

## Our position

# EU Customs Reform



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 €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

## Executive summary

While the EU Commission's proposed reforms to the Union Customs Code, such as the introduction of the European Customs Authority, the EU Customs Data Hub and the 'Trust and Check' trader status demonstrate a commitment to improving customs procedures and trade facilitation, there are several aspects that should be further refined.

For instance, customs simplifications under the Trust & Check Trader scheme, including centralised clearance, should be extended to all types of traded products and eligibility for authorisation should encompass all economic operators who meet the criteria. Similarly, the European Data Hub needs a streamlined approach that also addresses concerns about security, cybersecurity and protection of trade secrets.

Regarding Liability of Indirect Representation, it requires a comprehensive risk assessment, robust safeguards and clear guidelines, while the proposed marketplace importer requirements should apply proportional obligations. Overall, custom enforcement should be risk-based and transparent, with clarified standards and responsibilities for Deemed Importers.

In terms of the EU Customs Authority, it should be responsible not only for enforcement and risk management, but also for the uniform interpretation of customs legislation. It should also interact with economic operators to improve the application of legislation.

Finally, policymakers should aim to harmonise customs infringements, non-criminal sanctions and Restrictions and Prohibitions, all while limiting sanctions to cases of obvious negligence or intentional infringement.

## Introduction

On 17 May, 2023, the European Commission put forward proposals for a reform to the UCC, the first of its kind since 1968. These reforms aim to address the shortcomings of the current legislation and improve the efficiency and effectiveness of customs procedures within the European Union. In particular, the proposal introduces the European Customs Authority, the EU Customs Data Hub, and the Trust and Check Trader status. AmCham EU recommendations below seek to make sure that these reforms contribute to a more seamless and secure trade environment.

## Trust & Check trader and trusted supply chains

Trust & Check traders will benefit EU companies and further simplify customs formalities. The concept of 'self-assessment' and the change of EU customs approach from 'transaction-based' to a 'process-oriented' system can benefit economic operators. Although customs simplifications like centralised clearance and self-assessment are provided under the existing UCC, this has not been fully implemented across the EU. Centralised clearance should be made available for Trust & Check trader and trusted supply chains which trade in all type of products (including excisable products).

The proposed EU Customs reform allows only importers and exporters to be authorised as Trust & Check traders. This seems a more restrictive concept than the Authorised Economic Operator (AEO) defined under UCC. AEO is available for any economic operator established in the customs territory of the Union who is part of the international supply chain and is involved in customs-related

operations. These allowed companies (eg importers, exporters, freight forwarders, warehouse keepers, etc) to be authorised as AEO. Therefore, the Trust & Check trader concept should be available for companies (eg freight forwarders, warehouse keepers, etc) and not be restricted only to importers and exporters and all economic operators that meet the requirements.

## European Data Hub

The creation of centralised databases and data management such as a EU Customs Data Hub and Trust & Check trader concepts are crucial to ensure integrated data collation and sharing between customs authorities as well as a pan-European risk assessment. Digitalisation plays a vital role in streamlining customs procedures and minimising bureaucratic hurdles, benefiting both companies and customs authorities. This is particularly significant considering the growing workload faced by customs authorities. Providing customs authorities with ‘a wide range of advanced data analytics, also including through the use of artificial intelligence’ which ‘should be an enabler for risk analysis, economic analysis, and predictive analysis to anticipate possible risks with consignments coming to or moving from the Union’ (Recital 20) will clearly allow them to operate more effectively and target scarce resources on safeguarding the EU market from counterfeits and other illegal goods. However, clarification and reassurance are needed. It is essential to live up to the commitment of making the AEO status truly effective.

To guarantee security and safety, the proposal rightly identifies the importance of making no compromise on safety and security. However, the EU Customs Data Hub, and even more the ‘full transparency’ approach embedded in the Trust and Check trader concept, raise concerns with regards to security (particularly for aviation), cybersecurity and the protection of trade secrets. The EU Customs Data Hub and Trust and Check trader concept should have sufficiently robust safeguards against system failure or cyberthreats.

