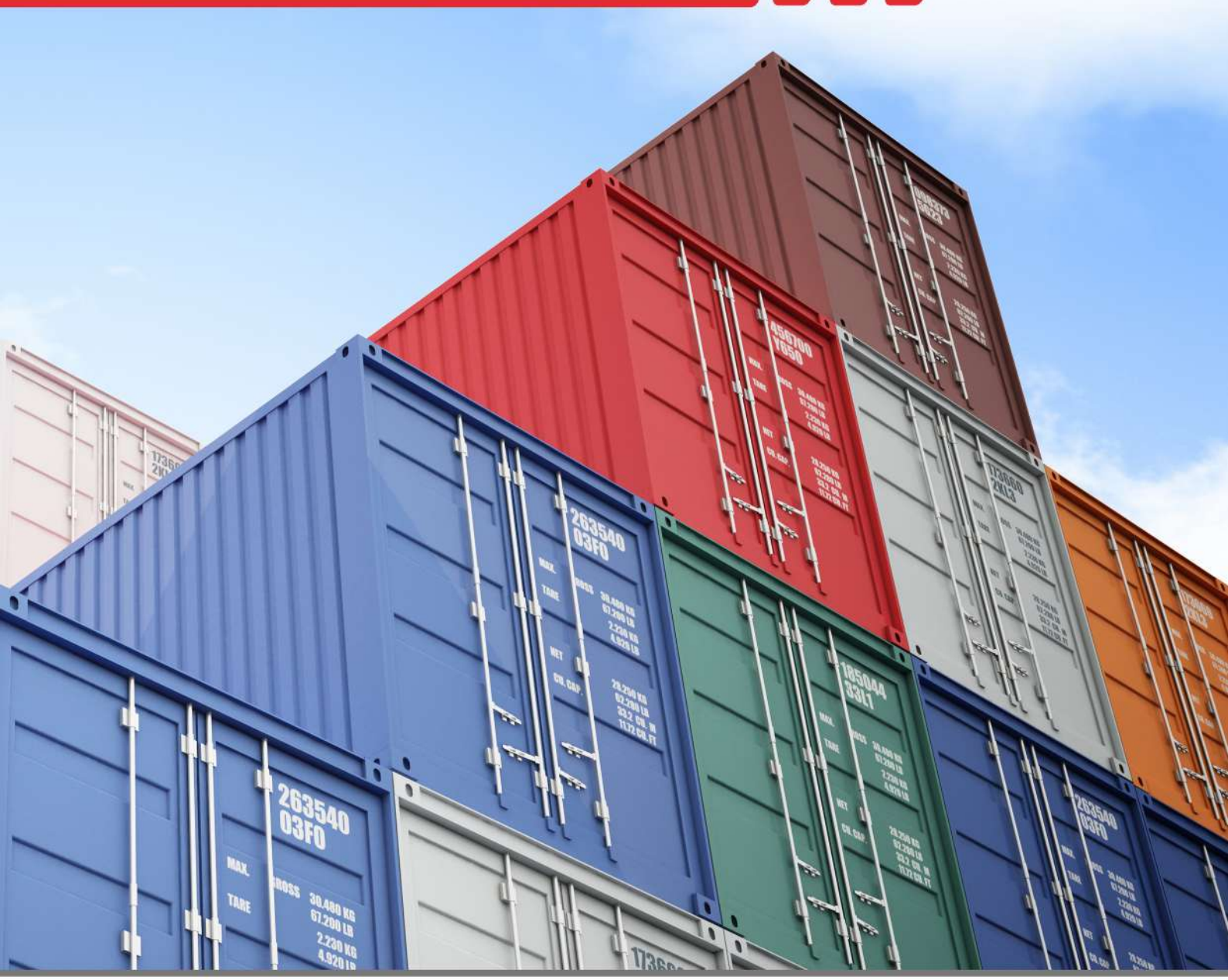
2024/12/30

PROPOSAL FOR AMENDMENTS TO THE CUSTOMS UNION REFORM PACKAGE

REPORT



FEDERATION OF POLISH ENTREPRENEURS

CALPE
CENTRUM ANALIZ LEGISLACYJNYCH I POLITYKI EKONOMICZNEJ

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ABBREVIATIONS

AEO	Authorised economic operator
AEO-C	Economic operator authorised for customs simplification
AEO-S	Economic operator approved for security and safety
AEO-NF	Authorised economic operator for compliance with non-customs legislation (non-fiscal)
B2B	Business to business
B2C	Business to consumer
CDH	Customs Data Hub
CJEU	Court of Justice of the European Union
DPP	Digital Product Passport
DSA	Digital Services Act
EC	European Commission
ENS	Entry summary declaration
EP	European Parliament
ESPR	Ecodesign for Sustainable Products Regulation
EUCA	European Union Customs Authority
EUCR	European Union Customs Reform package, consisting of 1) a 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 (COM/2023/258 final), 2) 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 and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold (COM/2023/259 final), and 3) Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT (COM/2023/262 final)
FPP	Federation of Polish Entrepreneurs
GDPR	General Data Protection Regulation
IA	Impact Assessment Report accompanying the document 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, SWD (2023) 140 final.
ICS	Import Control System
MS	Member State(s)
nUCC	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
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
TFEU	Treaty on the Functioning of the European Union
UCC	Union Customs Code, Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

1. EXECUTIVE SUMMARY

In May 2023 the European Commission (EC) released a proposal to reform the European Union (EU) customs union and tabled customs union reform package. The core of the reform is the establishment of an EU Customs Authority (EUCA) that would oversee a new Customs Data Hub (CDH). Reform aims at adopting a more centralised and digitalised approach to customs that should lower compliance costs for traders, free up resources for national authorities and ensure a more efficient, strengthened and fraud-proof customs union. A new model of partnership with trusted economic operators is proposed, as well as simplifications being a result of a data-based approach. Customs processes should be adapted to address challenges of digital trade and evolving business models. The objective of the reform is also safeguarding EU citizens from non-compliant goods and supporting fair competition on the European market.

Considering the challenges currently confronting the EU and the imperative for Europe to enhance both its competitiveness and its security that are intertwined at the border, getting the EU customs reform right has never been so important and so urgent. 'Taking the customs union to the next level' becomes a must and the new customs legislation framework shall work effectively for both customs as well as for trade.

Discussions on a reform proposal are ongoing in the Council of the European Union. Closing the negotiations will be a top priority during the Polish presidency in the first half of 2025. There are still areas of the reform that require additional work, like improving the position of SMEs', clarifying the responsibilities of the various operators, introducing further facilitations tailored for different supply chain actors.

