

The Future of EU Customs For a modern, frictionless customs environment

Executive Summary

Customs is a true bottom line for many EuroCommerce members. Retail and wholesale are inherently dependent on free global trade flows for goods and services. They are also the engine of global trade. Frictionless trade is essential for these businesses to create wealth for the EU in these challenging economic times and maintain the high number of jobs that retail and wholesale provide across the EU. For these businesses to compete at their best, they need predictability and legal certainty based on fair, proportional and efficient rules that are effective for national authority controls and, designed to work with commercial systems, instead of legislative obligations in isolation that create heavy investment commitments.

Customs is an amazingly wide area. The following paper is designed to highlight various issues that have been raised within EuroCommerce forums and, we hope, provide themes and concepts for wider debate that can form part of the future of the Union Customs Code. In particular, the paper focuses on:

- The need for best practice in legislative creation and the most simple, effective processes and tools for both customs authorities and trade with the least impact on commercial operations, based on risk-based reforms and proportionality that address customs interaction with VAT and Excise.
- Taking EU Customs Union to the next level and seizing global opportunities, especially those created through digitalisation and omnichannel commerce, by recognising a competitive and strong economic sector, working in an environment as frictionless as possible, creates wealth for the EU at this critical economic moment.
- Addressing fundamental challenges, balancing customs controls and the facilitation of legitimate and compliant trade against a background of rising international import and export flows of goods, disrupted global supply chains, Brexit, inflation, the impact of the Ukraine conflict on energy and food supply and the unprecedented and real pressure on authorities and traders alike.

The paper takes the opportunity to explore specific questions and makes recommendations, including:

- The legislative process at the working level, where EU Institutions, national authorities and trade interface to examine and propose solutions to make legislation more responsive.
- Strengthening AEO and the need to open it up by making the investment applying for the status is more proportionate to the benefits, through ensuring facilities really are process based instead of transaction and centralised clearance is fully implemented in practice as a priority.
- Creating better synchronisation and alignments where there are overlaps between customs, VAT and Excise, such as through more coordination at the working level when creating legislation to make sure systems, where they do overlap, do not contradict each other's aims.
- Ensuring effective collection of VAT and customs duties in the short, medium, and longer-term, whilst ensuring channel neutrality and a level playing field for all forms of trade and commerce business models, regardless of where they are established. Additional obligations

placed on business must be proportional, effectively enforceable, taking into full account the economic reality of how businesses operate.

- Addressing the uniform application of customs law and responding to application questions through engendering a more common approach and attitude, including trade in training and creating an arbitration mechanism.

EuroCommerce and its members have been in the vanguard of trade representation at the Trade Contact Group on customs. We remain committed to working with the European institutions, national authorities, and other stakeholders to help achieve an effective and innovative EU customs structure that reflects modern business practices and operations and facilitates cross-border business in Europe and on the global market.

Content

1.	Executive Summary	P.2
2.	Issue	P.4
3.	Introduction	P.4
4.	Central Message	P.4
	Supporting Messages	P.4
5.	Overarching Principles	P.5
6.	General Observations	P.5
7.	Specific Comments	P.6
	i. Legislative Process	P.6
	Legislative Process: Recommendations	P.8
	ii. Authorised Economic Operator (AEO)	P.9
	Authorised Economic Operator (AEO): Recommendations	P.9
	iii. Customs, VAT and Excise	P.10
	Customs, VAT and Excise: Recommendations	P.10
	iv. eCommerce – Ensuring Effective VAT Collection	P.10
	eCommerce – Ensuring Effective VAT Collection: Recommendations	P.11
	v. eCommerce – Effective Customs Duty Collection by Data Sharing	P.11
	eCommerce – Effective Customs Duty Collection by Data Sharing: Recommendations	P.12
	vi. Uniform Application of Customs	P.12
	Uniform application: Recommendations	P.13
	viii. Operational Application Questions	P.13
	Operational Application Questions: Recommendations	P.14
8.	Conclusions	P.14

1. Issue

The EuroCommerce position regarding the future of EU Customs in relation to the review of the application of the Union Customs Code (UCC), the Customs Action Plan and other related developments.

