

Consultation response

Revision of the Union Customs Code



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Introduction

The EU's customs union is the foundation of its single market and its involvement in international trade. The EU agrees on a common set of rules and policies concerning goods crossing the EU borders, which national customs administrations implement and enforce. Customs' mission is to facilitate legitimate trade, collect customs revenue and protect European citizens against products that do not comply with EU food, health and environmental rules, and against security and safety risks including smuggling, crime and terrorism.

Customs authorities supervise all goods entering or leaving the customs union. They use risk management techniques to identify risks and carry out controls of the goods, to ensure that rules are respected and that imported goods are safe and secure for EU citizens. Often, this happens in close cooperation with authorities competent for enforcing sectoral legislation, for example on product safety or animal health.

The EU applies a common customs tariff, which means the same way of calculating the duty for an import in all Member States, in line with the EU's trade agreements, and collects the customs duties for the EU budget. Once a good is in the EU single market, in technical terms 'released for free circulation', it can be moved freely from one Member State to another without customs controls. Any port, airport or external border crossing point is therefore the entrance to the EU. The protection provided by a customs officer in one place, is at the service of all.

However, there are significant differences in the capacity, risk analysis and resources of the national customs administrations. Furthermore, illegal activities can change routes from one entry point to another, making it more difficult to detect. Overall, global trade has evolved rapidly, with a significant increase in terms of volumes, including a rapid expansion of e-commerce. EU rules and standards have evolved as well, calling for an increasing role of customs in performing tasks going beyond revenue collection. Concerns for the protection of EU public interests, EU citizens and business have risen to the fore. Brexit, the Covid-19 pandemic and the Russian aggression of Ukraine have been accelerators of these changes.

The Commission has engaged in a deep reflection to make the customs union fit for the future. This includes in particular a foresight study, which resulted in a report on the future of EU customs 2040, and the report and recommendations of the Wise Persons Group on the challenges facing the customs union. Evidence gathered by this Group shows that dangerous, non-compliant products still enter the EU market every day and that we leave billions of customs duties uncollected. As a result, it appears that customs in the EU do not yet function "as one" as they should. This leaves the customs union at the mercy of its weakest link.

The European Commission is preparing a proposal to reform the customs union and is assessing its expected impacts. The aim of this consultation is to gather the views and experiences of interested parties (including businesses, trade associations, individuals, public authorities and other stakeholders) regarding the state of the customs union and possible reform elements.

A summary of the responses to this consultation will be published after the end of the consultation period.

About you

Language of my contribution - EN

I am giving my contribution as - Business association

First name – Michal

Surname - Chvojka

Email (this won't be published) – MCH@amchameu.eu

Organisation name: American Chamber of Commerce to the EU

Country of origin – BE

Organisation size – Small (10 to 49 employees)

Transparency registration number: 5265780509-97

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published. Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

X - I agree with the personal data protection provisions

Information on your interaction with customs

On average, how frequently are you involved in customs operations, procedures and/or declarations?

Daily or almost daily

Do you deal regularly with more than one customs office or Member State?

Yes

If yes, in your experience, do you find that Member States execute similar operations in different ways? Please provide details

In terms of the interpretation and application of customs legislation, as well as intellectual property rights (IPR) enforcement for illegal and counterfeit goods, businesses are regularly confronted with a non-unified approach by the customs authorities of different Member States. Combined with a highly diverging risk perception across Member States, this results in very significant differences in pre-clearance and clearance processes as well as average lead times and inspection rates across Member States and among various customs offices within single Members States. The most recent changes (as of 1 July 2021) are the area where major differences exist, eg: application of H7 data set and requested data in H7 declaration. Also, the Authorised Economic Operators (AEO) program and associated simplifications for trusted companies and the customs representation, could be mentioned. Overall, COM should take stronger leadership role. There are also differences in storage and destruction costs and practices.

Increased harmonisation and standardisation of customs processes across the EU are key to facilitate trade whilst ensuring that bad actors cannot direct their import flows towards countries with lower risk perception. While moving towards more uniform application of customs law, the EU must aim for

the highest quality solutions that simultaneously allow meeting facilitation and control goals and that avoid by all means equalling to the common denominator among the Member States.

