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Updated Joint Statement of Concern

EU industry urges the European Commission to reach compromise solutions in the Implementing Provisions of the Modernised Customs Code

Changes in customs valuation principles that would raise import duties could undermine trade and threaten recovery efforts

The European Commission's Taxation and Customs Union Directorate-General (DG TAXUD), assisted by various Customs Code Committees, is currently drafting the new Implementing Provisions of the Modernised Customs Code (MCCIPs). Its current proposal is to eliminate the possibility of using 'earlier sales for export' as a basis for valuing goods that are sold through complex supply chains, and further significantly expand the royalties and licence fees subject to customs duties as a result of a proposed new definition of the 'condition of sale' requirement for such fees.

We, the undersigned, continue to urge the European Union (EU) to retain the possibility of using the 'earlier sale for export' principle, including for goods sold from a bonded warehouse, and preserve the current 'condition of sale' requirement for imposing customs duties on royalties and license fees.

This current proposal for changes to EU customs principles would result in higher import duties which in turn would lead to price increases on a broad range of goods imported into the EU, including semi-finished products. In particular, such a proposal would hurt Small and Medium-size Enterprises (SMEs) that must import and export goods for their business. In light of its ambiguity and lack of legal certainty (especially as it could involve information that is unavailable when the customs declaration is filed), it may also be difficult for businesses to apply the new 'last sale' concept which is being proposed as the sole basis for customs value. As such, it would not contribute to the EU's commitment to trade facilitation – quite the contrary. Many EU businesses have based their import compliance strategies on existing customs valuation principles which are consistent with international norms, ensure predictability and work well as a general rule.

We believe that potential efforts to streamline the EU's valuation rules as part of the ongoing customs modernisation process should not eliminate flexibility which allows

EU businesses to stay competitive. Rather, such efforts should focus on elaboration of existing principles and guidelines to assist all Member State customs authorities (including those with less experience in applying relevant principles in practice) in assessing evidence which an importer may be required to present to substantiate a declared customs value. Increased costs as a result of the proposed changes would place a disproportionate and unwelcome burden on EU businesses, especially during these significantly challenging economic times. Eventually the proposed changes would lead to more job losses in the EU.

We have already pointed out that the United States recently decided to preserve the earlier sale principle in response to similar concerns expressed by US industry. At the latest meeting of the Customs Code Committee's Valuation Section, held on February 24, 2011, several Member States expressed support for these concerns, confirming their preference to retain the possibility of using 'earlier sales for export' as a basis for valuing imported goods. The Member States concerned represent more than a majority of the EU's GDP and flow of imports. While DG TAXUD has indicated it may be willing to find compromise solutions for 'earlier sale for export' and the 'condition of sale' requirement for imposing customs duties on royalties and licence fees in response to industry concerns, concrete results in the form of revised draft MCCIPs have yet to be realised.

As the draft MCCIP text is now approaching finalisation and adoption procedures, we urge the European Commission to take the compromise solutions presented by several of the undersigned parties into serious consideration and agree on possible settlement on draft provisions which account for industry concerns. We note in this regard the strong EU industry support for the proposed compromise solutions, and our continued commitment to remain available to further discuss alternatives with Member States and the European Commission.

The price increases expected as a result of the proposal for changes would reduce the competitiveness of EU businesses that are dependent on imported goods and would eventually be passed on to EU consumers at a time of economic uncertainty. This would be inconsistent with the assertive trade policy agenda proposed by the European Commission for 2010-2015, aiming for sustainable economic recovery through increased competitiveness of EU companies and lower prices for EU consumers.

In closing, we urge the EU to avoid these proposed changes and ensure that EU customs principles remain stable to the benefit of consumers, industry and customs authorities alike.

The undersigned,

American Chamber of Commerce to the European Union (AmCham EU), The Customs Practitioners Group, BusinessEurope, Orgalime, Japan Business Council in Europe (JBCE), EuroCommerce, The European Chemical Industry Council (CEFIC), Federation of the European Sporting Goods Industry (FESI), Interactive Software Federation of Europe (ISFE), Japan Electronics and Information Technology Industries Association (JEITA), European Shippers' Council (ESC), European Branded Clothing Alliance (EBCA), Ernst & Young, Minor Metals Trade Association (MMTA), Toy Industries of Europe (TIE), DigitalEurope.