuation), or with the decisions adopted for the interpretation of that Agreement by the Committee on Customs Valuation, with effect from the date of publication in the *Official Journal of the European Union*.

2. BVI decisions shall not cease to be valid with retroactive effect.

3. By way of derogation from Article 23(3) and Article 27 of the Code, BVI decisions shall be annulled where they are based on inaccurate or incomplete information from the applicants.

4. BVI decisions shall be revoked in accordance with Article 23(3) and Article 28 of the Code.

5. The customs authorities shall revoke BVI decisions where they are no longer compatible with a judgment of the Court of Justice of the European Union, with effect from the date of publication of the operative part of the judgment in the *Official Journal of the European Union*.

6. Where a BVI decision ceases to be valid in accordance with paragraph 1, or is revoked in accordance with paragraph 4 or 5, the BVI decision may still be used in respect of binding contracts which were based upon that decision and were concluded before it ceased to be valid or was revoked.

The extended use referred to in the first subparagraph shall not exceed 6 months from the date on which the BVI decision ceases to be valid or is revoked.

In order to benefit from the extended use of a BVI decision, the holder of that decision shall lodge an application to the customs authority that took the decision within 30 days of the date on which it ceases to be valid or is revoked, indicating the quantities for which a period of extended use is requested and the Member State or Member States in which goods will be cleared under the period of extended use. That customs authority shall take a decision on the extended use and notify the holder, without delay, and at the latest within 30 days of the date on which it receives all the information required in order to enable it to take that decision.

7. The Commission shall notify the customs authorities where:

(a) the taking of BVI decisions, for goods whose correct and uniform determination of customs value is not ensured, is suspended; or,

(b) the suspension referred to in point (a) is withdrawn.’

(6). Article 21 is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 December 2027.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25.1.2024

For the Commission
The President
Ursula VON DER LEYEN