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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 February 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 29 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Technical Committees on Customs Valuation and on Rules of Origin, established under the auspices of the World Customs Organization, with regard to, respectively, the adoption of advisory opinions, commentaries, explanatory note, case studies, studies and similar acts concerning the valuation of imported goods for customs purposes under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, and the adoption of advisory opinions, information and advice and similar acts on the determination of the origin of goods under the Agreement on Rules on Origin

Delegations will find attached document COM(2022) 29 final.

Encl.: COM(2022) 29 final

EUROPEAN
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Brussels, 4.2.2022
COM(2022) 29 final

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Technical Committees on Customs Valuation and on Rules of Origin, established under the auspices of the World Customs Organization, with regard to, respectively, the adoption of advisory opinions, commentaries, explanatory note, case studies, studies and similar acts concerning the valuation of imported goods for customs purposes under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, and the adoption of advisory opinions, information and advice and similar acts on the determination of the origin of goods under the Agreement on Rules on Origin

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a framework decision establishing the position to be taken on the Union's behalf in the Technical Committees on Customs Valuation and on Rules of Origin, established under the auspices of the World Customs Organisation, in connection with the adoption of, respectively, advisory opinions, commentaries, explanatory notes, case studies, studies and similar acts concerning the valuation of imported goods for customs purposes under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, and of advisory opinions, information and advice and similar acts on the determination of the origin of goods under the Agreement on Rules on Origin.

2. CONTEXT OF THE PROPOSAL

2.1. The World Trade Organisation Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 and the Agreement on Rules on Origin.

The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 ('the Customs Valuation Agreement' or 'CVA')[1] aims to establish a fair, uniform and neutral system for the valuation of goods for customs purposes for all Members of the World Trade Organisation.

The Agreement on Rules of Origin ('ARO')[2] aims to ensure that non-preferential rules of origin do not themselves create unnecessary obstacles to trade and aims to harmonise at international level rules of origin, other than rules of origin relating to the granting of tariff preferences. Until the completion of the harmonisation programme, contracting parties are to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade, and that they are administered in a consistent, uniform, impartial and reasonable manner.

Both agreements entered into force on 1 January 1995.

The European Union is a party to both Agreements[3].

2.2. The Technical Committees on Customs Valuation and on Rules of Origin, established under the auspices of the World Customs Organisation

The Technical Committee on Customs Valuation (TCCV), established under the auspices of the World Customs Organisation is responsible, amongst other tasks, for furnishing information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Member or the Committee. Such information and advice may take the form of advisory opinions, commentaries, explanatory notes, case studies and studies.

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1 https://www.wto.org/english/docs_e/legal_e/20-val_01_e.htm

2 http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/origin/overview/wto-agreement.pdf?db=web

3 Council Decision 94/800/EC of 22 December 1994, OJ L 336/1, 23.12.1994, p. 1-2.

The TCCV shall meet as necessary but at least two times a year. A decision of the TCCV shall be taken by a majority comprising at least two thirds of the members present. The advisory opinions, commentaries, explanatory notes, case studies, and studies adopted by TCCV are attached to the reports of the TCCV sessions and are made available for customs and trade in the Compendium of the TCCV' texts. The Union and its Member States participate in the TCCV as a single block, expressing its voice on the basis of an EU coordinated position established prior the TCCV' meetings.

The Technical Committee on Rules of Origin (TCRO), established under the auspices of the World Customs Organisation is responsible, amongst other tasks, for furnishing advisory opinions, information and advice on any matters concerning the determination of the origin of goods to secure uniformity in the interpretation and application of the ARO.

The TCRO shall meet as necessary but not less than once a year. The Union and its Member States participate in the TCRO meetings as a single block, expressing its voice on the basis of an EU coordinated position established prior to the TCRO meetings.

2.3. The envisaged acts

For TCCV, the proposed framework decision concerns the following acts, insofar as they would have legal effects in the Union:

- Advisory opinions adopted pursuant to point 2 (a) and point 2 (d) of Annex II to the CVA. An advisory opinion answers a question raised on the application of the CVA to a particular set of facts, actual or theoretical. Thus when the facts in a situation are identical to those described in the advisory opinion, a clear solution is available for the use of Customs administrations; in cases where the facts are not identical the advisory opinion may nevertheless serve as a guide in resolving the problem.

- Commentaries adopted pursuant to point 2 (d) of Annex II to the CVA. A commentary is a treatise consisting of a series of comments on part of the text of the CVA intended to clarify a situation where a literal reading of the text itself can usefully be supplemented by additional guidance. Commentaries would, where appropriate, include illustrative examples. Thus, commentaries would usually provide Customs administrations with guidance as to the application of a particular part of the CVA to a number of situations.

- Explanatory notes adopted pursuant to point 2 (d) of Annex II to the CVA. An explanatory note elucidates the Technical Committee's views on a question of a general nature arising from one or more provisions of the CVA. Explanatory notes may also examine trade practices as they relate to the question and draw the necessary conclusions. Reference to an explanatory note will enable Customs administrations to apply a provision of the CVA to a number of varying commercial situations falling within its subject coverage.

