



CONFIAD PAN EUROPEAN NETWORK

CONFEDERATION INTERNATIONALE DES AGENTS EN DOUANE – INTERNATIONAL FEDERATION OF CUSTOMS BROKERS AND CUSTOMS REPRESENTATIVES

CONFIAD'S POSITION PAPER – ISSUES ARISING FROM THE APPLICATION OF VAT AND CUSTOMS LEGISLATION IN THE AREA OF E-COMMERCE

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This paper discusses the position of Confédération Internationale des Agents en Douane ("**CONFIAD**")¹ in relation to the issues arising from the application of VAT and customs legislation in the area of e-commerce.

The present submission has been prepared following the discussions that took place during the 44th meeting of the Customs Expert Group - General Customs Legislation Section (CEG/GEN/44) jointly with the Trade Contact Group (TCG) on 26 January 2022, as well as by considering the European Commission Note dated 18 January 2022 entitled 'Summary of the Member States' contributions on the outstanding issues on the application of the new VAT and customs legislation in the area of e-commerce.²

By way of background, CONFIAD was founded in 1982 as the organisation of the European Customs Brokers, with the purpose of defending and coordinating the professional interests of its members, supporting the harmonisation of the legislative, professional and customs regulations at European level. The members of CONFIAD are national associations representing customs brokers in nine EU Member States. CONFIAD has a permanent presence in Brussels and regularly contributes to the policy-making activities of the European Institutions in the areas of customs.

CONFIAD respectfully submits that, as part of its policy-making activities in the area of e-commerce, the European Commission should properly address the challenges arising from the the valuation of e-commerce items in regular flows (i.e. not IOSS and intrinsic value), and consider the important contribution of customs brokers to the fight against fraud:

- In an **indirect representation** context, CONFIAD respectfully requests the European Commission to explore ways to find a workable solution to the issue of the **value of the large numbers of items imported B2B2C on behalf of non-established companies** (example: Chinese company selling products from a fulfilment centre in the EU). In this scenario, the imported goods have not yet been sold and the operation is essentially a stock movement by a non-established company. As the indirect customs representative, the customs representative is also the declarant in accordance with Article 170 UCC and therefore fully liable for the duty. CONFIAD would appreciate the Commission's guidance on how to determine the value of the goods for this type of flows. In CONFIAD's view, customs brokers should be allowed to calculate the customs value

¹ Transparency Register Number 900179622923-45.

² Ares (2022)374882.



based on the resale price on the platform. Indeed, the import value is EU frontier and at wholesale level. The resale value is retail value, often delivered to the consumer. Accordingly, the customs value should be the retail price, minus relevant costs after the release into free circulation (transportation, storage, and handling costs, fulfilment costs).

CONFIAD respectfully submits that customs brokers need a predictable valuation method that can be implemented on very large flows of products. Importantly, **it does not matter if the customs value ends up being slightly higher across the board. Predictability of the operations is of the essence.**

- In a **direct representation** context: In CONFIAD's experience, practical issues arise in the framework of the importation of e-commerce items on behalf of established companies, who are then selling such items from a fulfilment centre. Specifically, CONFIAD would appreciate the European Commission's guidance on practical ways for customs agents to **verify the customs value of e-commerce flows** that they declare in direct representation. In CONFIAD's view, brokers should be liable in this type of transaction only insofar they did not respect the instructions of the declarant they represent or if they knowingly participate in fraud. In CONFIAD's view, in the absence of adequate tools, it is difficult to determine when a low value becomes so low that it should be treated as **fraudulent**. In certain Member States customs authorities tend to require representatives to check the value of imports against the Market Access Database (MADB). In practice, however, the MADB does not work: it is often way above the online resale price of the products, or in other cases way below (because tariff positions include very different products). As noted above, CONFIAD respectfully submits that the resale price on the online platforms should be used to screen imports. But even by upholding this solution, the question arises as to which percentage difference between the resale price and the price communicated by the declarant should trigger the suspicions of the direct representative on the possible existence of fraud. CONFIAD further respectfully requests the Commission to address the practical **difficulties customs brokers encounter when trying to act as a direct customs representative**. This is made impossible in some Member States: the administrative compliance requirements are impossibly high to meet in an e-commerce context (e.g., the requirement to have a written agreement, in a set form, with the person who is represented, and to have a wet signature by that importer).
- **Fighting fraud with customs authorities, the Commission and OLAF.** A significant share of e-commerce imports is declared by customs brokers. This is necessary because, in order to declare goods, one has to have access to the declaration platform of the Member State. Most e-commerce importers have no access to the declaration platforms, and need a broker to declare the goods. CONFIAD's members are regularly exposed to fraudsters (or negligent/careless actors) looking around for a weak link: a broker without expertise and/or unaware or the risk of not complying with customs law. This means that in practice when they comply with customs law, diligent brokers risk to lose business to new, non-compliant brokers, in the same port, or elsewhere in the same or another Member State. The only solution CONFIAD sees to this worrying trend is to require from anyone willing to become a broker a high level of expertise, higher than what is currently required. A high level of competence required to customs brokers will significantly reduce the ability by anyone to commit fraud through erroneous or false



declarations. Importantly, such a level of expertise should also be the same everywhere in the EU in order to avoid distorting the Single Market. Effective enforcement of customs compliance throughout the EU will be enhanced by making sure that all customs brokers are skilled and competent, and will refuse to declare goods in circumstances conducive to fraud (e.g. undervaluation, non-payment of VAT, etc.). In the same vein, efforts should be undertaken by the Commission in order to facilitate the cooperation between customs brokers and national customs authorities, the European Commission and the European Public Prosecutor in circumstances in which brokers identify potentially fraudulent trade flows. In sum, **CONFIAD supports policies aimed at creating better communication between the European Commission, national customs authorities and customs brokers with a view of tackling fraud before it materializes.**

CONFIAD wish to thank the Commission for its attention and for the opportunity granted to present its position. CONFIAD remains at the Commission's full disposal should there be questions or request for clarifications.

For CONFIAD

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President