If you import or export for your business, how do you submit customs declarations?

You prepare and submit declarations directly into national customs systems

Have your interactions with customs changed due to the UK's withdrawal from the European Union?

Yes

How has your experience changed in this respect? Please provide details

Application of full import and export formalities for the shipments arriving and departing from/to Great Britain led to substantial increase in the volumes of clearances. At the same time, express carriers are facing customers who are used to delivering goods between the two countries without formalities, and who are not fully prepared for the changes. More extensive interaction is necessary both with the customers and the customs administrations. It is also unclear whether the UK is or may become a transit hub for IPR infringing goods including parallel imports.

In your own experience, how important are the following customs issues in terms of the administrative workload they generate for business?

	Very important	Quite important	Somewhat important	Not very important	Not important at all	Don't know
Classification of goods	x					
Determining the origin of goods	x					
Valuation of goods for customs		x				
Correction of errors in declarations	x					
Amendments of declarations because of changes in routing, entry point etc.		x				
Unexpected delays at the border	x					
Adapting to information technology environment to manage customs processes		x				
Getting or verifying data from third parties to use in customs processes	x					
Getting or handling documents for import or export (certificates, supporting documents, permissions, etc.)	x					

Other (please specify) More harmonisation of the Customs processes and procedures amongst EU Member States customs admin	x					
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Overall views on the Customs Union

In your opinion, how well is customs contributing to the achievement of the below objectives, through its controls of imports and exports?

	Very well	Quite well	Fairly well	Not very well	Not well at all	Don't know
Protecting EU industrial production and employment from competition of unfair trading practices		x				
Coping with global geopolitical developments (e.g. new trade agreements, commercial disputes, punitive tariffs, etc.)			x			
Supporting circular economy and the sustainable use of resources				x		
Keeping up-to-date with new business models and technologies				x		
Combatting global pollution (e.g. plastic waste)				x		
Combatting forced labour, child labour and working conditions in international supply chains			x			
Ensuring supply chain due diligence and promoting EU values internationally (e.g. human rights, environmental protection)			x			
Combatting smuggling			x			
Preventing the financing of criminal activities (e.g. terrorism)				x		
Responding to the Covid-19 pandemic and its socio-economic consequences			x			
Coping with the consequences of the withdrawal of the UK from the EU (Brexit)		x				
Enforcing sanctions and export restrictions for dual use goods (goods used for both civilian and military purposes), e.g. following the Russian invasion of Ukraine		x				
Ensuring compliance with EU standards (animal and plant health, product safety, environment protection, etc)		x				
Ensuring compliance with intellectual/industrial protection rules (IPR, counterfeiting...)		x				
Ensuring the protection of the EU's financial interests (collection of duties and taxes)				x		

Please provide details or specific examples

500 character(s) maximum

Customs authorities have worked in getting proof of the exporter and destination of cargoes on hold in European ports and have diverted from Russian exporters as well as Russian ports and borders, specially from the moment that the sanctions against Russia were imposed.

We recognise the critical importance of maintaining the highest levels of safety and security for EU Member States and citizens through effective risk management. However, in order to ensure competitiveness a sharper and more proactive focus on trade facilitation than what has been evident during the Union Custom Code (UCC) implementation will be essential. Despite the UCC's stated aim to facilitate trade, it has ultimately obliged traders to provide more data at an earlier stage and on a transactional basis.

In this regard, the urgent implementation of Binding Valuation Information decisions (BVI) is a critical improvement that should be made as to guarantee predictability and consistency of valuation throughout the European Union Customs Union (Customs Union). In addition, there are interpretative issues relating to valuation that remain insufficiently clarified even with the publication of the Commission's Compendium of Customs Valuation texts. Whereas we recognize the importance of the revenue collection objective, increasingly – and unfortunately – traders have the impression that this objective prevails over trade facilitation objectives.

The Single Trader Interface set up for the Import Control System 2 (ICS2) is a big achievement and should be duplicated to include other customs procedures such as import, export and transit. The customs clearance data sets are being standardised although there are still too many data elements which can be requested on top of the standardised data set.