Acknowledging the importance and urgency of the reform and responding to the call of both the EC and Hungarian and Polish presidencies to present specific proposals for legislative amendments to the proposal, the Federation of Polish Entrepreneurs together with CALPE team (Center for Analysis of Legislation, Policy and Economics) prepared a report - proposal for amendments to the European Customs Union reform package (EUCR).

The report provides analysis of the proposed amendments to the EUCR package, emphasizing modernization, simplification, and harmonization of customs procedures to enhance compliance and competitiveness within the Single Market. Key proposals aim to align reforms with existing regulations, ensure practical implementation, and address concerns raised by various business stakeholders (Polish and European).

The report addresses the issue of non-fiscal liabilities. We think that consistency is crucial between customs' and other legislation concerning non-fiscal liabilities. Therefore, we propose to build on a concept of so called 'responsible person' provided in a framework that can be found within 'the other legislation applied by customs authorities'. Certified and thus professional entity shall ensure robust oversight of non-fiscal compliance for imported goods and shall act as the responsible entity for compliance, reducing reliance on intermediaries ill-suited to assume importer responsibilities. In the report we propose to integrate accreditation of such entities into customs system to enhance accountability and streamline enforcement.

It is important that new Union Customs Code (nUCC) aligns with the liability provisions outlined in regulations that primarily govern the entry of specific goods into the EU market, limiting its own mandate to fiscal responsibilities and clearly prioritizing the non-fiscal compliance framework of the relevant product-related regulations.

Next to the introduction of certified and professional non-fiscal representatives, the report builds on the concept of early (upstream) compliance verification through product data - Digital Product Passports (DPPs). We propose utilization of DPPs to submit product compliance data at the initial stages (before their introduction to the EU market), well ahead of actual importation of goods, enabling thorough and proactive risk assessment. This includes mandatory data provision by certified non-fiscal representatives in case of goods destined for consumers, to ensure comprehensive tracking and compliance. We also suggest introducing simple mechanism allowing for more balanced treatment of B2C and B2B flows in parallel to emerging proposals of some EU Member States (MS) customs administrations.

We also re-evaluate simplified tariff system proposal[1] providing for critique of the planned five-tier tariff bucket system and citing inconsistencies with existing regulations and limited simplification benefits. We opt for a flat 7% tariff for e-commerce imports, which provides undiminished budget revenues for the Member States, while offering significant simplifications for business and customs administrations.

