

VAN BAEL & BELLIS



Initial Thoughts on the EU Customs Reform Proposal

| 21 June 2023

1-INTRODUCTION

On 17 May 2023, the European Commission (“*Commission*”) published its [proposal](#) for a regulation establishing the Union Customs Code and the European Union Customs Authority, and repealing the current Union Customs Code as part of a broader [EU Customs Reform Package](#). This Client Alert provides a short summary of the key changes that would be introduced by the proposal, as well as our initial thoughts on the reform. Our reflections have been influenced by discussions with the Commission and industry during the first full-day plenary meeting of the [Trade Contact Group](#) (“*TCG*”), as well as discussions with stakeholders.

The proposal addresses two main challenges facing the Customs Union: a sharp increase in low-value shipments from e-commerce transactions and increasing burdens on customs authorities due to border controls that check compliance with non-customs European Union (“*EU*”) legislation. These challenges have exposed weaknesses under the current Union Customs Code (“*UCC*”), including insufficient visibility on goods entering and leaving the Single Market, limited data quality and access, high administrative burdens on trade and diverging implementation amongst Member States. The proposal prepares the Customs Union for the future by creating an EU Customs Authority (the “*Authority*”) and an EU Customs Data Hub (the “*Hub*”), introducing customs simplifications, particularly for e-commerce goods and trusted traders, setting out common minimum harmonisation of customs infringements and non-criminal sanctions, and defining key terms, such as ‘importer’.

2-KEY CHANGES UNDER THE PROPOSAL

- The **creation of an EU Customs Authority** that will act in a central, operational capacity for the coordinated governance of the Customs Union in specific areas. The Authority will conduct various risk management tasks, as well as perform IT systems development, data management and data processing tasks. It will also aim to improve the operational management of the Customs Union through capacity building activities, providing operational support and coordinating customs authorities. In addition, the Authority will through its coordination and monitoring role contribute to the enforcement of non-customs legislation, including restrictive measures, and will play an active role in crisis management. The Authority will be **established as of 2026** and will become **fully operational by 2028**
- The **creation of an EU Customs Data Hub** that will provide a modern, integrated set of interoperable electronic services for collecting, processing and exchanging information relevant for implementing customs legislation. The Hub will allow for electronic implementation of customs legislation across Member States and enable a better customs surveillance of goods. It will be used by traders to fulfil reporting obligations and to demonstrate compliance with customs and non-customs legislation. In addition, the Hub will facilitate the work of the Commission, the EU Customs Authority, customs authorities, the European Anti-Fraud Office (“*OLAF*”), European Public Prosecutor’s Office (“*EPPO*”), and other authorities and EU bodies. Although the Hub will be **fully operational by 31 December 2037**, economic operators may start using the Hub **from 1 March 2032**, with the planned launch of the Hub for e-commerce traders as early as **2028**.
- The **simplification of customs procedures in e-commerce transactions** through the creation of the “deemed importer” concept and simplified tariff treatment for distance business-to-consumer transactions, which will apply as **from 2028**. Online intermediaries, such as internet platforms, will act as the “deemed importer” and be responsible for the customs debt for e-commerce products, rather than private consumers. To

avoid placing a disproportionate administrative burden on these intermediaries, the customs duty can be calculated by applying a new bucket tariff in the Combined Nomenclature to the product's customs value (net purchase price without VAT and including total transport costs until the product's final destination). In addition, online intermediaries will not need to prove a product's non-preferential origin. Alongside these changes, the EU will eliminate the 150 EUR *de minimis* threshold on imports. The proposal will also limit the duration of temporary storage for all goods entering the EU, including e-commerce goods, to 3 days.

- The **creation of the "Trust and Check" trader scheme**. When compared to the existing Authorised Economic Operator ("**AEO**") programme, Trust and Check traders will enjoy additional customs simplifications and facilitations, such as the replacement of the transit procedure (including transit declarations) for inter-Member State movements with customs supervision, the ability to self-release goods, and fewer controls. This scheme will rely on economic operators making available real-time data on the movement and customs compliance of its goods to customs authorities. As a result of this new scheme, the AEO for customs simplifications will be phased out by the **end of 2037**.
- The **establishment of a minimum core of customs infringements and non-criminal sanctions**, which Member States may decide to go beyond. According to the proposal, clerical or minor errors should not constitute a customs infringement unless the customs authority can establish that they were committed intentionally, or as a result of obvious negligence or manifest error. Acts or omissions can constitute customs infringements, as well as inciting or aiding and abetting these acts or omissions. Common extenuating and mitigating circumstances, as well as aggravating circumstances, are also identified. Member States should establish a limitation period between 5 and 10 years for initiating proceedings concerning a customs infringement.

