

INCEPTION IMPACT ASSESSMENT

TITLE OF THE INITIATIVE	Exchange of Customs Related Information with Third Countries		
LEAD DG – RESPONSIBLE UNIT	TAXUD B.4 in association with TAXUD B.3	DATE OF ROADMAP	10/07/2017
LIKELY TYPE OF INITIATIVE	Legislative / non-legislative initiative -		
INDICATIVE PLANNING	<i>Commission proposal Q1 2018</i>		
ADDITIONAL INFORMATION			
<p>This Inception Impact Assessment aims to inform stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. The Inception Impact Assessment is provided for information purposes only and its content may change. This Inception Impact Assessment does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content.</p>			

A. Context, Problem definition and Subsidiarity Check

Context
<p>This Commission has identified a deeper and fairer internal market as a key priority, and as one of the European Union's best assets in times of increasing globalisation. In the Single Market Strategy, the Commission put forward a number of measures to deepen the internal market.</p> <p>However, in today's global value chain, trade with third countries is constantly rising, and hence the role of customs authorities becomes increasingly important. Globalisation combined with the increased cross-border flow of small low-value consignments challenges customs resources not only when ensuring the collection of customs duties, but also as regards their role in ensuring security and safety of the single market and its inhabitants and guaranteeing the protection of Intellectual Property Rights (IPR). At the same time customs has to offer procedures promoting competitiveness through facilitation and acceleration of trade.</p> <p>Cooperation and exchange of customs related information with third countries play an important role in the area of the Customs Union and common commercial policy. They ensure the correct application of customs legislation and in particular the exchange of customs related data aims at improving customs risk management to better target customs controls and, thereby, may accelerate legitimate trade, enhance the security and safety of the Union and its residents through preventing from and detecting of illegal trade and have a positive influence on the reduction of corruption at the external borders.</p> <p>That is why, in 2014, the Commission put forward an EU Strategy and Action Plan for customs risk management. Among others, it focuses on tapping the potential of international customs cooperation, including the exchange of customs information, as this helps ensure the correct application of customs legislation, and in particular facilitates improved customs risk management to better target customs controls.</p> <p>There are various initiatives in place that allow customs authorities in the EU and third countries to exchange certain customs information in specific circumstances. These are either based on international agreements and decisions adopted by bodies set up by international agreements, such as</p> <ul style="list-style-type: none"> • stand-alone customs cooperation and mutual administrative assistance agreements; • customs and trade facilitation chapters included in free trade agreements; • agreements on trade facilitation and security and agreements on transit; • Joint Customs Cooperation Committee decisions on mutual recognition of authorised economic operator ((AEO)/trusted trader programmes); and <p>or <i>non-legally binding arrangements or pilot projects</i> (e.g. Smart and Secure Trade Lanes (SSTL) with China¹).</p>

¹ https://ec.europa.eu/taxation_customs/general-information-customs/customs-security/smart-secure-trade-lanes-pilot-sstl_en

In particular, an exchange of information currently exists in the context of mutual administrative assistance agreements that cover exchange of information on request and in case of evidence or suspicion of irregularities, but not in an automated and advance way.

However, an increasing number of third countries have requested or proposed the Commission and individual Member States to develop and strengthen customs cooperation, in particular through automatic and advance exchange of customs related information. Member States are facing pressure from third countries to enter into arrangements on a bilateral basis, but cannot do so on their own as the topic falls under exclusive EU competence.

The topic has been discussed in various fora (e.g. Club meeting of Customs Directors General in Varna on 22-23 May 2008, Customs Policy Group (Full Members) meeting of 2-3 July 2009) and at different high level seminars in Vilnius (November 2010), Budapest (April 2011), Krakov (October 2011), Kiev (October 2012) and Druskininkai (24 – 25 October 2013) with a focus on the EU Eastern neighbours.

In addition, Member States stressed the importance of enhanced exchange of customs related information with third countries in their Council Conclusions of 19 December 2016, in which they explicitly invited the Commission “to consider coming forward, by the end of 2017, with proposals for a policy framework and where necessary Union legislation on enhancing the exchange of information between the Customs Authorities of the EU Member States and those of third countries in the area of common commercial policy.”²

Problem the initiative aims to tackle

The EU trade accounts for around 15% of the world's trade in goods and trade flows are of critical importance to its economic growth and competitiveness. However, facilitating these rapidly growing trade flows combined with rising security and safety risks, whilst making sure they comply with our rules and custom formalities are applied correctly is a challenging task. In 2015, EU customs authorities handled almost 293 million customs declarations, and an overall trade flow with a value of 3.5 trillion EUR. Although there are no reliable estimates of the size of illicit trade flows, the incidence of fraud, and the amount of harmful goods imported, they are likely significant.