And finally, we address the issue of the removal of EUR 150 de minimis threshold. We assess the implications of abolishing duty exemption for low-value goods, highlighting potential administrative and economic impacts. The aim of this assessment is not to oppose the EUR 150 de minimis waiver but to raise awareness as to the possible risks connected with the removal and to make sure that the threshold removal is done together with introduction of other legal solutions proposed within the customs reform as only a coherent legal package could provide solution to the challenges of e-commerce.

Our report advocates for targeted amendments to the EUCR package to balance reform objectives with practical implementation challenges. By leveraging existing regulatory frameworks and enhancing compliance mechanisms, our solutions aim to strengthen the EU Customs Union while fostering a fair and secure trade environment within the EU.

[1] 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 and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold (COM/2023/259 final)

2. PREFACE

The overall aim of the EUCR proposals is to (1) simplify, unify and digitalize EU customs processes, (2) ensure the effective collection of VAT and import duties on import, (3) protect EU consumers from prohibited and unsafe products. To achieve this, the proposals seeks to introduce a centralized and data-centric EU customs supervision framework (EU Data Hub and EU Customs Authority), a new partnership with business, and a new approach to e-commerce.

Assumptions adopted for the work on the report:

- The work has been based on the version of the regulations in the wording submitted by the European Commission (EC) to the Council in May 2023. The package includes:
  - 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;
  - 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 and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold;
  - Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT.
- We have taken into account the amendments adopted by the European Parliament (EP) in the first reading of the package (in case the EP amendment concerns the scope of changes proposed in the report, we present our position on its content).
- If the Presidency and the Council present a further version of the legislation that is part of the EUCR (so called 'rev. 1'), the legislative proposals in the report might be adapted accordingly.

Key elements of the customs union reform proposed by the European Commission, which we have accepted as a starting point for analysis and work on the report:

- A new approach to e-commerce:
  - de minimis 150 EUR threshold waiver;
  - introduction of tariff simplifications (five buckets for B2C and no need to indicate the origin of goods, simplifying the customs value calculation which is to be determined only by the transaction method, i.e. based on the selling price on the platform and including both the costs of transport of imported goods to the place of their entry into the customs territory of the Union and the costs of transport after their entry into this territory);
  - definition of a deemed importer and his/her responsibilities. Deemed importer responsible for collecting the duty at the time of purchase on the B2C platform and paying it to the Member State (MS) of registration and the responsibility of a deemed importer for the implementation of the so-called non-fiscal obligations.

- New partnership with business:
  - new definitions of importer (deemed importer) and exporter;
  - data-based approach instead of traditional customs declarations approach;
  - the institution of Trust and Check Trader (TCT) instead of AEO simplifications (AEO-C), but with very demanding requirements to be fulfilled (de facto excluding SMEs and most other companies);
  - no simplifications for B2B that are not TCT, the basic simplification is replacement of the existing customs systems by the EU customs central data hub (CDH) as a one single point for customs data exchange (data-based approach);
  - the so-called 'non-fiscal' responsibility;
  - representation/intermediaries/carriers/service providers - changed roles, changes (limitations) in relation to the current tasks and roles in the supply chain.

- EU Customs Data Hub (CDH)
  - Data security, channels/methods of data delivery, rules for data sharing, access.

- EU Customs Authority

Important aspects to be taken into account for the final concept of EUCA tasks and responsibilities:

  - the issue of supervision over the decisions of the MS. If a directive (e.g. a shipment control order) from the CDH and EUCA were not to be implemented at the MS level, the customs authorities of that country must justify the derogation in a way that does not raise any doubts. It is advisable to define the procedure for resolving disputes in such situations, taking into account that this should not lead to delays in supply chains and cause costs on the business side.
  - uniform application of customs law - possible mechanisms to be introduced on the part of EUCA to secure 'acting as one' principle.

3. GENERAL REMARKS TO THE EUCR EXPRESSED BY TRADE REPRESENTATIVES THAT OUR REPORT SUPPORTS

We welcome the ambition to take the EU's customs union to the next level. As customs and businesses are facing many challenges nowadays, customs processes and controls shall be more efficient and harmonized allowing to boost European competitiveness, equal level playing field and increase European resilience. New technologies shall help to achieve the goals. Therefore, the EUCR proposal is timely but there are still areas of the reform that require refinement and discussion among all stakeholders.

There are general remarks to the EUCR that were expressed by many trade associations and business representatives during the discussions on the reform but also in different positions and non-papers, including the recent Joint Industry and Trade Statement on the EU Customs Reform[2] published in December 2024. In our report we are not discussing these opinions and proposals. We are nonetheless referring to them as we think that these are issues that shall be taken into consideration before accepting the final texts of the EUCR. These remarks are based on insights from practical, real-world experience and therefore offer perspectives that ensure the reforms are operationally feasible, effective as to reaching envisaged goals and enforcement of the rules but also beneficial for businesses across the EU.

