

# Binding valuation information and some issues on the e-commerce

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## BVI : something new?

Art. 36 UCC : « The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine:

(a) ...

(b) the cases referred to in Article 35, where decisions relating to binding information are taken with regard to other factors on the basis of which import or export duty and other measures in respect of trade in goods are applied.

**→ Controversy but majority opinion = something new !**



## E-commerce

Issue of determining customs value in the context of e-commerce → ruling

Interesting for :

- Taxpayers
- Customs administrations
- EU Commission



## E-commerce

*FBA*: transfer of stocks → Which valuation method?

- Transaction value: no sale for export
- Alternative methods: no identical/similar goods, no sale, no data...
- **Reasonable means: deductive value with flexibility = position of the Belgian customs administration**



## Legal force of the « value decision »

Article 23(3) UCC: "the customs authorities which took a decision may at any time annul, amend or revoke it where it does not conform to the customs legislation".



## Remedy *de lege lata* (I)

Art. 23 (3) UCC >< general principles of law

### Protection of the legitimate expectations:

- Creation of reasonable expectations
- Legitimate expectations

But principle of legality...



## Remedy *de lege lata* (II)

### 3 categories of conflict with EU law:

- Contrary to an unambiguous provision of EU law:  
**no legitimate expectations**
- Manifestly contrary to another provision of EU law: **no legitimate expectations**
- Non manifestly contrary to another provision of EU law: **protection of the legitimate expectations**



## Remedy *de lege ferenda*

Art. 20a of Delegated Regulation 2015/2446 (project): “By way of derogation from Article 23(3) and Article 27 of the Code, BVI decisions shall be annulled where they are based on inaccurate or incomplete information from the applicants”.





## Conclusion

The ordinary law system for customs rulings is less protective of taxpayers' rights than the system applicable to binding information. The possibility of issuing binding rulings on customs value improves taxpayer protection.

Thank you for your attention!



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