

EU NON PAPER

Subject: WTO TFC Meeting 26 June- EU implementation of Article 2 of the TFA (opportunity to comment/information before entry into Force, and consultations).

This non paper is divided into two parts. The first one refers to the general EU mechanism for stakeholder consultation before adoption of legislation/implementation measures at EU level. The second one details the specific mechanisms in place, in addition to those above, for customs related purposes.

A-GENERAL CONSULTATION MECHANISM

- On 19 May 2015, the European Commission adopted the comprehensive Better Regulation Package aiming at reducing the unnecessary costs of regulation. Better regulation is about designing EU policies and laws so that they achieve their objectives at minimum cost. It is a way of working to ensure that policy is prepared, implemented and reviewed in an open, transparent manner, informed by the best available evidence and backed up by the comprehensive involvement of stakeholders. To ensure that the EU action is effective, the European Commission assesses the expected and actual impacts of policies, legislation, and other important measures at every stage of the policy cycle – from planning to implementation to review and subsequent revision. For example, each time that the EU takes action, the European Commission publishes a roadmap or an inception impact assessment describing the planned initiative. Later, once they have been implemented for a sufficient period of time, the initiatives are evaluated to check their performance against standard criteria as well as their impacts at economic, social, environmental and human right level. Stakeholders are able to express their views over the entire life-cycle of a policy.
- **There are ample opportunities for any person to provide input to the development of Commission legislative proposals and the accompanying impact assessments:**
 - ✓ First, at the very early stage of development, an inception impact assessment sets out ideas for new laws and policies. They describe the policy context, the objectives, the options to be considered and a preliminary outline of the types of impacts that are expected. These inception impact assessments are published on-line with a possibility for stakeholders to provide feedback for 4 weeks.
 - ✓ Second, open 12-week internet-based stakeholder consultation is part of every impact assessment process. It is based on a consultation document and a questionnaire, which should address all main impact assessment elements.
 - ✓ The Commission collects the feedback on its legislative proposals and accompanying impact assessments and presents it to the European Parliament and the Council- more details below-.
 - ✓ It should be also noted that the European Commission adopts proposals, which are further considered and may be amended by the European Parliament and the Council. There is, therefore, still ample opportunity for stakeholders to comment on them in that process.

Regarding the feedback received, the European Commission is very transparent:

- ✓ All contributions received in 12-week open public consultations are published online on consultation website.
- ✓ A report outlining the overall results of the consultation work and providing feedback (synopsis report) is published on the consultation website and, where applicable, added as an annex to the impact assessment/evaluation report. This report also summarises relevant feedbacks received in parallel (e.g. on inception impact assessment).
- ✓ In addition, for legislative proposals, the explanatory memorandum should reflect how far the main contributions have been taken into account in the draft policy initiative.
- ✓ For delegated acts the key outcomes of the consultation process are reflected in the explanatory memorandum, which should give a short and proportionate summary of the consultation.
- ✓ For implementing acts, the Committee is informed about the outcome of the consultation and the discussion will be reflected in the minutes of the meeting, which are public.

B- SPECIFIC CONSULTATIONS FOR CUSTOMS RELATED ISSUES

- The European Commission created in 2002 the Trade Contact Group. It is a platform for regular consultation on all customs matters with business trade representatives. The members of the Trade Contact Group are international business associations (Europe or world-wide) involved in customs related activities at the European level. The Commission and the Group meet at least three times a year in Brussels at a high-level to discuss overarching customs policy matters. In addition, at a more technical level, Trade Contact Group members have a standing invitation to participate in the regular expert group meetings with the Member States delegates to prepare legislation, resolve points of disagreement in the application of customs rules and assist in the preparation of guidance on the interpretation of customs rules. The minutes of all these meetings are public. Furthermore, when project groups involving a smaller number of Member States are considered necessary to work on a problem in order to arrive at a possible solution for discussion and agreement in the general expert group, members of the Trade Contact Group who are impacted by that problem are generally invited to participate in the project group.
- Apart from this targeted consultation of business through the Trade Contact Group, the Commission, before adopting new customs rules, publishes them for feedback in accordance with the general consultation rules above described. This public consultation process is very much designed to allow the public to have a real say in the design of legislation.
- **Concrete examples:** Between 2012 and 2015, during the process of adoption of the new Customs Code (the Union Customs Code and its related delegated and implementing acts), the Trade Contact Group was largely consulted and took part in many meetings of the Commission with delegates from the Member States where the draft rules were discussed. This allowed traders to influence the final draft. Below several illustrations:

- ✓ Example: Authorisation for the entry into the declarant's records (EIDR): According to the Union Customs Code, economic operators may be authorised to lodge a customs declaration by entering the particulars of that declaration into their own records. At the time of drafting the rules implementing that particular provision of the Code, it was proposed to limit such simplification to the declarants providing the customs authorities a direct computerised access to their records. However, the businesses strongly opposed to this condition, explaining that providing direct computerised access to the customs authorities could encompass important costs for them. For this reason, the final rule states that the EIDR authorisation holder shall either make available, upon customs' request, the particulars of the customs declaration entered into the records or provide direct computerised access to that information in its records (if the customs authorities of the particular EU Member State concerned allow this).

- ✓ Example: requirement to be an Authorised Economic Operator. The UCC introduced a new requirement to become Authorised Economic Operator, namely that *the applicant or the person in charge of the applicant's customs matters has successfully completed training covering customs legislation consistent with and relevant to the extent of his or her involvement in customs related activities*. This means that the training must not be general but rather must be specifically designed to prepare the applicant for his particular business activity. This specific training can be provided by the customs authorities and/or by the private sector. At the request of traders and with their support, Commission services have drafted specific guidance to ensure a correct and harmonised application of this legal requirement, recommending the minimum content and duration that the training should have. As requested by the trader associations, the list of the training courses that the different Member States recognise at national level will be published on the TAXUD website.

In conclusion, there is a process of regular involvement of business at a very early stage in the actual drafting of legislation, but also during the implementation of adopted legislation as well as in the preparation of guidance on the interpretation of legislation. This is in addition to the public consultation process that is designed to allow the public to have input into the legislation and which has been described in the beginning under the general consultation procedures in force in the EU in line with the "Better Regulation" framework. All this means that businesses have an active and vital role in the shaping of EU customs legislation.