AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Consultation response

Wise Persons Group feedback

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Executive summary

The establishment of the European Commission's 'Wise Persons Group on Challenges Facing the Customs Union' (WPG) is a valuable initiative. AmCham EU welcomes it and takes this opportunity to provide the WPG with our ideas for customs reforms that we believe would benefit the European Union (EU) Member States, the EU as a whole and society at large.

The withdrawal of the UK from the EU, the new e-commerce VAT rules and COVID-19 have caused an uncontrolled explosion in the number of customs declarations. Historically, customs clearance processes were covering Business to Business (B2B) transactions. Within this framework, importers, exporters and customs brokers were familiar with the rules.

Today the supply chain has changed. In a Business to Consumer (B2C) environment, the regulatory framework is not always understood. Economic operators find it challenging to understand and apply very complex customs rules, while the complexity of the rules makes it challenging for customs authorities to control economic operators.

An effective Customs Union should have simple, clear and easily understandable rules that anyone can apply and control.

Below, we provide you with our recommendations on the different topics that are being reviewed.

Controlling the safety and security risks of e-commerce

An efficient risk assessment and control system, covering an increasing number of small parcels, facilitating legitimate trade while ensuring safety and security, requires:

- An increase in the involvement of platforms and other parties engaged in the e-commerce supply chain by enhanced data sharing obligations. Existing and upcoming data sharing requirements should, however, be taken into account: marketplaces using the Import One-Stop Shop (IOSS) are already reporting value-added tax (VAT) data through this system. Marketplaces will also start sharing tax relevant data on EU sellers based on the directive on administrative cooperation (DAC7) requirements that will be effective as of 1 Jan 2023. In addition, as of 2024, Payment Service providers will also start sharing data via the 'Central Electronic System of Payment information' (CESOP).

- The EU to work at bilateral and multilateral level to foster cooperation with other countries and trading partners ensuring that:

    - required controls are executed at the 'source': export countries and at shipper's premises.

    - intelligence information is shared between national authorities, including those of non-EU countries.

- The EU and Member States to share information with trusted economic operators, in order for them to flag suspicious transactions.

- Trusted economic operators working in good faith to be relieved from liability.

- Reconsidering the liability and responsibility of the customs declarant in terms of safety and conformity, as customs declarations are based on data and invoices provided by the shipper and customs declarants do not have access to the physical packages (unless under customs supervision). Customs declarants often do not have the required detailed subject matter expertise to examine whether the description of the goods on the invoice is genuine and authentic. These problems of documentary and data verification mirror those in the current debates about regulated obligations for e-commerce marketplaces. Marketplaces have access to transactional data at checkout but have no line of sight on

import declaration process and customs declaration data. To ensure that all economic operators contribute to the safety and security of the supply chain, the EU has developed the Import Control System 2 (ICS2) to increase the safety and security of shipments entering the EU. This system has two components: the first release covers aviation security and the second phase covers – amongst others – product safety and conformity. Delivering the risk management phase of the roll out of ICS2 is critical, and the Wise Persons Group should pay particular attention to identifying any means to accelerate adoption or avoid delays in this phase of delivery.

- The Wise Persons Group to continue monitoring new technologies and make these known across the group. As experts in determining these technologies, their remit needs to evaluate new technologies that can support the EU to control the safety and security risks associated with e-commerce.
    - E-commerce has given new distribution channels for legitimate trade. However, illicit traders are also exploiting these channels. The management of customs risk profiles should therefore be improved for better detection of illicit goods, which are intermingled with legitimately traded goods. The WPG's insights in how to efficiently tackle financial and non-financial risks for all types of commerce would be welcome. The express industry has implemented the new ICS2 rules. Despite the legal obligation, postal carriers currently only comply for between 50 and 70% of their volume. Other modes of transport will only need to adhere to the new legislation in 2023.

The required level of safety and security on e-commerce can only be achieved when the whole supply chain is secured.

What is the best means to ensure collection of customs duties and VAT on e-commerce goods?