- Case studies adopted pursuant to point 2 (b) of Annex II to the CVA. A case study is an exposition of a complex set of facts based on an actual commercial transaction, which can be used to demonstrate the practical application of one or more provisions of the CVA.

- Studies adopted pursuant to point 2 (b) of Annex II to the CVA. A study sets out the result of an examination in some depth of a question related to the provisions of the CVA, which is not more suitably covered by any of the foregoing instruments.

The advisory opinions, commentaries, explanatory notes, case studies, and studies are adopted by TCCV based on consensus, and are attached to the reports of the TCCV sessions.

Furthermore, they are made available for customs and trade in the Compendium of the TCCV' texts.

The proposed framework decision may concern as well the following acts adopted by the TCRO, insofar as they would have legal effects in the Union:

- Advisory opinions adopted pursuant to point 1(a) of Annex I of the ARO. At the request of one of its members, the TCRO may examine specific technical problems arising in the day-to-day administration of the rules of origin and give advisory opinions on appropriate solutions based upon the facts presented.

- Information and advice pursuant to point 1(b) of Annex I of the ARO. At the request of one of its members, the TCRO may furnish information and advice on any matters concerning the determination of the origin of goods.

Advisory opinions, information and advice adopted by the TCRO may serve as guides in resolving similar technical problems or issues concerning the determination of the origin of goods. Advisory opinions, information and advice are adopted by the TCRO based on consensus.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

Some Union positions to be taken in TCCV or TCRO meetings, and established prior to those meetings, concern the adoption in those Committees of advisory opinions, commentaries, explanatory notes, case studies, studies, information and advice, and similar acts that, without being necessarily legally binding acts, may have legal effects in the EU.

The adoption of Union positions on those particular instruments require an intensified, efficient cooperation between the institutions due to the technical nature and the volume of questions discussed in these committees, as well as the short time available to consider the matters in debate.

It is therefore in the interest of the Union that those positions are established according to principles, criteria and orientations governing respectively the valuation of imported goods for customs purposes and the determination of the origin of goods, and in an expeditious manner, to allow the Union to exercise its rights in the TCCV and in the TCRO.

To this effect, the Commission is proposing the adoption by the Council of an "omnibus" Decision in accordance with Article 218(9) of the Treaty on the Functioning of the European Union (TFEU)[4]. That Decision will lay down the framework for establishing on time the positions to be adopted on the Union's behalf in TCCV and TCRO, when those bodies are called to adopt acts having legal effects.

In order to ensure that the Council is able to assess and, where appropriate, revise the policy in this Decision on a regular basis, and in the spirit of the sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on European Union[5], the validity of this "omnibus" Council Decision should be limited in time.

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4 Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26/10/2012, p. 47-390.

5 Consolidated version of the Treaty on European Union, OJ C 326, 26/10/2012, p. 13-390.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) TFEU provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[6].

4.1.2. Application to the present case

The TCCV under the auspices of the World Customs Organization (WCO) is a body set up by an agreement, namely the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement - CVA). The TCRO under the auspices of the World Customs Organization (WCO) is a body set up by an agreement, namely the Agreement on Rules of Origin (ARO).

The technical advisory opinions, commentaries, explanatory notes, case studies, studies, information and advice, and similar acts which the TCCV and TCRO are called upon to adopt, concerning the valuation of imported goods for customs purposes and, respectively, the determination of the origin of goods constitute acts having legal effects, as they may be capable of decisively influencing the content of Union law, namely, the provisions of the Union Customs Code and its delegated and implementing acts pertaining to the valuation of imported goods for customs purposes and of matters relating to the determination of the origin of goods.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

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[6] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.2.2. Application to the present case

It is settled case-law that an EU act falls within the common commercial policy if it relates specifically to such trade in that it is essentially intended to promote, facilitate or govern such trade and has direct and immediate effects on it. The value of goods for customs purposes and the origin of goods are identified and regulated by the Union Customs Code as factors on the basis of which imports and export duty and other measures in respect of trade in goods are applied. The CVA and the ARO are trade agreements related to trade in goods, as are the acts adopted by bodies they have set up. The main objective and content of the envisaged acts therefore relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

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on the position to be taken on behalf of the European Union within the Technical Committees on Customs Valuation and on Rules of Origin, established under the auspices of the World Customs Organization, with regard to, respectively, the adoption of advisory opinions, commentaries, explanatory note, case studies, studies and similar acts concerning the valuation of imported goods for customs purposes under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, and the adoption of advisory opinions, information and advice and similar acts on the determination of the origin of goods under the Agreement on Rules on Origin

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By means of Council Decision 94/800/EC of 22 December 1994[7], the Union approved the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement - CVA) and the Agreement on Rules of Origin (ARO).

(2) Article 18(2) of the CVA establishes, under the auspices of the Customs Co-operation Council (WCO), a Technical Committee on Customs Valuation (TCCV), with a view, pursuant to point 1 of Annex II to the CVA, to ensuring, at the technical level, uniformity in interpretation and application of the CVA.