Therefore, effective management of risks in the international supply chain is vital to ensuring the protection of the financial and economic interests of the EU, and the security and safety of EU residents, while at the same time facilitating legitimate trade. To do that, more systematic information exchanges at international level would help.

However, the current possibilities to exchange customs information with third countries are not sufficient to match the growing trade flows. Currently, the exchange of information with third countries in the area of common commercial policy is not governed by a single and comprehensive instrument, but through different acts (Union Customs Code, individual international agreements and decisions, non-legally binding arrangements or pilot projects) that all contain a piece of the puzzle. Most importantly, there is no framework in place allowing for general and systematic exchange of customs-related information with third countries.

The current situation poses limitations on the functioning of the exchanges of customs-related information between the EU and third countries' customs administrations or other parties involved in the international supply chain as it does not allow for general and systematic exchanges, but needs individual ad hoc solutions which may require lengthy and complex negotiation processes with partner countries and create administrative burden.

Limited exchange of customs-related information with main trading partners not only impairs the ambition of EU International Customs Policy but also has economic and security related consequences. In particular it has an impact on EU revenue, competitiveness and security. Illicit traffic of goods can cause high losses in revenue when customs authorities are not in a position to impose customs duties entirely or at correct level.

Limited exchange of customs-related information could have a negative impact on economic prosperity and public order in case risk analysis cannot be carried out efficiently due to lack of advance information complementing the data required from the economic operator. The availability of timely, high-quality advance electronic data significantly enhances the capacity of Customs administrations to pre-select for control the high-risk movements of goods, while facilitating and accelerating the low-risk traffic. This should also have a positive effect on the financial interests of the Union.

² I/A Note - 15310/16 + ADD 1 + ADD1COR1; Document: 14220/6/16 REV 6

At the same time limited exchange of customs-related information can result in a situation that goods endangering the security and safety of EU residents are entering the customs territory illicitly.

The European Commission is therefore considering taking an initiative to address these issues.

Subsidiarity check (and legal basis)

This initiative covers automatic and advance exchange of customs information. These exchanges of customs information fall within the scope of the exclusive competence of the Union under Article 207 of the TFEU³ on the common trade policy, pursuant to Article 3 (1) e) of the TFEU and solely the Union is empowered to regulate based on "uniform principles".

In addition, Article 12 (2) and (3) of the Union Customs Code (UCC) provides that confidential information acquired by the Customs Authorities of the EU Member States in the course of performing their duty may be communicated to competent authorities of third countries for the purpose of customs cooperation "in the framework of an international agreement or Union legislation in the area of common commercial policy" and insofar as an adequate level of data protection is ensured.

Member States unanimously agree on the need for EU action and invited the Commission in its Council Conclusions on Enhanced Exchange of Customs Related Information with Third Countries of 19 December 2016 "to consider coming forward by the end of 2017, with proposals for a policy framework and where necessary Union legislation on enhancing the exchange of information between the Customs Authorities of the EU Member States and those of third countries in the area of common commercial policy".

B. Objectives and Policy options

To improve the security and safety of the EU and its citizens, facilitate legitimate trade and protect the financial interests of the European Union, it is important that the customs authorities of the EU Member States can share, on a more systematic basis, customs related information with third countries. More specifically this information exchange aims at improving risk management in the EU and recipient countries, further facilitating procedures and contributing to the fight against fraud, in particular undervaluation.

The policy options and relevant instruments will be defined in detail at a later stage to take account of the results of the public consultation and targeted consultations.

In the baseline scenario, the EU would carry on with the current approach of case by case agreements at EU level. This would seem unlikely to satisfy customs authorities' information needs, not only because of the time involved in concluding such agreements, but also because of the different trade patterns of the Member States. In the current situation, if a Member State wants to share, systematically, information with a specific third country, it can only request the EU to negotiate an EU-wide agreement with that particular third country.

Other possible options could include various manners to provide the EU with a policy framework, and if appropriate Union legislation, for a systematic exchange of customs related information with third countries. The Commission will compare and examine possible instruments at bilateral (e.g. bilateral protocols or standard provisions in future bilateral EU agreements), multilateral (e.g. convention) and EU level (e.g. EU regulation allowing the EU to exchanges information without need for an international agreements and at the same time empowering Member States to conclude bilateral agreements). Specifically, key parameters to be assessed and defined would be the requirements and criteria for such an information exchange, and the types of information to be covered.