The creation of a European Customs Data Hub is a positive step towards the centralisation of the submission of data for all EU customs processes into one interface, whereas today economic operators need to develop multiple interfaces to the customs authorities of the 27 Member States. The EU Customs Data Hub (Title III) should help prevent the anomalies and lack of transparency caused by the maintenance of unconnected, individual national databases, as well as the duplication both in terms of management and updating such disparate systems. In rolling out this mandatory system, due attention should be paid not only to facilitating its interoperability with EU systems (eg IPEP) as outlined in Recital 20, but also relevant non-EU databases such as the WCO’s CENCOMM.

Union-level risk management activities (Recital 32, Title IV, Chapter 3 and art. 81 and 97), with common risk analysis, Union control recommendations to customs authorities and instructions that goods destined for the Union may not be loaded or transported are all very positive developments.

Lastly, the current UCC workplan should be finalised by 31 December 2025, as required in art. 278 of the UCC. The current situation, where deployments are delayed and requirements as well as specifications are constantly changing, results in an unstable environment that has repercussions on compliance levels and predictability capabilities for both economic operators as well as customs authorities.

## Quality and intelligent (re-)use of data

Trade intermediaries provide a significant amount of data to customs authorities, whether pre-loading, pre-arrival or upon the entry of imported goods. Focusing on better quality data – rather than simply more data – is key to ensuring that legitimate trade is not overly constrained and that data collection is justified and effective.

Other important stakeholders should also contribute to the provision of data relevant to the activities of customs authorities and other competent authorities, as it is the case of payment service providers. This will contribute to improved risk analysis at the origin, which will translate into more efficiency to prevent illegal trade at the earliest stage possible.

There needs to be a streamlined approach to data submission to the EU Data Hub that includes only essential information required for efficient border entry. Additional data be transmitted separately, perhaps directly from traders' systems, in accordance with the Customs proposal.

Considering that the Import Control System 2 (ICS2) already encompasses most data elements required for customs submissions for goods valued below €150, there is a compelling case for accelerating the implementation of benefits to expedite e-commerce transactions, a concept previously identified in the final report of the Customs 2020 Project Group on Import and Export Customs Formalities for Low-Value Consignments, published by DG TAXUD.

The report also highlighted the potential reuse of data already submitted to customs authorities through ICS2.0 for security and safety purposes, recommending further analysis for future implementation. At the heart of the proposal is the idea that data furnished to the ICS2 Shared Trader Interface will serve two distinct purposes: fulfilling the Entry Summary Declaration (ENS) requirements and facilitating Customs declarations. The fundamental principle driving the proposal is that economic operators should submit data only once, aligning with legislative requirements. Subsequently customs authorities can use this data for various necessary purposes. This approach entails the submission of the reduced data set for Customs declaration (CD) for low-value consignments, alongside the Entry Summary Declaration (ENS) particulars, through the ICS2 Shared Trader Interface, acting as a single point of entry (STI).

In addition, the EU introduced traceability systems (eg Track & Trace) for highly regulated products such as excisable products. These systems are already collecting information on physical and financial flows of products from non-EU manufacturers up to the first retail point. Therefore, a solution to link existing EU IT systems (such as Track & Trace) to the EU customs data hub can facilitate trade and avoid data duplication in existing EU IT solutions.

Furthermore, the definition of 'economic operators' who 'should be able to submit to or make available in [the Data Hub] all relevant data required to fulfil customs legislation' (Recital 23) should include right holders' data pertinent to IPR. In the latter regard, we welcome the clarity provided in article 38 that 'customs authorities and economic operators may exchange any information not specifically required under the customs legislation, in particular for the purpose of mutual cooperation in the identification and counteraction of risk'. Similarly, references to access to the data by other EU Law Enforcement Authorities (Recitals 24-26, art. 31) should include the latter's ability to submit relevant data.

Lastly, if traders upload their information in one central portal this should help to identify falsified shipping documentation which is a well-known problem in this illegal trade. As laid out in

art. 252(1)(c), infringements should include ‘provision of incomplete, inaccurate, invalid, inauthentic, false or falsified information or documents to customs’: sanctions here need to be set at a level to ensure deterrent effect.