2. Introduction

EuroCommerce is the voice for six million retail, wholesale, and other trading companies that engage in a full range of cross-border supply chain activities. These range from SME entrepreneurs importing fashion items through to major corporates in cutting edge retail such as eCommerce. EuroCommerce supports the EU's ambition to make customs processes simpler and controls more efficient and harmonised. A frictionless and responsive customs environment is crucial for many of our members with extensive supply chains or operations across EU and international borders. Efficient and simple customs reduce costs and time to process border crossing operations, facilitates compliant international cross-border trade and minimizes delivery delays and landed costs for EU customers.

Our members recognise the advances made by the EU Institutions and Member States since the introduction of the Customs Code in 1993. Since then, the application of customs has witnessed a growing relationship between the key stakeholders. In that respect, there has been an increasing understanding of the economic impact customs can have on competition and wealth creation.

EU customs is now at another pivotal moment with the *Customs Action Plan* initiative, the current revision of the *Application of the Customs Code*, and the *'Wise Persons' Group's* work and report all featuring prominently in guiding the future direction of EU customs. In this respect this paper sets out the areas merchants and wholesalers believe should be prioritised during the forthcoming debates on the revision of the Union Customs Code.

3. Central Message

The EU should strategically aim to lead the world with effective, yet innovative customs law, institutions, systems and tools that respond swiftly to business and economic developments, within a uniform, integrated and fully paperless customs environment as soon as possible.

Supporting Messages:

- EU Competitiveness is equally as important to the EU economy as effective customs controls because trade creates value and wealth, especially in new markets like eCommerce,
- New approaches to customs clearance and customs controls should be addressed and piloted, with the accent on trade facilitation – a concept endorsed by the WTO - and eliminating burdens, when designing customs legislation, institutions, systems, and tools,
- Although trade, EU Institutions, and national authorities are working more closely together due to the last Customs Code modernisation, an even closer partnership should be sought at every stage to *'co-create'* a modern, frictionless customs environment for the future,
- There should be more consistency between administrations and swifter resolutions to individual trade queries at the EU-level regarding specific customs application problems, *and*
- Advances in new technology should be examined with more urgency, and - where appropriate - projects piloted swiftly to clearly determine the potential to enhance existing systems and tools.

4. Overarching Principles

These messages are supported by overarching principles that should form the basis of any future Customs modernisation to ensure:

- The central aim of reforms should be to create the most simple, effective processes and tools for both customs authorities and trade with the least impact on commercial operations.
- Channel neutrality and a level playing field for all forms of trade and commerce business models, regardless of where they are established.
- Reforms are data driven and based on economic reality of how businesses operate.
- Reforms facilitate genuine trade to and from the EU. Control and enforcement should focus on the highest risk areas (risk-based approach).
- The proportionality of any new obligations for businesses.
- Rules are effectively enforceable by customs authorities, also against non-EU actors.
- Reforms appropriately address overlaps with VAT and other taxes charged at or in relation to crossing the borders.

5. General Observations

The creation of the single market led to a desire to improve the harmonisation of EU customs, with a deliberate movement towards a more risk-based approach following the growth of trade. Since the turn of the 21st century, the EU customs legislation has experienced a significant modernisation process to reflect this. That process laid down ambitious targets to streamline customs law and introduce modern provisions to help provide more consistent and efficient application.

This recent ambition to take the EU Customs Union to the next level and seize global opportunities, especially those created through the rise of digitalisation and omnichannel commerce, is welcome. A competitive and strong economic sector, working in as frictionless an environment as possible, creates wealth for the EU. The EU is facing fundamental challenges balancing customs controls and the facilitation of licit and compliant trade. Historic rising flows of international import and export of goods, disrupted global supply chains, Brexit, inflation n attack on Ukraine conflict on energy and food supply have all added unprecedented pressure on authorities and traders alike. At the same time, EU customs authorities are increasingly responsible for controlling a widening range of non-fiscal tasks, such as economic/IPR compliance (including counterfeiting), safety (e.g., weapons, drugs), goods compliance (CE marks), and environmental compliance. Finding the right balance with legitimate trade has never been so crucial for the EU economy.

