

# AmCham EU calls for an amendment of the Commission proposal to harmonise customs infringements and sanctions

## Executive summary

The EU's customs union entails the harmonisation of customs legislation through the Community Customs Code and its implementing provisions. However, compliance with those measures is ensured by the enforcement legislation of each Member State, including their rules on penalties for customs infringements. The European Commission has recently released a proposal to harmonise national rules related to customs infringements and sanctions. Some elements of the proposal could have serious negative impacts on economic operators and the American Chamber of Commerce to the European Union (AmCham EU) urges the EU to amend the proposal to eliminate these potentially damaging provisions.

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*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 €2 trillion in 2013 and directly supports more than 4.3 million jobs in Europe.*

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On 13 December 2013, the European Commission issued a proposal for a directive on the EU legal framework for customs infringements and sanctions. The EU customs union entails the harmonisation of customs legislation through the Community Customs Code and its implementing provisions. However, compliance with those measures is ensured by the enforcement legislation of each Member State, including their rules on penalties for customs infringements. With the proposal, the European Commission aims to address the lack of harmonised customs infringements and sanctions legislation.

The American Chamber of Commerce to the European Union (AmCham EU) urges the EU to amend the proposal in order to eliminate some provisions that could lead to seriously negative impacts for economic operators.

Firstly, article 3 of the proposal introduces '*strict liability infringements*' whereby sanctions will be imposed '*irrespective of any element of fault*'.

Customs infringements should lead to penalties only in cases where there is evidence of negligence or when infringements are committed intentionally. A system of strict liability will have unjustified and severe implications for economic operators and is not even in accordance with the legislation currently in force in the majority of Member States. According to the impact assessment, only three Member States have strict liability infringements for non-criminal infringements. Furthermore, contrary to the impact assessment, which justifies a system of strict liability because it could be a '*useful simplification in less serious customs infringements*', we fail to see any simplifications or benefits for economic operators.

Therefore, we urge the EU to delete article 3 (and article 9) of the proposal and not to include a list of strict liability infringements and corresponding sanctions.

Secondly, articles 9, 10 and 11 propose imposing of fines as a percentage of the 'value of the goods' when the infringement relates to a specific good, with pecuniary fines foreseen for infringements not related to specific goods.

Customs infringement usually involves a failure to pay the duties due and therefore any sanction imposed should represent a percentage of the unpaid duties and not the value of the entire shipment. A fine calculated on the basis of the value of the goods will disproportionately penalise economic operators that import more valuable items, without any justification for such discrimination.

Moreover, in order to prevent unjustified discrimination in the application of penalties, the upper limit for fines proposed in relation to the infringements that do not relate to specific goods should also apply to cases relating to specific goods. For instance, article 10 could provide that sanctions can amount to '*up to 15% of the evaded duties or €22,500, whichever is the lower*' when related to specific goods

Thirdly, article 12 states that the competent authorities should take into account all the relevant circumstances in determining the type and level of the sanction and provide a non-exhaustive list of such circumstances.

However, it is not clear how those circumstances will be taken into account and whether they should be considered as aggravating or mitigating factors. For example, the status of authorised economic

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operator (AEO) should in our view be considered a mitigating factor and this should be expressly stated. The proposal should clearly and explicitly distinguish between mitigating and aggravating circumstances and ensure that not only what appear to be mostly aggravating circumstances are listed.

The proposal should also be amended to ensure that fines would not be imposed when an operator voluntarily discloses a customs infringement that would otherwise result in the imposition of sanctions.

Finally, article 13 grants customs authorities four years to initiate the relevant proceedings from the time of the infringement and provides that *'any act of the competent authority, notified to the person in question, relating to an investigation or legal proceedings concerning the same customs infringements'* will interrupt this time limit. Any proceedings concerning a customs infringement will be *'precluded'* after the expiry of *'eight years'* from the time the infringement was committed, or the last of a series of reoccurring infringements ceased.

This is in total disregard of the provisions of the Community Customs Code. In accordance with article 221.3 of the Community Customs Code, a customs debt can only be notified to the debtor within three years from the time the relevant import took place. This time limit cannot be interrupted by any act notified to the person concerned by the competent authorities. Only an appeal against a customs decision can suspend the time limit. The application of a different time limit for the imposition of non-criminal sanctions is not justified. Any penalty imposed in case of a customs infringement should be notified to the person concerned within the same three-year limit and other notifications received from the customs authorities should not interrupt it. Consequently, the time limit for the notification of customs infringements should be aligned with the three-year time limit for the notification of the customs debt.

AmCham EU urges the EU to take seriously into consideration the above-mentioned amendments. We note our continued commitment to remain available to further discuss alternatives with Member States, European Commission and the European Parliament.