- **EU Customs Data Hub**
  - **Data minimization.** The data submission to the CDH shall be limited to the core minimum required for smooth entry of goods through the borders, with all other data provided in a separate mode, through direct access to traders' systems as per the EUCR proposal. Equally important is to ensure that only the crucial data elements (safety and security data plus IOSS number plus unique consignment reference) are shared with / through the CDH at the moment the goods are crossing the EU borders, limiting the volume of information to be swiftly processed, so that the process works fast and reliably. Data referring to the imported product (product card / DPP) and its sales (value, customs duties and taxes) are to be provided to the CDH separately, prior to listing and importation respectively, in case of e-commerce. The future scope of required data shall be discussed and defined in close cooperation with traders based on business processes and roles in the supply chain.
  - **Data security** is critically important for businesses and this needs to be safeguarded for all data shared with the CDH.
  - **Harmonized data sharing and documentation requirements**. The data sharing mechanism and any documentary requirements need to be fully harmonized, removing the need for countries to comply with 27 systems and requirements.
  - **Opportunity for partnership with trusted traders/marketplaces.** EUCR is an opportunity to promote more of a partnership between trusted traders/marketplaces and other actors involved in importation and cross-border distance sales, to share risk management data and resources, and combine efforts to combat fraud and bad actors. These partnerships should be structured in a way that makes them accessible not only to global entities but also to smaller local businesses.

[2]https://federacjaprzedsiebiorcow.pl/wp-content/uploads/2024/12/Joint-Statement-on-the-EU-CustomsReform_DEC2024-1.pdf

- Need for reciprocal data sharing. Data-sharing provisions shall be proportionate, effectively enforceable also against non-EU businesses and ensure a level playing field. Businesses (especially marketplaces) would require clearer guidelines and reciprocity to ensure the data collection is targeted and meaningful and adequately addresses the issues the EUCR proposal is trying to address.
- **Design of CDH.** Transparency is needed in the process of designing, delivering and implementing the CDH. Project group shall be created by the EC with customs MS experts, service providers/IT suppliers and economic operators. A road map is crucially needed from 'as is' to 'to be' business processes and architecture.

- **EU Customs Authority**

Important aspects to be taken into account for the final concept of the EUCA tasks and responsibilities:

- **Supervision over the control decisions of MS customs.** If a directive (e.g. a shipment control order) from the CDH and EUCA was not to be implemented at the MS level, the customs authorities of that country shall justify the derogation in a way that does not raise any doubts. It is advisable to define the procedure for resolving disputes in such situations, taking into account that this should not lead to delays in supply chains and cause costs (both in monetary terms as well as time-wise) on the business side.
- **Uniform application of customs law.** Adequate mechanisms shall be introduced allowing EUCA to secure 'acting as one' principle.
- **Advisory status for trade.** Interested parties/stakeholders should be given advisory status within the Management Board of the EUCA.

- **Path for innovation**

Provisions related to 'sand-boxes', i.e. possibility to apply processes and solutions out-of-the-box to try new and innovative mechanisms for clearance of goods and their control, shall be provided for in the text of the nUCC. The intention is though that any new proposal shall not negatively impact the pace of the reform's process but to allow for creativity and breakthrough improvements in customs clearance and related processes.

- **Trust and Check Trader (TCT)**.

TCT status aims to offer trusted traders streamlined customs processes and reduced checks and this is a welcomed step toward encouraging compliance while rewarding low-risk traders with more efficient customs procedures. Nonetheless, the proposed advantages of TCT are rather limited and, apart from the possibility of self-assessment, are already available to any economic operator under the current customs legislation.

Very demanding requirements to be fulfilled by the future TCT de facto exclude SMEs and most other companies from the possibility to be TCT and to use further simplifications despite being compliant trader. In order to make the TCT status work, SMEs should receive targeted capacity building support to enable them to qualify for the TCT status. This also could be achieved through keeping facilitation structure where intermediaries can extend authorisations to clients who will not be able to become TCT and they can do this both within the direct and indirect representation frameworks.

Finally, it is worth noticing that the TCT facilitation model places insufficient trust on the traders, as post clearance audits may still take place. It creates insufficient incentives to ensure that checks are being made by customs authorities in real time to avoid costly post release surprises.