But, as all these challenges line-up, EU customs is at pivotal moment with the current revision of the *Application of the Customs Code and the Customs Action Plan* initiative. Additionally, the Report by the Wise Persons Group on the Reform of the EU Customs Union will influence thinking and guide debates. EuroCommerce believes it is imperative the EU learns recent lessons and seizes the opportunities these initiatives offer. The outcome of these review processes and debates will guide the direction of EU customs for several decades to come. EuroCommerce believes these initiatives present a unique opportunity to create *a world leading* innovative EU customs: *a network that truly reflects modern businesses and their dynamics*. Trade in all sectors, especially new ones like eCommerce, need new, streamlined approaches to create modern, frictionless, and responsive customs rules, underpinned by ‘state-of-the-art technology’, with better synchronisation with other taxation regimes. This is particularly so for companies desperate to build-back their marketplaces post-Covid, recreate post-Brexit supply chains, work within new eCommerce VAT rules or mitigate the impact of the Ukraine conflict.

EuroCommerce believes a cornerstone of this is an even closer partnership with business when planning and decision-making at the EU and national levels. The default ‘official’ mindset should be one of trust and openness between trade partners to ensure that distortions of treatment are tackled openly. Customs should now evolve with strategic emphasis on trusted traders using the very latest technology and thinking. Trade facilitation is important and is recognised in the Wise Person Group report. This is especially so within the context of AEO. The programme must become easier to access for smaller businesses and AEO holders *must* benefit from greater simplifications than at present. These simplifications should be process-based using self-assessment with periodic (not transactional) reporting. The potential offered by Centralized Clearance should be pursued vigorously, along with a much greater synchronisation between customs VAT and Excise when developing any changes to rules, systems, and tools.

From EuroCommerce’s perspective, there are eight fundamental challenges we believe should be tackled to facilitate customs operations. These challenges, which are not mutually exclusive are:

1. The legislative process at the working level is slow and complicated, with a tendency to treat entry into force deadlines more importantly than the content: *that can lead to lopsided application and burdens.*
2. Customs legislation remains complex and complicated despite modernisation and can still be difficult to navigate for users, especially SMEs, *even with guidelines.*
3. The effective benefits provided by AEO status are disproportionately limited considering the cost of applying and maintaining the status and can vary by location. Serious enhancements to the AEO program should be a priority in any review.
4. In past reforms, Customs, VAT and Excise have been treated as three separate silos, yet there can be significant operational overlaps creating friction and a connected approach is needed to manage these overlaps with smoother synchronisation and interoperability between regimes. This applies to any other, existing or new, border-charged tax or levy.
5. Accurate and complete customs data for correct enforcement is important. The importance of data was recognised by the Wise persons group report, where they recommended a new a ‘new approach to data’ to make sure there is complete cradle to grave approach.
6. The functioning of the Import One Stop Shop mechanism should be strengthened and the risk for IOSS n° misuse should be reduced before an expansion of its scope is considered.
7. Eradicating distortions in treatment caused by uneven interpretation of the law across EU customs authorities (and even offices within the same authority), which still exist after thirty years of the common customs law in the EU.
8. Responses to questions regarding inconsistent interpretation across EU Member States and the wider Customs Union are disproportionately slow and can take years to arrive at a conclusion. *Some form of formal working approach needs to be found.*
8. There are too many possible scenario’s applying at the EU customs border from a fiscal measures’ perspective (e.g. distinction between IOSS and non-IOSS B2C parcels, B2B parcels currently not included in IOSS), goods subject to Prohibitions & Restrictions (IOSS eligible but with a different declaration / data set), not mentioning all non-fiscal measures (related to safety, environment, public morality and so on).

6. Specific Comments:

i. Legislative Process

Customs legislation needs to be clear, simple, and easy to follow and provide certainty and predictability. It is just as important for officials as our members to work with legislation that is

applied uniformly, consistently, and fairly. But, rather than modernising customs legislation every twenty or so years, the EU should invest time and effort in creating legislation that can be more responsive to changing market circumstances and business models. Markets and technology develop more dynamically today, unlike thirty or more years ago and to compete in future, modern markets, and businesses, like eCommerce, will need innovative law that is adaptable in real time, not years behind ‘the curve’.