Currently the EU does not have a centralised and consistent process for allowing companies to validate data that the customs borders receive. The updates should address this gap and enable a consistent method to pull data out in the same manner that the Single Window is enabling centralised clearance. This would enable companies to self-govern throughout the EU. This is desired by the EU but not enabled in all Member States, thus, a uniform approach, covered by updated legislation, would be useful. This maps to the call outs to address risk.

In essence, a fully-fledged EU customs information environment should be the goal of the UCC reform. Such environment shall encompass data management capabilities for better risk management, including simplified provision of data (eg, enabling re-use of data, avoiding duplications, etc) in reduced customs processes, streamlined handling of non-customs formalities (building on the concept of Single Window) and more tailored services for trade, other public authorities and consumers. Customs data currently available is often too limited and of insufficient quality to effectively support customs enforcement. A 'new approach to data' is particularly key to effectively tackle the challenges raised by e-commerce.

What do you consider to be the main achievement(s), improvement(s) or positive impact(s) of the Customs Union to date?

500 character(s) maximum

The adoption of the UCC (including its delegated and implementing acts) had a positive impact for the Customs Union. However, the digitalisation/ harmonisation/ modernisation process of the Customs

Union should continue. This should take into consideration the latest supply chain trends (eg, e-commerce), enhanced customs risk profiling technologies and more efficient customs enforcement through proactive cooperation with agencies such as the European Anti-Fraud Office (OLAF).

The basis of the import and export system remains the existing national clearance systems, which obliges traders to develop, maintain 27 different systems and interfaces. This should be further harmonised in line with what has been done with the ICS2 system. There should be more consistency between administrations and swifter resolutions to individual trade queries at the EU-level regarding specific customs application problems.

What do you consider to be the main challenge(s) or disappointment(s) with the Customs Union to date?

500 character(s) maximum

A major challenge is the harmonised interpretation of law and the harmonised implementation of the rules by Member States. Differences in IT implementation, the clearance process, lack of facilitations for trusted traders, increased demand for provision of information at the border and lack of cooperation of law enforcement authorities are still areas for substantial improvement. Trade timely involvement and the notification of specifications is crucial at designing systems and the relevant legislation.

A method to address brokers who clear without authority in an EORI's name is lacking in the legislation. This needs to be updated in the current legislation.

Value Added Tax (VAT) compliance on all supply chain players – interpretations about responsibilities for each player are different between EU Member States, as an example: Sweden.

A key mechanism to increase the Customs Union's efficiency should be to further facilitate trade by trusted traders, as this will support compliant and legitimate businesses while allowing customs authorities to focus more on fraud and non-compliance risk areas.

This should be achieved by allowing enhanced benefits for AEOs. The AEO program needs to be incrementally improved in terms of the simplifications or reductions it provides, from clearance processes and lead times. This can be done by factual departure from a transaction-based approach and bolder move to one based on processes, which is more feasible given the development of the IT infrastructure both on the customs' and traders' side. Another key simplifier would be to centralise customs clearance capabilities (ie with the decisive role of the Member State of identification only). AEO traders should also have access to post-entry data to check for any inconsistencies, for example with Import One Stop Shop (IOSS) return data. It should also allow for goods to be released by AEO trusted traders without the involvement of the customs authorities at the border (self-clearance, organized in a similar way as VAT reporting and payments), in order to ensure that trade operates smoothly, particularly in the case of just-in-time consignments; depart from transactional base clearance and develop periodical reporting only, especially for AEO, as new enhanced benefit.

As of today, what are your (or your organisation's) most important needs and priorities regarding a possible reform of the Customs Union?

	Very important	Quite important	Somewhat important	Not very important	Not important at all	Don't know
Customs authorities in EU27 acting as one (uniform application of rules and of customs controls, no divergences, no weak border points)	x					
Simpler rules for simpler customs processes, less formalities (including for goods sold online)	x					
More effective protection against financial risks (collection of customs duties, VAT and other charges to the benefit of EU and national budgets)		x				
More effective protection against non-financial risks (better enforcement of EU safety, health, environmental and IPR rules on imported goods)			x			
More effective tools to tackle smuggling, illicit or fraudulent trade		x				
More effective sharing of information and data between national customs administrations and other authorities enforcing product requirements on imported goods		x				
Better adaptation of customs to new global, commercial or political developments and crisis	x					
Better performance measurement framework, with easier access to comparable quality data	x					
Others (please specify)						

Issues at stake

Administrative burden and potential for simplification

Do you see the need to simplify how information is provided to customs and to reduce administrative burden and formalities?

