

Ecommerce Europe's contribution to the Wise Persons Group consultation on the challenges facing the Customs Union

Introduction

Ecommerce Europe welcomes the opportunity to contribute to the Wise Persons Group (WPG) consultation on the challenges facing the Customs Union. Recently, the EU Customs Union is facing important external challenges, such as the increase in international import and export flows of goods, the boost to digitalisation and e-commerce, Brexit, and more. Additionally, the EU customs authorities are increasingly responsible for a wide range of tasks, including transport security, product safety and sustainability. In this context, it is of utmost importance to ensure that customs processes and controls become more efficient and harmonised, as this could reduce the costs and time to process imports, facilitate the international cross-border trade, and minimise the delivery days and unexpected costs for EU consumers. Furthermore, increased customs control capabilities and proactive control measures through the use of technology as data become available in advance are equally key, in order to minimise safety risks for customers, to help fight customs, duty and VAT fraud and to protect and grow revenues for governments.

Therefore, Ecommerce Europe would like to share its contribution to the consultation and provide the WPG with structured feedback that reflects on the key topics identified by the WPG.

1. E-commerce – ensuring effective VAT and customs duty collection

The EU VAT E-commerce Package has incrementally reformed the way VAT is collected, particularly on low value consignments. The legislation includes the introduction of an Import One Stop Shop system (IOSS) which facilitates the process to collect and remit VAT on imported shipments with a value not exceeding €150. We believe **the IOSS should be further strengthened in its functioning and performance**, 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 H7 customs declarations which causes **double VAT taxation** for shipments declared under an H7 customs declaration even though these shipments are IOSS eligible.

In addition, the current system is prone to **misuse of IOSS numbers**. This is due to the optionality of the IOSS, the fact that IOSS numbers cannot be kept confidential, but also 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). Another root cause for potential misuse is the fact that there is no end-to-end system in place to link IOSS merchant/marketplace level identifier with the transaction level identifier for each shipment. As a result, IOSS numbers can be misused (intentionally or not) by businesses to avoid paying VAT at the customs border. This will lead to reconciling differences between IOSS returns and EU customs data. In addition, this will drive new unlevel playing fields and lost VAT overall.

When it comes to customs duty collection, customs data currently available is too limited and often of insufficient quality to effectively support customs enforcement. This is caused by the fact that several data fields in the customs declaration are optional to complete, and for some fields it is not clear which information needs to be provided. We believe customs duty collection could be further improved by data sharing rules for parties involved in the e-commerce supply chain, and by effectively using this data. Additional enhanced data sharing by actors in the e-commerce supply chain (e.g., logistics operators, parcel delivery operators) can help address the detection of undervaluation, VAT and customs fraud, and the detection of non-financial risks.

Improvements in data sharing should be accompanied by appropriate liability and enforcement measures. While designated postal operators have taken steps in the right direction regarding the mandatory sharing of customs data, these carriers remain exempt from liability for customs declarations under Article 23.3 of the Universal Postal Union (UPU) Convention¹. To promote compliance and improve effective customs duty collection, all carriers must be accountable for declarations. This in particular, as several designated postal operators collect additional charges when lodging customs declarations, even presenting H7 super reduced datasets to customs authorities.

Recommendations:

The IOSS system could be improved by **introducing a VAT relief mechanism** for the double paid VAT due to customs IT readiness issues. It is important to address this issue as a matter of priority as it undermines the functioning of the IOSS.

Furthermore, the green lane status of IOSS eligible shipments through supporting national customs should be improved. This would enable the national IT systems to handle IOSS for all customs declaration types, including H7 customs declarations.

Possibly, the security of the IOSS ID and end-to-end integrity of the existing IOSS programme should be strengthened. This should happen before considering expanding the scope of the IOSS further.

Additionally, **remaining misalignments between VAT and customs legislation must be resolved**, for example between the IOSS VAT scope and the new customs competent office rule under article 224(1) of the UCC/IA leading to non-IOSS eligible shipment < 150 EUR, such as B2B and excisable products, requiring direct clearance in the final delivery country leading to capability issues with brokers and customs logistics partners.