We appreciate customs law has its roots in the EU Treaty. But working-level progress can be sluggish. The legislative process can easily take three years and often more in discussion and negotiation. This is not good for dynamic modern markets. Yet despite this lengthy process, the end results can *still* be unclear and difficult to apply – *and a key element can end up dropped to another time so a deadline can be met*. Traders have raised concerns and unsuccessfully asked for deadlines to be adjusted on more than one occasion because authorities would not be uniformly ready to apply new rules or systems by a deadline. We feel that too much emphasis is given to the text, which does not fully achieve its intentions operationally. In this respect, some thought could be given to making pilot projects a more integral part of the legislative creating process as provided for in the customs code to ‘test-bed’ new systems or technology, such as ‘A.I’ and ‘Block-chain’ in the field.

The last Customs Code modernisation took some fifteen years of discussion and development until it entered into force in 2015. The implementing rules followed a year later and many of the promised guidelines to articulate legal text were not published until sometime after then. Alongside the law, *key* eCustoms systems were still outstanding in 2016. A derogation was needed to delay the completion of eCustoms by nearly ten years, until the mid-2020s; for example, the single window for customs, which will transform customs operations for all business profiles, notably SMEs, has only just been *provisionally* agreed at the political level. The TES initiatives are also joining many systems together, which will be beneficial, but completion of a viable integrated network is some way off. The dynamics between, politics, law and operations is appreciated. But such delays frustrate many traders that are keen to unlock an electronic customs environment, such as centralized clearance, which will synchronise with other taxation regimes and systems when phase 2 comes online. It is frustrating the delays did not look at emerging state-of-the-art technology. These are essential electronic systems for authorities and economic operators alike. Yet, it will not be possible now to assess their full operational value, or necessary critical revisions until towards the end of the 2020s - nearly fifteen years *after* they were envisaged as being operational.

Apart from the economic crisis created by the Covid pandemic, made worse in many cases by the supply chain impact of Brexit, the unfolding events on the EU’s very borders in the Ukraine show how fragile fixed rules can be. This strongly suggests the need for more responsive business mechanisms built into the law, that respond flexibly to economic emergencies or operational pressures created by significant or swift market developments. For instance, merchants and wholesalers faced difficulties importing supplies of Personal Protective Equipment for sale on the EU market. Additionally, contingency mechanisms - such as short-term adjustments to the Returned Goods Regime - could have helped legally mitigate some of the unintended, but real frictions created by the EU-UK TCA, which has led to great pressures on business of all profiles.

Despite an original intention to put the law into common language, the UCC remains legalistically complicated and is often difficult to navigate. Even officials at the same Customs Expert Group meetings responsible for creating a piece of text, later have different interpretations regarding the intention of the wording. This creates an exceedingly difficult environment for businesses to work within, especially SMEs. Business needs legal certainty and operational predictability, especially as they face penalties for erroneous application. It is often overlooked by officials and politicians that smaller businesses do not have dedicated compliance teams. Apart from their primary business of buying and selling, they must work with complex EU customs rules on top of a whole raft of other national business and social taxes or other EU rules, such as REACH. The original intention for the

UCC was law written in everyday language. That would have helped SMEs enormously and reduced the need for publishing guidelines alongside the law.