Yes

How would you suggest that information is provided to customs? Which type of information? Who should provide the information? When should the information be provided and how frequently? Through which channels should information be provided?

- Information requested at the border for the customs clearance purposes should be streamlined, and only the strictly necessary data should be provided there, supported with enhanced cooperation of law enforcement authorities and controls applied away from the border.
- Information should be provided by the 'owner', responsibilities for accuracy and correctness should be rationalised.
- Move from transaction based provision of information to system based approach is required.

Customs' role in enforcing prohibitions and restrictions and compliance with EU standards

Do you face competition from imported goods that do not respect EU standards?

Yes

Do you have evaluations, estimations, or any other evidence on the abovementioned challenges, in particular with regard to imported products not aligned with EU standards (prohibitions and restrictions)?

Counterfeits manufactured in clandestine factories conform to no regulatory standards, whilst illicit whites are mainly manufactured in countries with weaker regulations. Furthermore, they are distributed with no restrictions on age, display or quantity purchased. The Market Surveillance Regulation took meaningful steps to ensure 'that products placed on the Single Market, including products traded online, comply with high common EU rules, are certified and meet the quality and safety standards'. However, it only entered into force on 16 July 2021. The Commission is also working on a revision of the General Product Safety Directive, expanding the notion of responsible person. Before making any regulatory changes, sufficient time should be given to evaluate the system's implementation and the enforcement. Access to better quality data and better data sharing will be key to help enforcement against bad actors.

In your experience, can non-compliant and/or counterfeit goods easily be purchased online?

Yes

Do you see the need for a better, clearer and more efficient framework for cooperation between customs and other authorities responsible for Market Surveillance, law enforcement (including border guards and police), taxation, etc. for sharing data on the products entering or exiting the EU?

Yes

Please explain

500 character(s) maximum

Information requested at the border for the customs clearance purposes should be streamlined, and only the strictly necessary data should be provided there, supported with enhanced cooperation of law enforcement authorities and controls applied away from the border by cooperation of other authorities on a more efficient way. Information should be provided by the ‘owner’, responsibilities for accuracy and correctness should be rationalised.

As mentioned before, better information exchange is critical. Currently the EU does not have a centralised and consistent process for allowing companies to validate data that the customs borders receive. The updates should address this gap and enable a consistent method to pull data out in the same manner that the Single Window is enabling centralised clearance. This would enable companies to self-govern for the entire EU. This is desired by the EU but not enabled in all Member States, thus, a uniform approach covered by updated legislation would be useful. This maps to the call outs to address risk.

Market surveillance nowadays is organised per country. Some countries have put in place a budget to check on products, others have not. The EU should better organise this and make sure that the same amount and quality of checks are in place in all countries of the EU.

Should additional information requirements on specific products or EU standards be included in customs processes?

No

Please explain

No additional requirements should be needed at the border – with the better approach to data mentioned above, the sole moment of border-crossing shall be streamlined, while Customs attention focused on efficient and non-intrusive controls away from the border. In addition, customs authorities need to work closer together with the authorities of the offending export locations to stop the shipments before they are being shipped to the EU.

Information requested at the border for customs clearance purposes should be streamlined, and only the strictly necessary data should be provided there, supported with enhanced cooperation of law enforcement authorities and controls applied away from the border. Information should be provided by the ‘owner’, responsibilities for accuracy and correctness should be rationalised.

Contribution to the EU’s climate change policies and green agenda

As the fight against climate change is an important overarching objective of the European Union, like any legislative proposal, the intended reform of the Customs Union should take into account links and opportunities to promote the EU’s green agenda.

Greening customs: in what areas and through which measures do you see potential for customs authorities/customs controls to reduce their emissions and carbon footprint?

- Digitalisation and avoiding the paper-based procedures.
- Controls made on distance, without moving goods and persons.