- **'Economic Operator Authorised for Customs Simplification' (AEO-C)**. Linking all future trade facilitations to a single TCT status seems problematic. TCT status offers trusted traders streamlined customs processes and reduced checks, and this is a welcomed step toward encouraging and rewarding compliance but the proposed advantages of that status are limited. Therefore, there is a need to enhance the existing, globally recognised AEO framework to better reflect the roles of supply chain actors and ensure accurate data provision. This can be achieved through a tiered accreditation-facilitation structure that aligns with business realities and builds on the strengths of the current UCC's facilitation framework. Rather than replacing the status of 'economic operator authorised for customs simplification' (AEO-C), additional variations could be introduced with further facilitations tailored to different supply chain actors. The AEO-C status is a tried-and-tested, internationally agreed and recognized certification that provides significant trade facilitation benefits, and it's essential for minimizing customs disruptions for compliant traders. Similarly, the status of the 'economic operator authorised for security and safety' (AEO-S) shall be retained under the nUCC.

- **'Deemed importer'**. The deemed importer definition shall apply equally across the sector and be efficiently enforceable on all marketplaces or other actors involved in distance sales of goods to EU consumers, regardless of their size, business model and place of establishment. Therefore, deemed importer definition shall allow to be broadly extended to persons engaged in distance sales of goods, including recognised suppliers operating in the IOSS[3]. The amendment proposed by the EP goes in this direction and is supported by FPP.

- **Union customs infringements and non-criminal sanctions.**
  - Circumstances which shall be taken into account for aggravating the sanction to be applied for the customs infringements shall be discussed and shall be more precise not to allow for fully discretionary decisions of customs authorities.
  - Pecuniary charges provided for in Article 254(a) of the UCC - at the level of 30% to 100% of the amount of the customs value or the amount of customs duties - if the infringement was committed unintentionally, appears to be clearly an excessive sanction, given that in addition to these sanctions, customs duties will be charged together with interest for late payment. Unintentional action should significantly reduce the level of sanctions.

- **Non-fiscal liabilities.** This issue is addressed in our report.

[3] The Import One-Stop Shop (IOSS) is an electronic portal introduced to simplify VAT collection and compliance for e-commerce businesses and online sellers importing goods into the EU. It was implemented as part of the EU VAT e-commerce package in July 2021, which consisted of the following instruments, amending the VAT Directive 2006/112/EC among others: Council Directive (EU) 2017/2455, Council Directive (EU) 2019/1995, Council Implementing Regulation (EU) 2019/2026, Council Regulation (EU) 2018/1909, and Council Regulation (EU) 2019/2027.

4. PROPOSED EUCR AMENDMENTS

The main reform goals are to enable EU Customs to better protect the financial and non-financial interest of the EU and its Member States as well as the Single Market (i.e. protecting EU citizens from non-compliant and dangerous goods and protecting European companies from unfair competition), enhancing EU competitiveness, simplifying and modernising customs procedures.

When proposing individual concepts of solutions and changes to the EUCR package in the report, we had in mind, first of all, the implementation of the objectives of the reform, as well as the modernization of customs processes, synergy with other regulations that apply to customs processes ('relevant other legislation applied by the customs authorities') and efficiency of customs processes for entrepreneurs (simplification).

Our proposal is based on following elements:

1. To address the EU's evolving approach to non-fiscal liabilities for products imported into the EU, focusing on customs authorities' role in enforcing legislation beyond financial duties. To introduce a solution that will allow for increased reliability and quality of data provided to the CDH concerning imported goods' compliance with non-fiscal regulations. And to place the responsibility to provide the data on reliable and certified entities.
2. To introduce mechanisms allowing for increasing compliance of goods destined for consumption and allowing for more equal treatment of B2C (e-commerce) and B2B flows.
3. To simplify tariffs buckets system, if finally needed.
4. To consider if removing the de minimis threshold at the level of EUR 150 as provided in the Chapter V of Council Regulation (EC) No 1186/2009[4] serves achieving the EUCR's goals.
5. To introduce provisions related to 'sand-boxes' to allow for innovations in customs clearance and related processes.

Our proposals do not introduce completely new solutions and legal institutions, but are built on the basis of existing concepts that proved to be practically efficient and effective thus heading for increasing cohesion and synergies.