Legislative Process: Recommendations

- Resources should be invested in exploring more innovative ways and options for creating and applying Customs legislation, which is more responsive in practice and focuses systems and tools more surgically at high risks.
- An existing or specially convened group of experts drawn from all stakeholders should examine the type of features a modern legislative infrastructure could look like to achieve a responsive legal environment that offers certainty and predictability.
- Commission officials face a difficult job. An exercise should take place to step back and critically analyse 'best practice' for working procedures and methodologies that create and guide legislative proposals at the Commission led Member State expert level. This should help create a smoother, more cohesive process for officials and other stakeholders.
- Deadlines are important for any activity. Yet a balance is needed. Purpose and content should not be squeezed to fit a deadline. More emphasis should first be given to creating a more modular approach with interactive deadlines based on discussion with *all* relevant stakeholders at the very earliest 'brain storming' stage so businesses know what is on the horizon and what they may need to budget for. A programme of open and *honest* deadline reviews, including all stakeholders, should be set at key stages in the timeline to critically assess if obligation to meet a deadline will erode the integrity of a proposal's purpose and content.
- Well written and clear legislation would do much to reduce uneven application and interpretation questions. That could offer a significant saving on time and costs for authorities, and businesses alike. An exercise aimed at addressing the navigational complexity of the law from a business user perspective and putting as much text as possible into plain language would cut costs and burdens on business, especially SMEs.
- Modifying eCustoms systems should be based on both operational needs and the viability of the latest, 'state-of-the-art' technology, such as A.I
- The scope for increasing secondments between business and the Commission could be examined to help in respect of putting law into user friendly language and to provide a business perspective in the development of other legislative projects.
- As draft regulation develops, consideration could be given to more pilot projects as part of the process to 'test-bed' how a draft text or concept would work in practice. The results could then be analysed to give direction to ensure a final text is fit for purpose and robust in operation from day one. That would minimise needing to patch a rule after it is in force due to uneven application and interpretation.
- Regulatory Impact Assessments are important for all new regulation. But they need to be conducted independently, perhaps by respected academic bodies for use by all EU Institutions. A new 'Trade Facilitation Test' should be applied to all new proposals to measure if a proposal facilitates or hinders economic recovery from the pandemic or the many crucial challenges now facing EU business.

ii. Authorised Economic Operators (AEO)

The Commission is aware many business sectors have called for the AEO program to be improved incrementally in terms of overall effective simplifications as well as reductions for clearance processes and lead times. Since its introduction, many have considered the AEO programme a missed opportunity as a trade facilitation provision. Some fourteen years after its launch it has

crept slowly to eighteen thousand applications per year. That is disappointing and different to projected in 2008. In concept, the AEO programme should be the most frictionless area for customs operations. EuroCommerce believes the time has come to urgently and critically analyse the structure to provide real core simplifications and benefits, not just tinker around the edges. Many members claim the complex, costly and burdensome AEO application process outweighs the perceived benefits, which drags down the numbers that would or could apply for the status.

Trade facilitation is important and a key comment in the Wise Person Group's report. Earlier exercises to improve AEO benefits seem more symbolic than operational. Our members would like to see a different approach adopted. An approach that is more focused first on practical business operations, rather than combatting hypothetical evasions from the rules.

One modern innovation would be to move from a transaction towards a process-based approach. This was the subject of *BusinessEurope's joint association letter to TAXUD on 25 November 2021*, which EuroCommerce signed. Our members believe this is a serious option now and the way forward for a modern customs environment, given the development of the IT infrastructure both on Customs' and traders' side. There would be significant benefits. AEO holders have already undergone checks of their business processes to obtain this status. It would make little sense to subject a trustworthy operator to further risk-control checks every transaction. By using a process-oriented approach as opposed to a transaction-based approach, the freed capacity could be used to focus on high-risk cases. If a company modifies its process leading to a change in customs procedure, no administrative changes would be necessary. At present this would imply, among other things, a change of the customs declaration. It would reduce the workload for all parties involved.

To improve the situation, benefits should be examined together with business, such as in the areas of reduced transactional inspections and centralised records. Separately, introducing a simplified confirmation of export by an AEO/ trusted trader would boost EU exports by offering the possibility for entering relevant data in port or similar systems when goods change hands into the next customs status, such as handed to express carriers conferring export on the consignment.

Authorised Economic Operators: Recommendations

- AEO should depart from transaction-based approaches in favour of process-based mechanisms with periodic (monthly / quarterly) reporting given the development of the IT infrastructure.
- Phase 2 of CCI is an important step. A key simplification is the enhancement of a centralised customs clearance capability designed to ensure it would truly be centralised (i.e., with the decisive role of the MS of identification only).
- AEO traders should also have access in all EU Member States to post-entry data to check for any inconsistencies with, for example, IOSS customs data.
- An important benefit could be allowing those holding AEO status to release goods at the border without the involvement of the customs authorities (self-clearance, organized in a similar way as VAT reporting and payments). This would remove points of friction, particularly in the case of just-in-time consignments.

iii. Customs, VAT and Excise

Customs, import VAT and Excise have been treated historically as three separate legislative silos despite their overlaps. Often a VAT or Excise issue does not figure in the debate until towards the end or even after implementation. This can complicate and delay the process. Although, there has been movement towards better coordination recently, there should be a concrete policy or strategy on tying the systems more closely together. Last July's introduction of the eCommerce

VAT Package highlighted some of the difficulties that a silo approach had created between these three taxation regimes when trying to address a modern marketplace and the new challenges that brings for authorities, operators, and consumers.