3-INITIAL THOUGHTS ON THE PROPOSAL

On 7 June 2023, the proposal was discussed during the first full-day plenary meeting of the TCG with the Commission. Participants considered the EU Customs Data Hub, e-commerce measures and the Trust & Check trader scheme. The meeting allowed an initial identification of the parts of the proposal welcomed by industry and the areas of concern and also provided insight into the Commission's rationale for the proposal. These discussions influenced the following initial thoughts on the proposal.

- The proposal fundamentally shifts the EU's approach to the enforcement of non-customs legislation by concentrating controls at the border in "one-stop-shops". National customs authorities will therefore play an increasingly important role in protecting the Single Market by assisting in the enforcement of established, new and upcoming non-customs legislation, such as the Deforestation Regulation and the forced labour ban.
- The creation of the EU Customs Authority is a step in the right direction but far from the establishment of a centralised EU customs authority. The Authority primarily fulfils a coordination function to facilitate enforcement of EU legislation by national customs authorities and does not go so far as to ensure the uniform application of customs legislation. Although it is regrettable that the Commission did not take a bigger leap on such an important issue, setting up such an Authority, even in the form included in the proposal, is likely to be highly contentious among EU Member States.
- The EU Customs Data Hub could be a powerful tool: putting data at the centre of the Customs Union, phasing out customs declarations, giving economic operators direct access to the Hub, centralising risk management but also facilitating more vigorous enforcement efforts through data-sharing with OLAF and EPPO. The implementation of the current UCC is ongoing, with centralised customs clearance still a work in progress. Efforts should focus on preventing similar delays under the proposal and shortening deadlines (where possible).
- The focus on e-commerce signals that the current UCC is not future-proof. The elimination of the 150 EUR *de minimis* threshold is likely to be controversial. It also remains to be seen whether potential increases in costs for deemed importers owing to the use of simplified tariff treatment and the application of the new

definition of customs value will be compensated through facilitations upon importation.

- Following past criticism that economic operators did not reap the benefits promised under the AEO programme, the ability to benefit from the scaled-up advantages under the Trust & Check trader scheme in practice is likely to be scrutinised and should lead to tangible results for operators.
- The Commission makes a new attempt to harmonise non-criminal sanctions for certain customs infringements under the proposal. This is likely to be a controversial issue, as it was in 2013 when the Commission made its last attempt to harmonise customs infringements and sanctions. Our view is that only cases of obvious negligence or intentional infringements should be subject to sanctions and the current situation whereby in some EU Member States any customs infringement leads to a criminal sanction should be reformed.

4-NEXT STEPS

The Commission's proposal will be subject to the EU's ordinary legislative procedure and will therefore be scrutinised by the Council of the EU and the European Parliament prior to its adoption. If enacted, the reforms under the new UCC will be gradually phased in over the next two decades.

As there are numerous key issues to be discussed over the coming months, we encourage economic operators to contribute to the design of the new UCC through the various TCG-participating trade associations and the Commission's [public consultation](#) on the proposal.

Lawyers to contact



Pablo Muñiz,
Partner
pmuniz@vbb.com



Isabella Omrod-Bufill
Associate
iomrod@vbb.com



Sophie Sundaram
Associate
ssundaram@vbb.com

VAN BAEL & BELLIS

BRUSSELS

Glaverbel Building
Chaussée de La Hulpe 166
B-1170 Brussels, Belgium

Phone: +32 (0)2 647 73 50
Fax: +32 (0)2 640 64 99

GENEVA

26, Bd des Philosophes
CH-1205 Geneva
Switzerland

Phone: +41 (0)22 320 90 20
Fax: +41 (0)22 320 94 20

LONDON

Holborn Gate
330 High Holborn
London, WC1V 7QH
United Kingdom

Phone: +44 (0)20 7406 1471