[4] Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty

5. AUTHORISED ECONOMIC OPERATOR FOR COMPLIANCE WITH NON-CUSTOMS LEGISLATION – AEO NON-FISCAL, AEO-NF

There is one very important aspect of the reform - non-fiscal liability regarding products imported to the EU - that requires addressing in a much broader context than purely customs. This area (denoted in the nUCC proposal as 'other legislation applied by the customs authorities') encompasses over 350 different pieces of Union legislation, in policy fields such as trade, industry, security, health, environment and climate.[5]

In its Explanatory Memorandum to the nUCC proposal, the Commission, referring to other legislation applied by the customs authorities, specifically mentions (and the list is not exhaustive):

- the Market Surveillance Regulation (MSR)[6], which provides the legal framework for risk-based controls of certain non-food products sold on the Union market;
- the revised General Product Safety Regulation (GPSR)[7], which aims to ensure the health and safety of consumers and the functioning of the internal market and, as such, provides a 'safety net', ensuring that EU consumers are protected against any product safety risks;
- the enforcement of numerous rules inter alia on chemicals[8];
- the protection of species of wild fauna and flora[9];
- the fight against climate change by minimising the use and emissions of dangerous substances[10];
- the Digital Services Act (DSA)[11], which sets obligations for digital service providers to tackle illegal content; and

[5] European Commission, Directorate-General for Taxation and Customs Union, Integrated EU prohibitions & restrictions list: indicative calendar and list as of 1.1.2022 legal notice, Publications Office of the European Union, 2022 (available here: https://op.europa.eu/en/publication-detail/-/publication/d2f48d8b-b0a4-11ec-83e1-01aa75ed71a1/language-en).

[6] Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019).

[7] Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC (OJ L 135, 23.5.2023).

[8] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

[9] Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).

[10] Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p. 195) and Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1).

[11] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

- the Carbon Border Adjustment Mechanism[12], which aims to ensure that the EU's climate objectives are not undermined by the risk of carbon leakage and encourage producers in non-EU countries to green their production processes.

It also lists some new (upcoming) rules aimed to:

- effectively ban the placing on the single market of products made wholly or in part by forced labour[13];
- curb deforestation[14];
- treat waste shipments[15]; and
- reduce the negative life cycle environmental impacts of products placed on the single market through the Sustainable Products Initiative proposal, which calls on customs authorities to cross-check the customs declaration with the information on the imported goods contained in the newly created Digital Passport for Products (DPP), established by the Ecodesign for Sustainable Products Regulation (ESPR)[16].

Approach of the Commission in the nUCC is a result of, as mentioned in point 5 of the preamble, the evolved role of customs authorities, which currently increasingly cover the application of Union and national legislation laying down requirements on goods subject to customs supervision, in particular the non-financial requirements on goods that are necessary for these goods to enter and circulate in the internal market. Such non-financial tasks have increased exponentially over the years to areas not only such as safety, security, sustainability, human, animal and plant health and life and the environment but also accessibility for persons with disabilities, the protection of human rights and Union values. Enforcement of the EU legislation through observing that prohibitions and restrictions established on the grounds of the protection of national treasures possessing artistic, historic or archaeological value and the protection of industrial or commercial property and other public interests, including controls on drug precursors, goods infringing certain intellectual property rights and cash, also lies within the mandate of the EU customs authorities. Further, the notion of 'other legislation applied by the customs authorities' also includes commercial policy measures (tariffs, trade agreements, regulatory standards, anti-dumping and safeguards against subsidies) and fishery conservation and management measures, as well as restrictive measures adopted on the basis of Article 215 TFEU[17] (sanctions).

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[12] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, OJ L 130, 16.5.2023.

[13] Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market [COM (2022) 453 final].

[14] Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM (2021) 706).

[15] Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056 (COM/2021/709 final).

[16] Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC (Text with EEA relevance), OJ L, 2024/1781, 28.6.2024.

[17] Article 215 TFEU provides the legal basis for the European Union to adopt measures that interrupt or reduce economic and financial relations with third countries (sanctions). These measures can include restrictive actions against natural or legal persons, groups, or non-State entities as part of the Union's common foreign and security policy.

The Commission also notes that the business models evolve (especially In the context of e-commerce) and therefore adjustments are required to certain definitions provided for by the EU Customs law. They include specifically definitions of importer and deemed importer, which do not exist in the UCC. In essence, these new definitions make those persons liable for compliance of the goods, including for financial and non-financial risks. Additionally, in the case of the new concept of deemed importer[18], its definition aims to ensure that - in the context of an online sale from outside the Union - the deemed importer, as opposed to the consumer, is considered the importer and assumes the corresponding responsibilities[19]. This means - in essence - that any intermediary, whether a marketplace, an online shop or any other person involved in the distance sales of goods to be imported from third countries into the customs territory of the Union (such as dropshipper, i.e. in the context of this report and based on the definition of 'deemed importer' as amended by the EP: an e-commerce business which does not hold the product inventory but serves as an intermediary between the buyers and a third-party supplier, often a marketplace) would become the deemed importer and thus subject to fiscal and non-fiscal rules of the nUCC and the 'other legislation applied by the customs authorities'.

