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From: General Secretariat of the Council
On: 23 January 2025
To: Working Party on Customs Union (Directors General of Customs)

Subject: Security and customs control challenges for customs administration based on experiences and problems arising within the e-commerce phenomenon
- Discussion paper by the Presidency

Delegations will find in the Annex the above-mentioned discussion paper with a view to the meeting of the Working Party on Customs Union (Directors General of Customs) on 23 January 2025.

Security and customs control challenges for customs administration based on experiences and problems arising within the e-commerce phenomenon

I. Scope of this steering note

This note covers the subject of the security challenges for customs administration based on experiences and problems arising within the e-commerce phenomenon. During the debate two exemplary aspects of the e-commerce are going to be presented which are in this note.

Member States are free and welcome to use also other examples.

The Polish Presidency encourages a debate to rise an awareness about the broadly understood security where customs administrations play an important role. The example of e-commerce is used because of constantly growing volume of e-commerce trade and the challenges it poses for the customs administrations.

The Polish Presidency anticipates that during the debate - in addition to pointing out the security challenges – proposals for potential courses of action, solutions or practices for the future adoption may be raised.

II. Context

The first quarter of the 21st century has recorded several shifts in the geo-political and trade landscape leading to disruptions in global supply chains, re-emphasising the need for the EU to identify and reduce its strategic dependencies. In this context, a well-functioning Customs Union is fundamental to the EU's competitiveness, sustainability and resilience.

The customs authorities manage a huge volume of international trade. In 2023 customs handled imports, exports and transit of more than 1.3 billion items, and these figures do not include the H7 reduced declaration form used for low-value consignments, mainly in e-commerce. Meanwhile, H7 data for the EU27 represents 79% of customs activity for processed products, where 2.1 billion of the 2.6 billion imported products were lodged with an H7 declaration. At the same time, those declarations only account for about 0.6% of total import value.

In doing so, the competence of the customs authorities is very broad and includes responsibilities for:

- collecting customs duties and other taxes: where 75 % of the customs duties collected by EU Member States go to the EU budget in the form of an EU traditional own resource. In 2023, €28.3 billion in customs duties were transferred to the EU budget.
- tackling the activities of criminal organisations; and
- ensuring that EU standards are upheld: customs officers check compliance with the EU legislation on environment, agriculture, food, cultural heritage, market surveillance, and product safety.

The importance of the last of the above is constantly growing. Customs are expected to play an active role in counteracting the unfair competence which adversely affects the security of the EU market. It is particularly relevant in the e-commerce sector.

Maintaining the customs duty exemption for goods up to €150 has created space for systematic abuse of this threshold through undervaluing and splitting of e-commerce consignments. At the same time, regulations on liability for non-tariff restrictions have proved ineffective when confronted with the structure and volume of e-commerce. Consequently, they are used by third-country operators to bring non-compliant products into the EU market.

Taking the above into account, the Polish Presidency would like to hold an open discussion to better understand the security and customs control challenges faced currently by the Member States based on their experiences with e-commerce. To open the debate we would like to use examples of selected measures proposed to address the issue of e-commerce in the customs union reform package.

III. The selected aspects of customs work in the context of security

In May 2023, the European Commission had proposed a reform of the customs union. In principle, this reform heads to the adoption of the new Union Customs Code (proposal for a Regulation of the European Parliament and of the Council establishing the Union Customs Code and the European Union Customs Authority and repealing Regulation (EU) No 952/2013), however, it includes also the proposal to amend Regulation (EEC) No 2658/87, i.e. the proposal for a Council Regulation amending Regulation (EEC) No 2658/87 as regards the introduction of a simplified tariff treatment for the distance sales of goods.

As stated in the customs union reform package, customs are the guardian of the EU's external border for goods and for the security of our supply chains, society and internal market. Customs supervises all goods entering or leaving the Customs Union, 24 hours a day and 365 days a year. Customs identify risks, based on trade and security intelligence and carry out controls to ensure that EU rules are enforced. In ever-evolving growing global economy, the EU Customs Union has to change and constantly adopt to new challenges and tasks.

In order to curb the undesirable practices in the e-commerce, the customs union reform package proposes several measures. They include in particular removal of the customs duty exemption for goods up to €150, introduction of a simplified tariff treatment and a more strict approach to responsibility for non-fiscal obligations (deemed importer scheme).

1. Simplified tariff treatment

Removal of the customs duty exemption for goods up to €150 may result in an administrative burden and collection costs for both customs authorities and businesses. To avoid that situation or to facilitate such trade, it is proposed to use a simpler method of duty calculation based on different so-called ad valorem bucket duty rates:

- 5% (e.g. for toys, games, houseware articles),
- 8% (e.g. for silk products, carpets, glassware);
- 12% (e.g. for cutlery, electrical machinery);
- 17% (e.g. for footwear); and
- goods having a 0% *erga omnes* duty rate would continue to benefit from zero duties.

The use of 5-tier bucketing system should not result in lower revenue than applying the standard calculation, but would be easier to manage. This system would only be used in relation to goods sold directly to consumers in the EU (B2C) and excludes goods subject to trade policy measures (like anti-dump and antisubsidies) and goods subject to harmonized excise duties. The 5-tier bucketing system shall be based on *erga omnes* duty rates and does not take into account the origin of goods.