We recommend the Wise Persons Group to evaluate the following measures:

- Decouple the collection of VAT from the collection of import duties, allowing duties and VAT to be handled by different agencies.
- Evaluate the effect of a change to the 150 EUR '*de minimis* duty threshold'.
- Strengthen the functioning and performance of the IOSS system, in particular by removing inconsistencies between national customs authorities and addressing remaining misalignments between VAT and customs legislation. For example, the customs' IT systems in several key import landing countries are not ready to recognise IOSS numbers in H1 customs declarations which causes double VAT taxation for shipments declared under an H1 customs declaration even they are IOSS eligible.
    - On **short term**, the IOSS system should be improved by introducing a VAT relief mechanism for the double paid VAT resulting from customs IT readiness issues.
    - On **medium term**, the following actions are recommended:
        - Improve the green lane status of IOSS eligible shipments by supporting national customs to enable their IT systems to handle IOSS for all customs declaration types, including H1 customs declarations.

- Strengthen the security of the IOSS ID and end-to-end integrity of the existing IOSS program to prevent IOSS number misuse.

- Resolve remaining misalignments between VAT and customs legislation. This includes the inconsistencies between the IOSS VAT scope and the new customs competent office rule under article 221(4) the UCC/IA that lead to non-IOSS eligible shipment < 150 EUR (such as B2B and excisable products) requiring direct clearance in the final delivery country, which leads to capability issues with brokers and customs logistics partners.

  - On longer term, consider making the IOSS mandatory for B2C transactions to take the VAT collection out of the customs brokerage process.

- Explore the effects of a change in the customs duty *de minimis* threshold and the interdependency with the scope and operation of the existing IOSS VAT collection mechanism. Careful consideration should be given to interdependencies between VAT, customs law and customs performance as per current experiences with IOSS VAT launch. This consideration should take into account the proportionality principle.

- Improve the security of economic operator identification and registration (EORI) numbers by enabling the economic operator to conduct *ex post* audits of the use of their own EORI number to identify mistaken or fraudulent use by other entities. This should be developed into a real time data feed, but today most national EU customs authorities refuse to provide any historic access to EORI usage records.

- Consider enhanced data sharing obligations for all actors involved in the e-commerce supply chain.

- Consider new concepts to further simplify the import procedures for low value B2C and C2C shipments.

Customs duties

De minimis

We encourage the WPG to assess whether the current *de minimis* amount of 150 EUR (that dates back to 2009) should be reviewed. The *de minimis* is a threshold applied in most developed countries and exempts shipments from payment of import duties.

A review of the *de minimis* threshold, with careful consideration of the interdependencies between customs and VAT, could increase trade facilitation and at the same time increase the competitive position of European Union trade. However, according to OECD reports on e-commerce, it is a channel which is being exploited by illicit traders[1]. We have included the reference to the relevant OECD report for ease of reference.

Currently, 27 % of commodity lines are exempt from import duties. The high number of duty-free items results from the many Free Trade Agreements between the European Union and its trading partners. Decreasing import duties would have a favourable effect on the global competitiveness of European trade. More than 58 % of the EU's total physical imports are raw materials and components used for further industrial processing, and around 56 % of the EU's total physical exports are finished products. Removing import duties will reduce the export sales price.

We encourage the WPG to review the Bill adopted by the Swiss Federal Parliament on 1 October, 2021 to unilaterally abolish import duties on almost all industrial goods. This decision is one of the initiatives to tackle the high prices in Switzerland. Based on government calculations, the expected duty deficit of CHF 500 million p.a. could be compensated through higher tax returns from companies, as the zero tariffs reduce costs for pre-

[1] OECD/EUIPO (2018), *Misuse of Small Parcels for Trade in Counterfeit Goods: Facts and Trends*, Illicit Trade, OECD Publishing, Paris, https://doi.org/10.1787/9789264307858-en

materials and bureaucracy for customs clearance procedures. Furthermore, consumers would benefit from reduced tariffs, with overall savings of approximately CHF 350 million p.a.

The WPG should also examine the current Swiss proposal to eliminate customs duties on industrial products, which, if implemented, is set to provide a significant boost to competitiveness in the country by lowering import costs, simplifying requirements for consumers and allowing customs authorities to focus on safety and security.

VAT

Whereas– import duties are identical for a particular product in each member state as part of the EU's Customs Union, import VAT is dictated by a different set of rules that is far less harmonised at the EU level and allows Member States much more discretion. The import VAT percentage for a particular product consequently varies depending on the Member State in which the product is imported.