The first major consequence of such approach and the new definition of (deemed) importer, would be the requirement, as per nUCC Article 20(2), of establishment of such a person in the customs territory of the Union. The importer can do this by having a registered office, its central headquarters, or a fixed place of business, where both the necessary human and technical resources are permanently present and through which its customs-related operations are wholly or partly carried out, in one of the MS. The deemed importer may decide to do the same (establish his or her business in the EU directly) or appoint an indirect customs representative established in the customs territory of the Union to act on his or her behalf. By the virtue of the nUCC Article 27(1) second paragraph, such indirect customs representative is considered the importer and thus subject to all the 'standard' obligations of importer as listed in the nUCC Article 20, i.e. providing relevant data to customs authorities, ensuring the correct calculation and payment of customs duties and other applicable charges, ensuring goods are compliant with non-fiscal rules and the 'other legislation applied by the customs authorities'.

Considering the nature of the business models of many of the present e-commerce actors (whether online shops, platforms, marketplaces or dropshippers - names can vary), which usually act as pure intermediaries between the buyers and sellers of goods imported to the EU (and as such are considered as providers of so called 'intermediary services' in the meaning of the DSA), the Commission decision to name them deemed importers may inadvertently lead to two possible solutions:

*[18] '(...) any person involved in the distance sales of goods to be imported from third countries into the customs territory of the Union ~~who is~~, **including persons** authorised to use the special scheme laid down in Title XII, Chapter 6, Section 4 of Directive 2006/112/EC' - definition from nUCC Article 5 point (13) **as amended by the EU Parliament** in its legislative resolution of 13 March 2024 on the 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 (COM(2023)0258 - C9-0175/2023 - 2023/0156(COD))).*

[19] Which include also, as per nUCC Recital 14, providing not only the data necessary for the release for free circulation of the goods but also the information that the deemed importer must collect for the VAT purposes.

a) they massively / en block change their business models to accommodate for the requirement to comply with non-fiscal measures applied by the EU (register their business establishments in the EU and become responsible for product compliance inter alia), or
b) they enter into contractual relations with businesses or persons already established in the EU to become their indirect customs representatives and bear all the possible consequences of non-compliance with financial and non-financial measures.

Chances that option a) (adjusting business models to fit with the intention of the Commission) will be chosen over option b) (appointment of a representative in the EU) are very limited at least in short- to medium-term (if at all). However, none of these options is actually the best ultimate solution.

Even if the intermediaries are forced to establish their business presence in the EU by - for example - deleting the exception from the need of being established in the EU provided for in the nUCC Article 20(3)(e), the result would be rather superficial. Firstly, because - as explained below - it would put liabilities on such intermediaries that they are objectively not able to comply with. And secondly, because it will lead to establishment of plethora of small entities, which will be very difficult to control, and which would in many cases not be able to (financially) bear the possible consequences of non-compliance, renting ex-post enforcement inefficient.

In case the option b) is chosen, the need of intermediaries would result in proliferation of various EU based entities offering their services as indirect customs representatives to any non-EU businesses. Such businesses would be competing mostly on price, as the e-commerce business is low margin business, where price sensitivity is very high, to the detriment of quality of their services and the level and extent of actual responsibility. Already today, the experienced, reliable and often certified as AEOs, customs representatives indicate that they will not be able to take responsibility for non-fiscal obligations due to the level of associated risk and the lack of means to deal with it. It shows their approach to potential new responsibilities is highly professional. Thus, this niche would be filled in by the emergence of companies, which only focus would be to satisfy the letter of the law (give their name and registration details to fulfil the obligation) but which may disappear from the market in case of irregularities, and with others created in their place in a flash. The game of 'catching' the responsible person would be endless and never victorius.
With virtually no requirements assuring professionalization of such representatives in terms of minimum human, technical and financial resources (notwithstanding those currently acting as AEOs or authorized as TCTs in the future), this is a recipe for disaster - such approach will not assure that customs authorities would actually be able to properly fulfill their critical role in applying and enforcing customs and other (non-fiscal) EU legislation. Even if they would have a potentially liable entity (the indirect customs representative established in the EU), it may prove - as mentioned above - to be non-enforceable in practice, being a phantom company unable to remedy potential harm to consumers by the product they took responsibility for or without any assets to pay the resulting non-compliance fine or sanction.