In what areas and through which measures could customs contribute to reaching the EU Green Deal's objectives? (E.g. promotion of environmental goods, circular economy, reduction of transport emissions, avoidance of carbon leakage, CO2 footprint of goods)

500 character(s) maximum

Accurate reporting on emission and carbon footprint requires high level of professional knowledge in a very specific area. This should not be linked to customs clearance procedures and should be moved away from the border activities. Other areas are having experiences with controls independent from the customs clearance, see the General Product Safety Regulation and the authorised representative approach, or the intermediary services in case of IOSS. Counterfeit goods should be destroyed in carefully controlled expert facilities as their composition is unknown. A network of approved, audited destruction and recycling facilities is needed.

Policy options

Which policy changes or mechanisms should in your opinion be included in a reform of the Customs Union?

	Strongly agree	Tend to agree	Neither agree or disagree	Tend to disagree	Strongly disagree	Don't know
A new partnerships with trusted traders and other competent authorities for better risk management, including reinforced advance cargo information	x					
Simplifying customs formalities for reliable and trusted traders established in the EU by making more use of commercial information rather than of burdensome administrative requirements	x					
Enhance co-operation between customs and non-customs authorities (notably Market Surveillance Authorities, Law Enforcement Authorities, Tax Agencies). This could cover, for example:	x					
-joint policy elaboration	x					
-operational coordination;	x					
-information exchange	x					
-improved enforcement of prohibitions and restrictions.	x					
Reforming the EU customs governance to provide for an EU layer	x					

that could, for example, deal with:						
-identification of risk priorities at policy and political level;		x				
-EU-wide risk management;		x				
-information technology management;		x				
-training of customs officers;		x				
-financing of customs equipment,;		x				
-EU crisis response.	x					
Providing for a fully-fledged EU customs information environment, with emphasis on, for example:						
-data management capabilities;	x					
-simplified provision of data (enabling re-use of data, avoiding duplications, etc.);	x					
-streamlined handling of non-customs formalities (building on the concept of “single window”).	x					
Adapting customs legislation to e-commerce transactions, for example by strengthening supervision of business-to-consumer flows and liability of involved actors for all fiscal and non-fiscal rules						x
Integrating the green agenda in the customs agenda and traders behaviours		x				

Do you have any other suggestions for policy measures to be included in a reform of the Customs Union?

Customs formalities should be simplified further for reliable and trusted traders established in the EU by making more use of commercial information rather than of burdensome administrative requirements was the initial objective. Even more simplified procedures for AEO companies would be welcome.

Additionally, there’s room for improvement in times of crisis to avoid the disruptions that happened during the Covid pandemic.

If new policy measures were introduced, can you please provide an estimation of the magnitude of the impact that each option would entail for you or your organisation?

	High positive impact	Limited positive impact	High negative impact	Limited negative impact	No impact
Better cooperation of customs and noncustoms authorities for better risk management, including reinforced advance cargo information and operational coordination	x				
Partnership with reliable and trusted traders that can use commercial information instead of burdensome administrative requirements to comply with customs obligations	x				
Reforming the EU customs governance to provide for an EU layer		x			
Providing for a single EU customs information environment, with emphasis on, for example data and the concept of single window	x				
Adapting customs legislation to ecommerce transactions, for example by strengthening supervision of business-to consumer flows and liability of involved actors for all fiscal and non-fiscal rules	x				
Integrating the green agenda in the customs agenda and traders behaviours		x			

Please Explain

Integrating the green agenda in the customs agenda and traders behaviours would likely create a negative impact due to the increase of paperwork it will create for businesses.

Any additional liabilities imposed on e-commerce actors should be based on economic reality of how these actors operate. For example, marketplaces are not involved in customs processes and they are therefore not the best placed actor for additional customs duty liabilities.

Due to a high number of parcels, customs authorities are not able to successfully identify illicit products. Detection of illicit trade goods can be improved by enhanced customs risk profiling technologies and more efficient customs enforcement through proactive cooperation with agencies such as OLAF.

A closer partnership should be sought between trade, EU Institutions and national authorities modern to create a frictionless customs environment for the future.

On and offline intermediaries should also provide pre-arrival data as standard good business practice, feeding customs' risk analysis to allow targeting of suspect large consignments. This maximises success, prevents tax and duty evasion. Customs should also log and store data on all detentions, including small ones.