## Liability of indirect representation

The indirect representation holds significant risks for declarants and customs brokers, particularly in view of new legislation on Carbon Border Adjustment Mechanism (CBAM), deforestation and forced labour. It is important to conduct a thorough risk assessment and develop appropriate safeguards to protect the interests of traders. Clear guidelines, transparency and accountability should be established to ensure that indirect representation does not create unnecessary risks or disadvantages for businesses. A balanced approach that safeguards both trade facilitation and compliance is essential.

## Marketplace deemed importer requirements

Ensuring proportionality is crucial when it comes to marketplace obligations in cross-border e-commerce business models, which greatly vary. Under current or proposed customs rules, marketplaces lack the necessary customs clearance information or access to data needed for duty calculations.

To effectively implement the proposed reform and ensure the proportionality of obligations, it is essential to establish specific rules for customs duty calculation, goods origin determination, valuation and the smooth flow of trade data. The EU Commission has made efforts to simplify the process with measures like tariff buckets, optional origin rules and simplified customs value. However, these simplifications need further refinement in close collaboration with affected businesses. For instance, the number of tariff buckets could be further limited to a maximum of three, with the potential removal or reduction of the highest tariff bucket (currently 17%), while allowing the utilisation of preferential schemes, and restricting data submission to the EU Data Hub to essential information (such as safety and security 7+1 data, Import One Stop Shop (IOSS) number, and unique consignment reference) and managing all other data through a separate mode.

The regulations must establish a level playing field and ensure effective enforcement on all marketplaces, regardless of their location, business model, size or shipping method. The current customs proposal defines a deemed importer as any entity engaged in distance sales of goods imported from third countries into the customs territory of the Union, authorised to use the IOSS. This definition might suggest that marketplaces not authorised to use the IOSS will not be considered deemed importers. To tackle this challenge, when the customs reform is implemented, the IOSS authorisation should be made mandatory for all marketplaces, as proposed by the EU Commission in the VAT in the Digital Age reform.

Introducing the deemed importer concept for marketplaces will exert significant pressure on the IOSS system, which is currently utilised by marketplaces to collect and remit VAT on low value third-party imported distance sales, and by businesses selling through their own channels. The IOSS system still faces significant challenges such as double taxation and the potential for misuse of IOSS numbers, which will be exacerbated even more if not addressed before the expansion of the IOSS’ scope to cover the collection of duties.

The same concern applies to the ICS2 and various other systems at national and EU-wide levels, such as the Single Window. These systems are still at different deployment phases, have not been fully implemented across the EU, and there is uncertainty regarding their full implementation by the EU's 2028 deadline. Moreover, such systems would also require amendments that are yet to be addressed, such as incorporating the concept of conveying unique consignment reference numbers.

These proposed reforms present an opportunity to beef up closer collaboration between marketplaces and other stakeholders engaged in cross-border distance sales. Such collaboration should be fostered to facilitate the sharing of risk management data and resources and to enable joint efforts to combat fraud and bad actors. Customs enforcement should be risk-based, with clear public guidance on enforcement criteria, and enforcement policies should be calibrated to encourage collaborative efforts. The European Commission can achieve this by clarifying legal standards and responsibilities, particularly for Deemed Importers, to promote transparency and cooperation with Customs authorities, and by exploring opportunities to enhance benefits for AEO or Trust & Check traders.

The marketplace deemed importer concept should not be expanded to include non-fiscal liabilities. The development of the General Product Safety Regulation and the related designation of a 'responsible person' by the European Commission is aimed at addressing non-fiscal liabilities concerning products imported into the EU via e-commerce from outside the EU. This legislation recognises the vital role of marketplaces in facilitating seller compliance while ensuring that regulated responsibilities are proportionate to promote compliance. The Customs proposal should align with the aforementioned approach when enforcing these domestic rules at the border. To simplify compliance for sellers from third countries, the European Commission could explore opportunities to enhance the professionalisation of responsible persons and establish a database of these providers for efficient cross-checking and up-to-date information.