The bucketing system proposal originated as an idea to balance the effects of the removal of the duty relief threshold on the administrative burden of customs authorities and businesses and, mainly, to simplify processes and procedures for operators, and was proposed before the COVID-19 crisis and war disturbances. This system has been proposed as facilitation for fiscal calculation purposes.

However, the same goods being the subject of the facilitated way of customs duties calculation still need to be the subject of customs controls to address the challenges arising from non-tariff measures where there is a need to employ all customs control measures quite often at the entry of goods into the EU. If the customs have access to a limited number of data foreseen in the simplification, the question arises whether it would be enough for risk assessment and consequently for customs control.

According to the report by Mario Draghi, former President of the European Central Bank, published in September 2024, the EU economy is facing increasing competition from non-EU operators and have less and less access to non-EU markets. The report emphasizes the increasing dependence on China, which may also threaten the development of EU industry due to state subsidies in China for entrepreneurs competing in the EU market, including e-commerce area. At the same time, the EU legislator continues to impose regulatory burdens on European companies, which are particularly costly for SMEs. In this context it appears relevant to consider also the impact of any customs simplification related to e-commerce.

2. Deemed importer and non-fiscal responsibilities

The role of customs has evolved over time to cover also non-financial tasks. During the last 20 years, non-financial sectoral legislation applicable to customs has increased immensely to address the growing expectations and concerns regarding security, sustainability, consumer safety, health and protection of the human and animal life. It is worth noticing that the list of these provisions exceeds currently 350 and the next ones are negotiated or are in line to enter into force soon.

In addition, the EU customs authorities contribute significantly to the fight against smuggling of illegal goods and terrorism and defend the EU values and way of life. Not all national customs authorities have those competencies but the customs is quite often an important partner for other services in the fight against the smuggling of illegal goods. E-commerce is not free of risks in this area.

In fact, EU customs is now the first service in the EU that should be able to prevent the entry into the EU of goods in breach of prohibitions and restrictions. The EU customs cooperate closely in this matter with other competent authorities. Still, they are on the forefront when it comes to protecting EU citizens against non-compliant, dangerous, or counterfeited goods from third countries, and EU businesses from unfair competition.

The control of parcels in e-commerce poses a significant challenge to the customs authorities. Due to the massive volume of the shipments of low value and diversified content, effective controls require enormous resources – human, infrastructural and technical.

In addition, according to the provisions of the current Customs Code of the Union, in B2C e-commerce transactions, the consumer is considered to be the importer.

Therefore, any customs action against a shipment, which was successfully found under valuated or incompliant with EU law, has a very limited impact.

In such a case, e-commerce traders are not responsible for the infringements. This is exploited by big e-commerce players and consequently adversely impact the EU economic security.

One of the solutions proposed in the customs reform package is to make the e-commerce platforms importers of the goods that consumers order online from third countries. To ensure that e-commerce platforms become importers, the concept of deemed importer should be introduced, in line with the VAT legislation and the recently adopted Digital Services Act.

This concept is based on assumption that the platforms are in a better position to learn about the suppliers of goods. It creates one single point of contact and specifies the person to be hold accountable if non-compliance is identified. Thus, the burden of ensuring non-fiscal compliance with the obligations of the importer would be placed on e-commerce platforms. These responsibilities require, inter alia, the platform (the importers, in general) to have access to all the necessary documentation, such as the EU declaration of conformity or the technical documentation related to the goods sold through their platform and be able to provide it to national customs authorities in case of request. In other words, in case of non-financial control, platforms will be the privileged contact of customs authorities, so they will have to establish partnerships and contact with the manufacturers in order to access the necessary documents, and they will be required to be able to demonstrate that, as any other importer, they took appropriate measures to prevent the sale and import in the EU (and, where applicable, export) of non-compliant or dangerous goods through their platform.

The concept of deemed importer, however, rises concerns amongst the e-commerce platforms. The platforms are primarily doubting whether they are in fact able to take responsibility as importer for the actions of the traders using their marketplace. Considering their role in the supply chain, they claim to have limited contact with the trader. Consequently, they put in question whether they indeed are in the position to observe and enforce the obligations imposed on importers on all 350 non-tariff measures related to products sold through the platform, as there is no other operator able to do this vis-à-vis the European consumer in the context of suppliers present exclusively in third countries. Irrespective of the issue of identifying the responsible person, the question arises how to maintain appropriate level of customs controls with the volume of e-commerce trade at stake. To effectively fulfil their tasks, customs authorities should have all the possibilities to carry on all necessary controls or any other necessary actions against goods selected for inspection. The national customs authorities' access to more and better information (including data from e-commerce platforms) would allow them to better manage risk and supervise the trade flows, up to stopping goods before or at the moment of entry.

In this context, the cooperation between customs and non-customs authorities is one of the key components of effective enforcement of non-tariff measures.

IV. Questions for consideration by the Member States

Based on examples or your own expertise:

1. what do you think would be the most effective system to enable customs to obtain all the necessary data for customs control to address the major security challenges in the EU?
2. what possibilities or measures do you see for ensuring effective and efficient customs control, given the nature of e-commerce traffic, including the structure and volume of parcels?
3. how do you assess the scope of data transferred to the customs authorities and what would be your opinion on limiting or extending the scope of such data for the customs control purposes?
4. how would you assess the regulations where e-commerce platforms would bear importers' responsibility for compliance with non-tariff obligations? What do you think of imposing on e-commerce platforms the obligation to verify the traders using their marketplaces, making them responsible for non-compliance of the products sold through these e-commerce platforms and imported into the EU?