Apart from the pressing issues facing eCommerce, addressed below, we believe the EU should use the lessons being learned from the VAT Package and the Import One Stop Shop (IOSS) project to ensure better synchronisation between regimes where they overlap and ensure any changes made that apply across other regimes are reflected simultaneously. For instance, changes to the duty-free rules meant Article 24 of Regulation 1186/2009 did not keep pace with the change of status for perfumes/toilet waters sold to consumers that do contain alcohol. Those goods remained liable to excise rules regardless that no Excise duty is payable.

We believe an exercise should take place to examine and identify the overlaps and the various Customs, VAT and Excise tools that can be better synchronised. New customs, VAT and Excise proposals should be screened at the inception stage with focus on the overlaps and how they can be brought within a synchronised system for that requirement.

Customs, VAT & Excise: Recommendations

- Resolving remaining misalignments between VAT and customs legislation, such as between the IOSS VAT scope and the new customs competent office rule. In this example, Article 224(1) of the Implementing Act creates non-IOSS eligible shipments < 150 EUR, such as B2B and excisable products. That obliges direct clearance in the final delivery country leading to responsibility issues with brokers and customs logistics partners.
- All new customs proposals should be screened with an analysis of the VAT & Excise impact at the start of the process, with options on to integrate those requirements flagged up.
- A review of the different customs, VAT, and excise Member State Expert groups, chaired by TAXUD should take place to examine overlaps and form new horizontal forums to better manage the legislative and systems development process where these regimes touch on each other. This exercise should involve the customs Trade Contact Group and the direct tax Trade Contact Groups.
- Resources should be invested in a longer exercise to analyse the various overlaps of data and other provision requirements, with an aim to reduce to bare minimum.

iv. eCommerce - Ensuring Effective VAT Collection

eCommerce and online marketplaces are new and dynamic global economic channels that the EU is fundamentally promoting. The VAT package incrementally reformed the way VAT is collected on eCommerce B2C imported goods of value up to 150EUR (other goods, i.e., B2B, C2C, excisable, and all above 150EUR are not covered by IOSS). The cornerstone was the 'Import One Stop Shop' system (IOSS) where VAT is collected upon checkout instead of paying VAT upon import clearance of the shipment. This was a considerable step, but there are still crucial operational weaknesses that must be addressed for the IOSS to function as intended. For example, national customs IT systems in some Member States were not then ready to recognize IOSS numbers in standard (H1) customs declarations, leading to double taxation. There are also still inconsistencies between VAT and customs legislation (as well as excise regulations), such as the customs competent office rules requiring non-IOSS eligible shipments to be cleared in the country of final destination.

Apart from medium and longer-term work on this project, EuroCommerce is concerned that the current system is prone to misuse of IOSS numbers. This impacts on the vast majority of merchants trying to follow the rules properly. There are several root causes to this issue: the optionality of the IOSS system, the fact that IOSS numbers cannot be kept confidential and the lack of transparency of IOSS holders to customs authorities (customs authorities can only verify the validity of an IOSS

number, but not the actual holder). Whilst it has not been identified as a significant issue to date, businesses who make use of the IOSS are acutely aware that IOSS numbers can be misused by businesses intentionally (to avoid paying VAT at the customs border) or by mistake. As taxpayers' IOSS accounting begins to be audited this could lead ultimately to a burden on the IOSS registrant to explain reconciling differences between IOSS returns and EU customs data and to evidence why he should not be held liable for IOSS misuse. The longer these are left unaddressed, more revenues are lost from collection and the further uneven the playing field becomes, distorting the situation for legitimate businesses.

eCommerce - VAT Collections: Recommendations

The functioning of the IOSS mechanism should be improved and strengthened before considering to expand its scope, by taking the following actions:

- **Short term:**
 - we support the EU Commission plans to investigate mandating the IOSS VAT scheme for all operators. We support the need to address level playing field concerns and closedown the scope for bad actors to simply pivot to non-IOSS registered platforms.
 - Enriching EC Customs surveillance data by including the country of destination of the IOSS shipment in order to allow for reconciliation with aggregator data.
- **Medium term:**
 - Improving the 'green lane' status of IOSS eligible shipments through supporting national customs to enable their IT systems to handle IOSS for all customs declaration types.
 - Strengthening the security of the IOSS ID and end-to-end integrity of the existing IOSS program before considering expanding the scope of the IOSS further.
 - Given the potential for IOSS misuse, we believe the EC should continuously monitor the system to ensure that this practice is not becoming widespread. This can be monitored by periodically consulting both Member States and IOSS registrants on the extent to which they find significant deviances between amounts accounted for on IOSS returns versus parcels declared through customs under corresponding IOSS numbers (where such deviances cannot be explained by a factor other than misuse – e.g. accounting errors).
- **Long term:**
 - the EU Commission should strive to reduce complexity caused by the high number of scenarios possible for customs clearance at the border, for example (1) whether the (deemed) supplier opted to use the IOSS; (2) Whether the parcel includes excise duty products; and (3) Whether the parcel is sold to a business or private customer. Reducing the number of scenarios should lead to less friction for suppliers & customers, and reduce workload for customs authorities, leaving them with more resources to fight fraud.

v. [eCommerce – Effective Customs Duty Collection by Data Sharing](#)

EuroCommerce believes currently available customs data is enough for eCommerce but often of insufficient quality and shredded to effectively support customs enforcement. This is because chunks of various data coming from various parties in supply chain are not properly and timely set together.

The Wise Person Group's report recognises the importance of data and calls for a new approach. Our eCommerce members believe customs duty collection can be further improved by data sharing obligations for parties involved in the eCommerce supply chain, and by effectively using this data. Marketplaces using the IOSS are already reporting VAT data through this system. From 2024,

Payment Service providers will additionally start sharing data as well via the 'Central Electronic System of Payment information' (CESOP). Combined with enhanced data sharing by other actors in the eCommerce supply chain (e.g., logistics operators) can help address the detection of undervaluation, VAT and customs fraud, and the detection of non-financial risks, once all the pieces are correctly arranged.

Improvements in data sharing should be accompanied by appropriate and effective enforcement measures. To promote compliance and improve effective customs duty and import VAT collection, EuroCommerce cannot see any other option but to find a way to make all declarants accountable for data they provide, regardless of their type or current exemptions they enjoy.

eCommerce – Effective Customs Duty Collection by data sharing Recommendations

- An EU harmonised, digital One-Stop Shop approach is strongly preferred, i.e., data sharing should be centralised via a one digital customs interface within the EU.
- Where data has been provided once, it should not be required again. Responsibility for the correctness of the data shared should be balanced as to the extent of their availability by the specific supply chain actor. For example, marketplaces, carriers, customs brokers all depend largely on data provided to them by the seller or shipper or importer and cannot verify the accuracy for most of these. Each of these actors is in possession of a part of the whole dataset and it is neither possible nor justified to expand beyond what they can deliver.
- Data privacy and confidentiality should be safeguarded.
- A level playing field should be created through applying additional data sharing obligations and liability broadly, irrespective of the place of establishment, business model, etc.
- Datapoints that should be shared should be actionable, scalable and should contribute to financial and non-financial risk management more effectively. It is the key to identifying an effective matching data key to link between the data provided by different actors. Required datapoints should be determined through a risk-based approach.
- Consideration should be given to whether data sharing should be reciprocal, as this would allow business to identify bad actors.

vi. Uniform Application of customs legislation

After thirty years of the Single Market, it is an anathema that such a high level of inconsistent interpretation of the rules persists across the different customs authorities (and even offices within the same authority). It is a real impact on operators present in more than one Member State and creates distortions of treatment and in some cases competition. That inhibits trade and cash flows. The non-uniform application of the UCC and its systems, such as BTIs, is an issue across the EuroCommerce membership as well as in other business sectors.