## Decision taken within prescribed timelines ('administrative silence')

Where the customs authorities fail to take a decision within the prescribed time-limits, the applicant may consider the request to have been denied and may appeal such a negative decision (art. 6, point 3, last paragraph of the proposed EU Customs Reform Regulation). Art. 6 introduces the figure of negative administrative silence. While we re-iterate the importance of having a decision issued by customs authorities within the prescribed deadlines, article 6 must be amended to include the obligation of the customs authorities to always adopt a decision in writing, even after the prescribed time-limit. The economic operator will therefore then clearly have the choice between appealing the unfavourable decision identified in the last indent of art. 6, point 3 or await a written decision from the customs authority, which can then be appealed. This approach is fully aligned with the approach taken in some EU Member States.

## Opportunities for import duties and tariff simplification

The Federal Council of Switzerland decided to eliminate import duties on industrial products across tariff chapters 25 as from 1 January 2024. The complex customs tariff structure for these products will also be simplified, with Switzerland adopting 6-digit HS codes (international Harmonized System) as a

basis, supplemented in most cases with two zeros. This change will reduce the number of tariff codes from 9,114 to 7,511.

Customs revenue on industrial goods amounted to 560 million francs in 2018 (including VAT and motor vehicle tax) and no less than 500 million francs on average in recent years. Due to the expected positive effects of the measure on the entire economy (approx. 860 million francs) and the resulting increase in economic and commercial activities, part of the shortfall will be compensated by additional tax revenue.

The economic studies that preceded this decision show following effects:

- Commodity prices: tariff reduction has a price-reducing effect.
- Foreign trade: Increasing Imports and Exports, Greater Product Variety.
- Domestic production develops differently by sector.
- International competitiveness increases.
- With a complete industrial tariff reduction, Swiss economic performance can be increased.

The elimination of import duties benefits traders, consumers, customs authorities and strengthens the competitiveness of Swiss exporters. Zero tariffs reduce bureaucracy for customs clearance procedures, import procedures for such products will therefore be less complicated and time-consuming, as special procedures (eg temporary importation, inward processing relief) may be redundant. Companies will no longer need proofs of origin to benefit from duty reductions in Switzerland.

The removal of import duties on industrial products stimulates e-commerce, where today returns are subject to duties and tax reclaim while physically presenting goods at the border, then confirming exit to start an administrative follow up until moneys refunded, causing financial and administrative constraints, both for trade and authorities.

We encourage the Commission to run an assessment in order to explore the impact of implementing a similar simplification in the EU.

## De minimis

There are conflicting views on the elimination of the de minimis threshold of 150 EUR, we therefore invite the Commission, EU Member states and the European Parliament to discuss with the stakeholders concerned and review available data in order to reach a conclusion.

## EU Customs Authority

The creation of the Customs Authority is key to contribute to the operational management of the customs union and to coordinate operational management. It has noted that the proposal provides for the Customs Authority to support customs authorities in achieving a uniform implementation of customs legislation (art. 207(c)) but this is stated 'notably' with a view to ensuring that customs controls and risk management are carried out in a harmonised way. The tasks as proposed for the Customs Authority in art. 208 to 210 of the proposal emphasises tasks in relation to enforcement of customs legislation and management of risks. More emphasis should be devoted and concrete tasks

devolved to the Customs Authority with regard to assisting in the uniform interpretation of customs legislation. The proposal provides that the Customs Authority must contribute to the correct application of restrictive measures in accordance with article 215 TFEU (ie sanctions imposed by the EU such as the sanctions targeting Russia) by monitoring their implementation and providing guidance to the customs authorities. That being the case, the Customs Authority should be more involved in the uniform implementation of customs legislation overall.

As well, in the proposal there is no procedure for private parties to interact and contact the Customs Authority precisely with a view to alert the Authority and contribute to improving coordination in the interpretation of the customs legislation. The only and extremely limited exception is that an applicant whose request for a decision remains un-responded to by customs authorities may 'inform' the Customs Authority of the absence of response. This right of information is not followed by any procedure for the Customs Authority to take action which is all the more remarkable as it is the sole interaction provided for by the proposal for private parties and the Customs Authority.

It is very important for private parties to be able to interact with the Customs Authority for the purpose of progressing in the uniform application of customs legislation and for the Customs Authority to have an active role in this regard.