Import VAT is destined exclusively to collect Member State's national budget. A single customs authority is therefore responsible for managing imports according to different sets of complex customs and taxation rules. This situation creates a compliance burden for the actual importers and for other stakeholders involved in the import process, including customs brokers and freight forwarders who work on behalf of importers or individual consumers.

We believe that this compliance burden could be reduced considerably if customs authorities were responsible solely for collecting import duties. Import VAT could meanwhile be collected by a different governmental agency. This separation in responsibilities – which some Member States already allow - would still protect the member state's financial interests but at a lower cost for importing companies and consumers.

Additionally, by making IOSS mandatory for B2C transactions and by making postponed accounting mandatory for B2B transactions while increasing the *de minimis* level on import duties, the EU would move away from a transactional to a systemic collection process and would pave the way for a more robust, less fraud-sensitive collection mechanism. This would also significantly reduce the burden on economic operators, customs declarants and customs authorities while allowing customs authorities to focus on their essential tasks.

How could data be collected along the entire value-chain to improve the management of financial and non-financial risks?

We recommend:

- That additional data sources such as traders, platforms and payment service providers are considered for data collection on B2C shipments to supplement current data sets provided by customs declarants. This should be done while taking into account existing and upcoming data sharing legislation (eg, suppliers and marketplaces that have opted into the IOSS are already sharing VAT data through their IOSS return - as from 2024, Payment Service providers will also start sharing data via the CESOP).

- That express carriers are not expected or obliged to collect additional data beyond what is currently required.

- That the customs risk assessment procedures resulting from analysis of additional data:

    - Do not interfere with the time-sensitive express operations at origin.

    - Result in a pragmatic and effective cooperation between stakeholders to ensure greater trade compliance and management of financial risks.

- That the liability of express operators will be limited to submitting correct customs declarations based on the data information that is provided by shippers, suppliers and importers, without making them responsible for the actual physical contents of the packages.
    - The current Practice for Express Operators permits closed and integrated IT systems and processes that allow them to manage the end-to-end cycle of every shipment. These systems are used to provide the customs authorities with the data required to monitor the movements of all packages.
    - Express operators do not have access to commodity production or pricing data and need to rely on due diligence checks on their supply partners.
- Customs authorities should work bilaterally or multilaterally with other countries or trade blocks in order to assess compliance of economic operators before shipping by moving from transactional to systemic validations.
- For e-commerce transactions processed through a platform, it should be taken into account that platforms are largely reliant on sellers for the correctness and accurateness of the data provided.

Additional recommendations and suggestions (background on governance, legislative process and process improvements)

The above items all refer to issues that result from the fundamental disconnects in the current customs framework. Providing solutions to them will not suffice as long as basic, structural inconsistencies are not addressed.

The EU customs legislative framework is defined by the Union Customs Code (UCC). The UCC mainly ensured that existing procedures were maintained and were digitised almost one-to-one, without a new design of processes, which means that every box, every stamp, every piece of paper from before, now has to be entered into the computer without any substantial process redesign.

For non-IOSS eligible low value shipments (eg, B2B shipments), a central clearance option should remain possible, as direct clearance in final delivery country would lead to capability issues with import logistics partners and brokers, undermining trade facilitation. The envisaged centralised clearance for import does not reflect the needs of our industry related to B2B shipments below 150 EUR. As a result, it lacks pragmatism, and like many other simplifications with the Union Customs Code, IT contains too many exceptions to allow for an effective use and application.

The UCC rules are too complex and they are interpreted differently depending on the Member State. This complexity has a counterproductive effect on compliance and the ability of economic operators to conform to the legislation. Additionally, not all Member States have the required IT infrastructure in place to allow customs declarants to submit the shipments that are subject to the new rules in a compliant manner.

The preparation of the Union Customs Code started 20 years ago – and it will be not fully implemented until 2025 and beyond. From a process and an IT point of view, the technology is outdated. The European Union needs to take a new approach, ensuring customs legislation is fit for current and future supply chains. In order to make the Customs Union effective, governance legislative and process recommendations should be considered.

Governance

Create one European Customs Agency

Because of the 27 different customs administrations, the legal process takes too long. The current legislation is not fit for purpose, as it does not address the reality of current and future supply chains. There is a need for a central and joint governance structure that ensures the harmonisation of customs operations across the European Union. Through it we will be able to create and rapidly adjust legislation based on the needs of governments and economic operators while using emerging technology.