(3) Pursuant to point 2 (a) of Annex II to the CVA, the TCCV is responsible for examining specific technical problems arising in the day-to-day administration of the customs valuation system of Members and giving advisory opinions on appropriate solutions based upon the facts presented.

(4) Pursuant to point 2 (b) of Annex II to the CVA, the TCCV is responsible for studying, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;

(5) Pursuant to point 2 (d) of Annex II to the CVA, the TCCV is responsible for furnishing information and advice on any matters concerning the valuation of

[7] Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p.1)

imported goods for customs purposes as may be requested by any Member or by the Committee on Customs Valuation (CCV) established by article 18(1) of the CVA. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes.

(6) Article 4(2) of the ARO establishes, under the auspices of the Customs Co-operation Council (WCO), a Technical Committee on Rules of Origin (TCRO), which shall carry out the technical work prescribed in Annex I to the ARO.

(7) Pursuant to point 1(a) of Annex I to the ARO, the TCRO is responsible for examining specific technical problems arising in the day-to-day administration of the rules of origin of Members and for giving advisory opinions on appropriate solutions based upon the facts presented.

(8) Pursuant to point 1(b) of Annex I to the ARO, the TCRO is responsible for furnishing information and advice on any matters concerning the determination of the origin of goods as may be requested by any Member or the Committee on Rules of Origin (CRO) established by Article 4(1) of the ARO.

(9) It is appropriate to establish the position to be taken on the Union's behalf in the TCCV, with regard to the adoption of advisory opinions, commentaries, explanatory notes, case studies, studies and similar acts on any matter concerning the valuation of imported goods for customs purposes, to secure uniformity in the interpretation and application of the CVA, as such acts may be capable of decisively influencing the content of Union law, namely, the provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code[8], Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015[9] and Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015[10] pertaining to the value of goods for customs purposes and its determination.

(10) It is appropriate to establish the position to be taken on the Union's behalf in the TCRO, with regard to the adoption of advisory opinions, information and advice, and similar acts concerning the determination of the origin of goods, to secure uniformity in the interpretation and application of the ARO, as such acts may be capable of decisively influencing the content of Union law, namely, the provisions of Regulation (EU) No 952/2013, Regulation (EU) 2015/2446 and Regulation (EU) 2015/2447 pertaining to the origin of goods and its determination.

(11) It is in the interest of the Union that the positions expressed by the Union in the TCCV and the TCRO be established according to principles, criteria and orientations governing respectively the valuation of imported goods for customs purposes and the determination of the origin of goods. It is also in the interest of the Union that such positions be established in an expeditious manner to allow the Union to exercise its rights in the TCCV and in the TCRO.

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8 OJ L 269, 10/10/2013, p. 1.

9 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.

10 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.

(12) In view of the highly technical nature of matters relating to the valuation of imported goods for customs purposes and of matters relating to the determination of the origin of goods, the volume of questions dealt with in TCCV and TCRO meetings taking place each year, the short time available to consider documents issued by the WCO Secretariat and TCCV/TCRO members in preparation of the TCCV/TCRO meetings and the consequent need for the position of the Union to take into account and address operatively the new information presented before or during the meetings of the TCCV and of the TCRO, necessary steps should be established, in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on European Union, for the specification of the Union position.

(13) In view of the recurrent late availability of working documents before TCCV and TCRO meetings, and in order to preserve the Union's rights and interests within those technical committees, the Commission should strive to call on the WCO Secretariat to ensure the availability of working documents in conformity with their respective rules of procedure, so that such documents are dispatched at least 30 days before the opening of the relevant session.

(14) To ensure that the Council is able to assess and, where appropriate, revise the policy in this Decision on a regular basis, and in the spirit of the sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on European Union, the validity of this Decision should be limited in time,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf on the adoption in the Technical Committee on Customs Valuation established by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, under the auspices of the World Customs Organization, of advisory opinions, commentaries, explanatory notes, case studies, studies, and similar acts concerning the valuation of imported goods for customs purposes, and on the preparation of such acts, shall be established in accordance with the principles, criteria and orientations laid down in Section I of the Annex.

Article 2

The establishment of the Union's position to be taken under Article 1 shall be conducted in accordance with the specifications laid down in Section II of the Annex.

Article 3

The position to be taken on the Union's behalf on the adoption in the Technical Committee on Rules of Origin established by the Agreement on Rules of Origin, under the auspices of the World Customs Organization, of advisory opinions, information and advice, and similar acts concerning the determination of the origin of goods and on the preparation of such acts, shall be established in accordance with the principles, criteria and orientations laid down in Section I of the Annex.

Article 4

The establishment of the Union's position to be taken under Article 3 shall be conducted in accordance with the specifications laid down in Section II of the Annex.

Article 5

This Decision shall enter into force on the date of its adoption.

It shall expire on 31 December 2025.

Done at Brussels,

For the Council
The President