C. Preliminary Assessment of Expected Impacts

The initiative aims to provide an EU policy framework that will allow systematic exchange of customs related information with third countries. However, such exchange is not only dependent on the policy framework itself, but will also depend on the willingness of third countries to cooperate in this area and the Union's political willingness as well as the technical capacity to do so (human resources, interoperability ICT systems) and, depending on the final shape of the framework, subsequent agreements to make sure the exchange materialises. These aspects are not the focus of this initiative; therefore, achieving the impacts described below will also depend on future

³ Ex-Article 133 TEC

action on these other parameters.
Likely economic impacts
<p>Systematic exchange of customs related information between customs authorities may help to make legitimate trade faster and at lower costs for economic operators and customs administrations. It can contribute to fluid trade lanes with facilitation of customs and border clearance and lead to more efficient, targeted control resulting in a positive impact on growth and competitiveness of European companies and increase international trade.</p> <p>Moreover, enhanced exchanges of customs related information can help customs authorities to prevent illicit traffic of goods and as a result ensure the correct collection of customs duties. This would also improve the level playing field and fair competition among businesses.</p>
Likely social impacts
<p>Cooperation and systematic exchange of customs related information could improve customs risk management and may, amongst others</p> <ul style="list-style-type: none"> • contribute – in addition to mandatory pre-arrival declarations – to the security and safety of consumers and residents in the EU, by strengthening controls to stop explosives, arms, dual use goods, Intellectual Property Rights Infringing and hazardous goods and to prevent the diversion of drug precursors; • lead to increased effectiveness of customs risk analysis or risk assessment in the prevention and detection of illegal trade, including customs fraud;
Likely environmental impacts
<p>No direct environmental impact is reasonably expected, given the nature and scope of the initiative.</p> <p>The streamlined approach allowing the systematic exchange of information on import or export of dangerous goods jeopardising the environment would nevertheless provide a positive impact on the environment.</p>
Likely impacts on fundamental rights
<p>Data exchanged with third countries can contain personal data and as such any initiative will be set up in line with EU legislation on data protection to limit any negative impact on the right to the protection of personal data.</p> <p>Information to be exchanged through a framework agreement could strengthen controls to stop Intellectual Property rights infringing goods. As such there would be a positive impact on the compliance with such rights.</p>
Likely impacts on simplification and/or administrative burden
<p>The systematic exchange of information with third countries could improve customs risk management in the EU, and hence allow competent authorities to be more selective in their enforcement actions. This could reduce the administrative burden for businesses acting in good faith and at the same time enhance their competitiveness through faster procedures.</p> <p>The exchange of information with third countries in the area of common commercial policy is currently taking place through a variety of different uncoordinated acts. Streamlining the current patchwork would allow for more systematic data exchange and would clarify the current situation.</p> <p>Depending on the final shape of the initiative, a streamlined framework for the systematic exchange of customs information with third countries could eliminate the need for negotiating individual agreements with third countries in this area. This would eliminate the need for ad hoc solutions and at the same time decrease the administrative burden at EU and also Member State level as these are lengthy and complex processes that require significant human resources.</p>
D. Data Collection and Better Regulation Instruments
Impact assessment
An impact assessment (IA) is being prepared.

As there is currently no legal instrument in place providing for systematic exchange of customs-related information with third countries, an evaluation of existing legislation cannot be carried out. In addition, the different bilateral international agreements between the EU and third countries that are currently used as basis for individual ad hoc information exchanges do not constitute standard instruments that can be evaluated in the context a possible legal initiative. That said, in the context of the impact assessment, the Commission will carry out an assessment of the current situation/working method, based on available material and the planned stakeholder consultations (see consultation strategy below).

Data collection

The following background information and input data is already available:

- Conclusions of the Customs 2013 Seminar on Strategies for the Exchange of Customs Information between the European Union and Third Countries held in Vilnius on 18-19 November 2010; Conclusions of the meetings on Customs Cooperation at the Eastern Border of the EU, in particular the High Level Seminar held in Budapest on 14-15 April 2011 and the High Level Seminar "Towards better cooperation" held in Cracow on 19-21 October 2011;
- Final Declaration of the High-Level Seminar on Customs Cooperation at the Eastern Border of the EU on held in Druskininkai on 24 – 25 October 2013.

Additional information and data will be gathered from the public, the customs administrations and key stakeholders through an open public consultation and targeted surveys as well as from statistical data available.

Consultation strategy

Public consultation

A 12-week open public consultation will be carried out in Q3 2017. It will focus on the on the need for EU action aimed at introducing an effective tool to allow for systematic exchange of customs related information with third countries and in case there is, on how this tool could be designed and its scope. This consultation will be announced on the Your Voice in Europe website: http://ec.europa.eu/yourvoice/consultations/index_en.htm

Other information gathering activities

Besides, to get the specific opinion on the preferred format of the initiative, data protection requirements and potential problematic areas and risks the following targeted consultations of key stakeholders are envisaged:

- Member States' customs administrations and any other relevant national competent authorities;
- The business community through the Trade Contact Group (TCG) and any other appropriate channels;
- Relevant international partners as well as international organisations, in particular the World Customs Organisation (WCO), may be approached for information and sharing of experience.

Will an Implementation plan be established?

Subject to the impact assessment work, and the final shape of the initiative, at the moment no particular risks are identified in regard of the implementation of this initiative, and therefore no implementation plan is foreseen.