Furthermore, the guidelines for enforcement, along with the resources available (eg border force technology, access to central databases, etc.) need to be standardised to ensure that there are no weak entry points which can be exploited. There is also a need for an application of common standards to be applied regarding the number of customs officers assigned, training given and approach to risk management.

Uniformity in the interpretation and implementation of customs rules and procedures.

Evidence shows that Member States interpret the Union Customs Code differently, which causes a non-uniform level playing field. This results in unpredictability and lack of standards.

A recent example is the VAT reform legislation that came into force on 1 July, 2021. Some Member States applied the legislation on customs competent office (art. 221,4 Implementing Act) in a different way than others, causing trade to change its supply chain and clear goods in other Member States. The contradictions between VAT and customs legislation overall caused a number of challenges in implementing the VAT e-commerce rules, highlighting the need for greater communication and cooperation between different authorities.

In addition, the VAT e-commerce package demonstrated the critical role that the European Commission must play in coordinating EU Member States' implementation of new customs rules. A lack technical specifications in advanced and open-ended transition periods, as well as poor communication of readiness by EU Member States has resulted in highly uneven implementation of the new rules. Despite Member States being granted an additional six months until July 2021 to prepare, many Member States have still not fully implemented the new VAT e-commerce rules, which places huge demands on traders who have had to swiftly adapt.

It is critical that the lessons learned from this exercise are considered for future legislative developments. There are already significant concerns that many Member States will miss or backend deadline to implement national upgrades of UCC systems.

Legislative process

Harmonise the prohibitions, restrictions, penalties and persecutions

There are EU-wide prohibitions and restrictions and there are national prohibitions and restrictions. This includes gambling devices, knives, human hair, cosmetics.

This makes it impossible to provide economic operators with one rule-set when exporting to the EU.

'Customs Infringements and sanctions must be harmonised together with the procedural rules that govern audits and investigations as a harmonisation of both sets of rules will ensure a uniform approach throughout the EU. Penalties must be effective, proportionate and dissuasive. They should therefore be foreseen only in cases where there is evidence of negligence or when the infringement was committed intentionally, while strict liability systems should be excluded. In addition, only serious customs infringements should be categorised as a criminal offence (e.g. import of counterfeit and/or smuggled illicit goods). EU Member state legal systems which treat every customs infringement as criminal should therefore be excluded since they not only fail to comply with the proportionality principle, but they also make certain Union Customs Code provisions, such as the general prescription time limit, redundant, undermining basic principles such as legal certainty'.

Simplify rules so that they are easy to understand, easy to apply and easy to control

The aim of the Union Customs Code was to:

- Streamline customs legislation and procedures;
- Offer greater legal certainty and uniformity to businesses;
- Increase clarity for customs officials throughout the EU;
- Simplify customs rules and procedures and facilitate more efficient customs transactions in line with modern-day needs.

The opposite has happened. Economic operators are facing an increase in rules, pages of base act, implementing acts, delegated acts and transitional delegated acts. The current legislation is not fit for purpose and should be simplified.

Allow economic operators to file all their customs declarations with the European Customs Agency at any customs office in the EU

Currently, customs brokers often file at least 5 declarations before a shipment can be released. They submit data for safety and security prior to loading, upload safety and security data prior to arrival, present the goods to customs on arrival at the first point of entry in the EU, present the goods to the member state of destination and file an import clearance in the member state of destination. This is done for each and every single shipment, regardless of the value or the contents of the goods. Customs declarations for the same shipment have to be submitted to different customs offices in different Member States, also requiring shipments to be presented to these customs offices, which force an operator to unnecessarily move goods and creates undesired negative carbon dioxide effects.

The Union Customs Code aims to simplify this process through centralised import clearance. However, this will not apply to all goods and transactions, so the Customs Code will not meet its objective. Furthermore, an EU-wide system which penalises economic operators will result in more stringent checks taken to ensure that rules are not broken and that the correct customs declarations are implemented.

Improve the turnover time of customs legislation and customs decisions

It takes years for customs legislation to adapt to new supply chain realities, government needs or technological developments. The process should be redesigned, enabling authorities to react swiftly to the opportunities and requirements as described in this paper. The turnover time of 120 days for a customs decision is also too long. Member States should be encouraged to finalise decisions far in advance of this limit.