Regarding the sharing of data for customs duty collection, data sharing should be centralised via a one digital customs interface within the EU, based on the EU harmonised custom data model and digitalised One-Stop Shop approach. Responsibility for the correctness of the data shared should also be balanced, and take into account that for example marketplaces largely depend on data provided by the seller and marketplaces cannot verify the accuracy of most of these.

Finally, the European Commission should assess the pros and cons of introducing **reciprocal data sharing** possibilities for businesses, as this would help identify bad actors. The assessment should take into consideration the interplay of such an introduction with other data-related legislations at EU level.

¹ Universal Postal Union Convention Article 23.3: "Member countries and designated operators shall accept no liability for customs declarations in whatever form these are made or for decisions taken by the Customs on examination of items submitted to customs control."

2. Lack of a uniform approach among Member States

Increased harmonisation and simplification of customs processes across the EU are key to facilitate trade whilst ensuring that bad actors cannot direct their import flows towards countries with lower risk perception. At the same time, businesses are regularly confronted with a **non-unified approach by the customs authorities of different Member States in terms of the interpretation and practical application of customs legislation**. Combined with a highly diverging risk perception across Member States, this results in:

- very significant differences in pre-clearance and clearance processes as well as average lead times and inspection rates across Member States and – also – among various customs offices within single Member States.
- a tariff classification of a good approved in one Member State is challenged by another Member State's authority. This today happens despite a binding tariff information in place.

Another example of where harmonisation of customs systems and processes is urgently needed are the lists of goods subject to Prohibitions & Restrictions (P&R). The lists vary across the different Member States and trigger complex documentation requirements for businesses. In addition, the lists are not transparently available in each Member State, making it very difficult for businesses to anticipate the customs treatment at the EU border. **Shipments containing P&R goods are currently also triggering double VAT taxation** as an H1 customs declaration is required for these, and customs authorities are unable to recognise IOSS numbers in this type of declaration. We recommend the EU Commission to address this issue by increasing transparency of the P&R lists, while working towards an EU harmonised P&R list on longer term.

Additionally, a key mechanism to increase efficiency of the EU Customs Union should be to further facilitate trade by trusted traders, as this will support compliant and legitimate businesses while allowing customs authorities to focus more on fraud and non-compliance risk areas. This could be achieved by allowing **enhanced benefits for Authorised Economic Operators (AEO)**. The AEO programme needs to be incrementally improved in terms of simplifications or reductions it provides from clearance processes and lead times by – especially – factual departure from transaction-based approach and bolder move to a process-based approach, which is more than feasible already given the development of the IT infrastructure both on customs' and traders' side.

Another key simplifier that should urgently be operationalised for AEO traders is a **centralised customs clearance capability** which envisages a decisive role of the Member State of identification only. AEO traders should also have access to post-entry data to check for any inconsistencies with for example Import One Stop Shop return data. It should also allow for goods to be released by AEO trusted traders without the involvement of the customs authorities at the border (self-clearance, organised in a similar way as VAT reporting and payments), in order to ensure that trade operate smoothly, particularly in the case of just-in-time consignments; depart from transactional base clearance and develop periodical reporting only, especially for AEO, as new enhanced benefit.

3. Smarter management (“governance”) of the Customs Union

There is a need for more cooperation and horizontal alignment among national customs authorities to support mutual learning and consistency in tackling current challenges. The focus of future reforms should be to simplify the current UCC legal framework, and to centralise and harmonise customs processes. It is critical to determine which aspects (customs legislation, training, set-up and maintenance of IT systems, data analytics, equipment) merit an EU level integration, and which ones are best organised at Member State level or Member State cluster level.

It is important that reforms are balanced between customs’ enforcement and control on the one hand, and trade facilitation and administrative simplification needs on the other. A risk-based approach is key to achieve this balance, allowing customs authorities to focus on the higher risk areas while facilitating trade for trusted traders. The EU Single Window Environment for Customs is already an important step to enhance cooperation and coordination between different authorities, and will support the automated verification of non-customs formalities for goods entering or leaving the EU.

Consideration should be given to set up a unified EU Customs authority across the EU.