As already discussed under point 5.i. above, legislation that was squeezed to meet deadlines may be a large part of the reason uniform application is often uneven, especially if complicated. We have heard that inconsistent IT systems in different authorities may hamper creating a more digital, paperless approach that is in everyone's best interest. The EU should address this with a programme to ensure that all authorities are able to accept electronic declarations and have fully harmonised data standards.

But engendering a more common approach and attitude is also important. There have been various 'customs' training programmes and they have helped. But they normally exclude businesses as part of the training team or audience. Also, they again appear more silo orientated, and customs training seems separate to excise or VAT training programmes, although there are overlaps.

EuroCommerce believes that more emphasis should be given to identifying ‘best practice’ to lead all Member States. That should include business in training events to help both sides under the dynamics the other faces. Likewise, training events that are multi-disciplined across Customs, VAT and Excise could start to help develop a more synchronised approach.

At a more strategic level, the ‘Wise Person’s Report’ has recommended an EU ‘Customs Agency. This concept may go some way to addressing the concerns members have raised over consistency and harmonised application of the UCC. The establishment of such an EU Customs Service would need careful deliberation on competencies and its mission statement. If it becomes reality, it must *not* become another tier that sits between national authorities, the European Commission, and economic operators, adding to complications between competencies, without enhancing consistency.

Uniform application: Recommendations

- All countries should be supported by the EU so they can accept electronic declarations and ensure data requirements are fully harmonised.
- Training programmes between Customs, VAT and Excise could be coordinated for the areas of overlap.
- Options should be examined to include businesses in training programmes on the presentation side as well as in the audience if appropriate.
- A future EU ‘Customs Agency’ could help create consistency but should not become simply another layer of bureaucracy.

vii. Operational Application Questions

The general time limit of 120 days for a decision from the customs authorities is sufficient for complex decisions. But it is far too long for most of the decisions with potential economic impacts for a significant number of daily operational decisions requested by the economic operators. For normal international trade operations/ flows of goods the time limit should be significantly reduced (to 30 days with possibility of a single extension by half of that time).

Members have raised problems of interpretation and uneven application with national authorities. Although there are legal remedies, many questions seem appropriate for an intervention from the Commission services. These cases are not abstract. They involve very real cash-flow impacts and competitive distortions.

Yet the nature of the relationship between the Commission and national authorities means an intervention can take many months, even years. EuroCommerce believes there should be a means found to accelerate these cases to a swifter conclusion. One option to achieve this could be an agreed alternative dispute resolution binding arbitration system built into the working level to mediate between a national authority and company where an interpretation appears in contradiction to the UCC. This could act as a mid-way point and avoid costly litigation for both authority and company.

As discussed above, an EU Customs Service proposed by the ‘Wise Persons Group’ may help improve interpretation and uneven application and could provide such an arbitration mechanism.

Operational Application Questions: Recommendations

- Interpretation questions raised with Commission services require an agreed system with Member States regarding whether an interpretation meets the intention of the UCC.

- A structured and binding arbitration systems could be established to act between local questions and legal remedy for individual conflicts of opinions over UCC interpretation.
- The EU Customs Agency, mentioned above, may provide a solution on remedying conflicts of interpretation.

7. Conclusions

The application of EU customs has modified beyond recognition since 1993, when the Customs Code entered into force. Now, there is much more welcome understanding of the impact on business and the need for trade facilitation. But many challenges remain that must be addressed if the Code is going to provide modern, effective controls that do not divert business from concentrating on their core business, not regulation.

The EU should be ambitious and aim to lead the world in customs law and systems that benefit the businesses that must work with in the EU's customs structure. EuroCommerce believes it is now possible to create legislation and systems fully utilising advances in IT, which are effective at both protecting the EU and its citizens, as well as providing a frictionless, modern predictable and consistently applied trader friendly environment that facilitates *genuine trade and supports level playing field*.

About EuroCommerce

EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 27 countries and 5 million companies, including leading global players and many small businesses. Over a billion times a day, retailers and wholesalers distribute goods and provide an essential service to millions of business and individual customers. The sector generates 1 in 7 jobs, offering a varied career to 26 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector.

Contact:

Harald Past - +32 2 737 0597 - past@eurocommerce.eu
Graham Austin – EuroCommerce rapporteur on customs

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