Harmonise and digitise data requirements and focus on better quality data

Economic operators are increasingly and more urgently required to provide duplicate data. EU customs authorities should carefully consider the need and purpose of data requirements imposed on business. The underlying principle should always be to minimise data collection to the necessary minimum in order to facilitate operations and ensure smooth transactions.

At the same time, the EU should seek to harmonise data requirements across the EU and move to a fully electronic way of working. Many data elements are left for the Member States to decide whether they are optional or mandatory, which can force traders operating in more than one Member State to change their systems. The actual submission of data requirements can also vary, for example, in the level of messaging exchange or the process behind the submission of data. While the customs declaration may be submitted electronically, sometimes the paperwork accompanying such declaration must be printed and presented to customs for further controls.

Balance risk management and trade facilitation

The EU's proposed strategy for customs risk management is in its infancy and we await more concrete details. The roadmap's aim to take a 'low-risk' approach to risk management will need to be carefully handled to avoid restricting the flow of legitimate trade. In our view, updating of this framework should focus on harmonising and streamlining current approaches and making better use of existing data to ensure an efficient EU-wide system , rather than developing comprehensive new initiatives or establishing new data requirements that would add to an already complex risk-management environment that can vary from country-to-country.

Process improvements

By implementing the following process improvements, the EU has an opportunity to achieve greater efficiency for customs authorities while also supporting smooth and reliable supply chain processes. These processes should be adopted and, where applicable, be included as trade facilitation priorities in Free Trade Agreements negotiated by the EU with other countries. This would deliver benefits to EU importers while supporting EU SMEs in their export processes.

A single electronic window that ensures the release and clearance for customs and other government agencies.

Currently a customs declaration can be subject to multiple controls through different channels by various government agencies. There is a need for a facility that allows parties involved in trade and transport to lodge standardised information and documents with a single-entry point to fulfil all customs and other government agencies related regulatory requirements. Individual data elements should only be submitted once the system allows for multiple filing by different economic operators and it should take advantage of centralised clearance.

Import duties and VAT collection - VAT should be collected through IOSS or deferment accounts

We recommend the Wise Persons Group to evaluate the following measures:

- Assess a separation of the collection of duties and VAT, allowing duties and VAT to be handled by their respective agencies.
- Make IOSS made mandatory for B2C transactions to take the VAT collection out of the customs brokerage process.

Reduce the administrative burden on customs authorities and economic operators

There is an inflation of customs declarations independent from the value or content of the goods. This makes it challenging for customs declarants to timely and correctly submit customs declarations and for the customs authorities that can adequately control these declarations. Thus, it is necessary that the WPG considers a reduction in the administrative burden endured by customs authorities and economic operators.

Language used by economic operators in customs declaration

Only a few Member States allow English as the language to submit import customs declarations and other accompanying documentation. This causes additional cost and red tape in the customs clearance process for non-English speakers. Therefore, economic operators should be able to use any official language when submitting their custom declaration.

Provide enhanced benefits for authorised economic operators (AEOs)

The EU's AEO programme needs to go beyond positive perception and deliver additional benefits for businesses to continue to add value. A more harmonised approach across the EU is key, where both the certification and

implementation process can still vary by Member State. This complexity adds uncertainty and costs to our business and can lead to the requirement for bespoke local monitoring tools.

When considering the EU's AEO Mutual Recognition Agreements (MRAs) with third countries, further facilitative aspects are also required to provide added value. We consider that a truly beneficial AEO MRA scheme and a reduction in safety in security checks would optimise the number of checks for fiscal purposes for qualifying shipments, rather than simply prioritising these shipments for faster release.

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The European Union cannot allow itself to have legislative cycles longer than 25 years. The Customs Union currently fails to reach for two major objectives of the European Commission: the Green Deal and the digital transformation.

The European Union needs to move further and faster towards a more effective Customs Union. In order to do so, the governance, legislative framework and its internal processes need to be re-assessed and improved.

Only by making fundamental changes, the Customs Union will allow for effective revenue collection and will be able to protect its citizens whilst increasing the competitiveness of legitimate European trade.

We hope that you will consider our views. We remain available to provide you with any additional information you may require.