## Minimum core of customs infringements and non-criminal sanctions

The harmonisation of customs infringements and non-criminal sanctions is an important step towards ensuring the uniform enforcement of customs law by Member States. However, the following should be taken into account.

First, in accordance with the tradition of several EU Member states, sanctions should be limited to cases where there is evidence of obvious negligence or where 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.

Secondly, the new UCC should guarantee that only the most serious customs infringements, involving obvious negligence or intent, are prosecuted criminally. Some Member States can prosecute all customs infringements criminally and issue extremely high and disproportionate fines. Moreover, by considering any customs infringement potentially a criminal wrongdoing, those Member States also avoid the general three-year time limit for the retrospective collection of duties. As a result, the three-year time limit becomes in practice redundant in those jurisdictions. The persistence of these divergences amongst Member States will continue to place certain economic operators at a clear disadvantage.

Thirdly, a distinction between administrative and criminal sanctions is also required. Although only infringements where obvious negligence or intention should result in a penalty, criminal sanctions should be reserved for the most serious cases, while less serious infringements involving obvious negligence or intention should be subject to administrative fines.

Finally, customs infringements and non-criminal sanctions cannot be harmonised in isolation. This harmonisation must go hand in hand with the harmonisation of the procedural rules surrounding



customs audits, decisions and the rights of defence, among others. The different processes followed by customs auditors in Member States to determine whether an infringement has occurred serve to distort the market, even if customs infringements are harmonised. For example, even basic issues such as how a customs debt is notified to the debtor still lack a clear procedural framework in some Member States.

## Restrictions and Prohibitions

The EU Customs reform proposals do not contain a harmonisation of Restrictions and Prohibitions. If the Proposals envision to provide the same legal framework in all EU Member States to all economic operators, the restrictions and prohibitions in the Member States need to be aligned. Otherwise, imports into the EU will need to comply with 27 different rule sets.

AmCham EU supports the recommendation of the study 'A Comparative Analysis of Member States' Customs Authorisation Procedures for the Entry of Products into the European Union', presented to the European Parliament in December 2022 (\*), 'that the EU should work to harmonise the national lists of prohibitions and restrictions Entities involved in the importation of goods into the EU highlighted divergent lists of prohibitions and restrictions used by Member States with additional requirements that go beyond the EU list. This divergence creates significant difficulties for entities (especially SMEs) importing into multiple Member States, and they can be costly for businesses, as they have to familiarise themselves with restrictions and certificates needed by different customs authorities (or hire external consultants). Representatives consulted for this study have argued that there is a need for one single EU list to be adopted by all Member States. Should such a measure not be possible, gradual harmonisation of lists should occur through dialogue between the European Commission and Member States. Furthermore, harmonised definitions of the legal terms used in providing for prohibitions and restrictions should be adopted, in order to avoid diverging interpretations by Member States'.

## Implementation timelines

The proposed distant timelines for implementation may delay the realisation of the benefits that the hub can provide. In the fast-paced and evolving landscape of global trade, it is crucial to expedite the implementation process to ensure that the hub remains relevant and effective. allow sufficient time to ensure the reform meets its desired results and is adapted to the realities of business and trade, for which continued consultation with industry is key. Regular business consultation and pilot testing can become key mechanisms to ensure successful implementation.

## Conclusion

The proposed reform for the EU Customs Code contains several aspects that demonstrate a commitment to improving customs procedures within the EU, such as the introduction of the European Customs Authority, the EU Customs Data Hub and the Trust & Check Trader status. However, policymakers should finetune the implementation timelines, the reduction in temporary storage periods and an approach that considers both compliance and facilitation. Further discussion with the stakeholders concerned and revision of available data are needed in the case of the elimination of the de minimis threshold.

Thanks to their experience across the entire supply chain, AmCham EU members are ready to fully collaborate when developing Implementing and Delegated Acts, as well as guidelines and training material, for the future legislation to support a fair level playing field for all legitimate economic operators, safeguarding the interests of citizens, facilitating trade and allowing customs authorities to collect taxes and run the required risk assessment.