



EUROPEAN COMMISSION  
Impact Assessment Board

Brussels,  
D(2013)

**Opinion**

**Title**                    **DG TAXUD - Impact Assessment on a Union legal framework for customs infringements and sanctions**  
**(resubmitted draft version of 16 May 2013)\***

**(A) Context**

EU customs legislation is fully harmonised and provides for a stable and comprehensive legal system, which aims to ensure the proper and uniform application of EU autonomous and international rules, and to set out the obligations and rights of customs administrations and economic operators in a common and transparent way. However, despite the fact that customs legislation is fully harmonised, its enforcement, lies within Member States' national law. Consequently, customs legislation enforcement follows 27 different legal sets of rules and different administrative or legal traditions. This means that infringements of certain obligations stemming from the harmonised EU customs legislation are punished by sanctions which differ in nature and severity according to the Member State that is competent for it. This has an impact not only on the effective management of the Customs Union through the uniform enforcement of its legislation, but also on the equal treatment of economic operators doing business with customs and on the equal access to customs facilitation measures of legitimate trade.

**(B) Overall opinion: POSITIVE**

**While the report has been improved along the lines of the Board's first opinion it should be further strengthened in a number of respects. First, the report should provide additional evidence of the problems arising as a result of differences in implementing Customs Union requirements across Member States, explaining how and to what extent these differences contribute to the international pressure on the EU to comply with trade obligations from the Kyoto Convention, illicit trade and Authorised Economic Operator (AEO) issues. It should better explain the necessity and proportionality of EU action concerning customs sanctions, and indicate how Member States' concerns about intrusive action affecting their legal systems will be addressed. Second, the report should further specify the content of the options, explaining how the range of applicable sanctioning rules will be decided, what the role of Member States will be in this and how they will be applied in practice. It should also clarify how the options will address sources of trade irregularities, such as trade distortion, customs loopholes and illicit trade. The report should better assess transposition and compliance costs, by providing estimates of the difference in relative compliance costs for SMEs compared to larger businesses and for Member States with significantly different regimes from what is being proposed.**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

**Finally it should provide a more transparent comparison of the options, clarifying the scoring system and explain in a more comprehensive manner how the preferred option was selected.**

**(C) Main recommendations for improvements**

**(1) Better substantiate the problems and strengthen the subsidiarity analysis.** The report should better explain what evidence exists about the nature and magnitude of the identified problems so that it is clearer how differences in Member States' customs regimes negatively affect internal trade and international trade agreements. It should strengthen the evidence of international pressure by describing in greater detail what the United States arguments are in bringing forward a customs complaint and demonstrate the significance of this complaint by identifying the proportion of supporting WTO members. In addition, it should more clearly explain how the proposed appeal mechanism in the Trade Facilitation Agreement is targeting the Union in particular, the arguments in favour and against the mechanism, as well as the political support for such a mechanism within the World Trade Organisation. In addition, the report should provide further evidence of illicit trade that occurs as a result of implementation differences across Member States, as it is not clear how important the contribution of these differences is relative to other factors that contribute to illicit trade, such as customs rates or poor enforcement of customs infringements. It should also provide an overview of what effects the implementation differences have on the granting of AEO status across Member States to give a better indication of the extent of this problem. The report should then further substantiate the baseline scenario, for example, by explaining how Union differences could be expected to further contribute to increased illicit trade, as it is still not clear how the problems are expected to evolve if no action is taken. In particular, it should describe what would be the reasons for and consequences of further action at an international level (e.g., due to non-compliance or risk of further WTO complaints) in so far as confidentiality restrictions allow. On that basis the report should better explain why EU action is required at this point in time, given that customs sanctions have not been subject of EU intervention to date. The report should also discuss why previous attempts at harmonisation were deemed "intrusive" by several Member States, and explain how this initiative will address these concerns. The report should also clarify the EU's competence to intervene in the approximation of "criminal customs infringements" under Option D, and explain how it relates to other areas of EU non-exclusive competence in justice.

**(2) Clarify the content of the options.** The report should more clearly present the content of the options, explaining how decisions on sanctions and infringements will be made and identifying the responsible actors, especially which actors will be involved in drawing up the list of sanctions in Options C and D. The role of Member States in this process should be clarified. Furthermore, the report should address the issue that there is considerable room for interpretation for Member States in applying sanctioning rules in cases of non-criminal infringements in Option C, as it is difficult to develop a complete list of possible infringements to guide Member States. The options section should further clarify how the options will address all the identified trade irregularities in the problem section, as currently this is only explained in the assessment of the impacts..

**(3) Better assess and compare impacts of the options.** The report should use a more evidence based analysis to measure impacts on Traditional Own Resources collection, trade distortions and international pressure, assessing how and whether these impacts are distributed over different actors in a proportionate manner. For instance, it should

provide estimates of implementation costs for national authorities, especially for Member States with significantly different regimes from what is being proposed (e.g., in countries with only criminal customs sanctions). The report should better assess compliance costs and in particular the effects on SMEs, who are disproportionately affected by these costs compared to larger businesses. It should also better describe the scores allocated in the comparison of options, as no explanation is given of what a "+++" score means. Furthermore, it should explain why option C has been selected as the preferred option, indicating what proportion of Member States would not support option D and why. The report should better explain that the issues raised during the recent consultation on the TOP10 most burdensome legislative acts for SMEs are not directly linked to the problems this initiative addresses. It should more clearly indicate where the options are expected to contribute to simplification of procedures, especially for SMEs.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report*

**(D) Procedure and presentation**

The section on monitoring and evaluation should list concrete indicators. It should also explain how monitoring of these indicators will be organised, especially who will be responsible for the collection of data.

**(E) IAB scrutiny process**

Reference number	2013/TAXUD/002
External expertise used	No
Date of IAB meeting	Written procedure. This opinion concerns a resubmitted draft IA report. The first opinion was issued on 04/02/2013