The limited efficiency of the solution that assumes deemed importers' obligations being fulfilled by indirect customs representatives is related also to the position of such representatives in the supply chain - they are/will be usually the last element of the chain, without direct (or formal) connection to either manufacturer or distributor of products imported to the EU, in most cases also without any connection to the seller or distributor of these products. As such, they are/will be purely executing instructions provided by their principals in a passive manner, which seems to be completely incompatible with the scope of their responsibility under the nUCC.

One shall also bear in mind that these principals are/will be in turn quite often other intermediaries (online shops, platforms, marketplaces, dropshippers etc.), equally limited in their objective possibilities to exercise due control over the manufacturers of products (or even the sellers / distributors using such intermediary service) to the extend allowing taking such responsibility for products imported to the EU as importer's. This specific position of intermediaries such as online platforms between various types of recipients of their services (sellers on one side and buyers / consumers on the other when discussed in the light of online marketplace's usual business, i.e. intermediating in sale of goods) is well recognized and observed by the DSA. When comes to providers of intermediary services such as online platforms, the DSA very clearly states (see DSA preamble point 27) that the problem of activities online should not be dealt with by solely focusing on platforms' liability and responsibilities - in fact '(r)ecipients of the service should be held liable (...) for the illegal content that they provide and may disseminate to the public through intermediary services'. Translating these rules to the language used by the nUCC - the deemed importer should not be held liable for products being offered for sale through its platform.

The DSA's framework acknowledges the proper role of intermediaries such as marketplaces - it emphasizes setting up due diligence obligations, like requiring seller verification or providing information on products and responsible persons to the consumers, rather than making platforms liable for all content from third parties. Executive Vice President Vestager and other EU officials have frequently noted that these regulations aim to enhance marketplace accountability without attributing blanket liability for all seller activities, focusing instead on measures like improved transparency and better enforcement mechanisms[20]. This balance was intended to ensure safer consumer interactions without imposing impractical liabilities on platforms, which only serve as intermediaries. Nothing should change in this respect and thus the Commission proposal for the nUCC should be made consistent with the DSA approach.

An important aspect of the DSA is the continuation of the rules on monitoring obligations, already developed under the Directive on electronic commerce[21]. General monitoring describes a process whereby an intermediary is obliged to introduce technological measures which monitor all user activity on its services. Such general monitoring obligations are now illicit according to Article 8 of the DSA (which contains the same rule as Article 15 of the Directive on electronic commerce), making exemption for monitoring obligations in specific cases as per CJEU jurisprudence, which may be ordered by national authorities[22]. The rules of the nUCC related to the deemed importer may actually lead to imposition

[20] See for example: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/statement_20_2450/STATEMENT_20_2450_EN.pdf
[21] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000.
[22] C-18/18 - Glawischnig-Piesczek

of such a general obligation on platforms (marketplaces) and other intermediaries - in order to be able to comply with customs law and other legislation applied by the customs authorities, they would need to collect, analyse and verify data on products offered for sale through their interface by all of their sellers (and question not only availability and existence of such data but also its correctness, authenticity etc., including possibly testing the products themselves, which the platform does not have any links with). This becomes very close to the motion of 'general monitoring' as provided for in the DSA and should be avoided.

Furthermore, the Commission claims that the customs union reform is consistent with all the other above listed 350+ Union policies and various measures covered by the notion 'other legislation applied by the customs authorities', which are subject to customs authorities' interventions or actions. The level of this consistency can however be assessed as not adequate. This is due to the fact that the Commission's proposal tries not only to amend the market-established approach that's currently applied in the EU with respect to obligations of certain entities in the supply chain which are placing goods on the EU market but also seems contradicting some of the currently applicable legal provisions.

In a first place, when it comes to non-fiscal liabilities regarding certain consumer products (i.e. those mostly imported to the EU through e-commerce channels), the Commission spent the last several years building up an acquis to address products sold via e-commerce coming from outside of the UE. The clear choice in these non-fiscal measures is to focus on having a 'responsible person' within the EU (established in the EU). This is now the case of all products covered by the General Product Safety Regulation[23], where Article 16(1) provides that '(a) product covered by this Regulation shall not be placed on the market unless there is an economic operator established in the Union who is responsible for the tasks set out in Article 4(3) of Regulation (EU) 2019/1020 in respect to that product'[24].

According to this approach, the responsible economic operator is first of all an EU established manufacturer, or an importer where the manufacturer is not established in the EU, who is already responsible for product safety. If neither of those parties are established in the EU, then the responsible economic operator may be an authorized representative who has a written mandate from the manufacturer to perform certain tasks, or a fulfilment service provider who effectively becomes the authorized representative where no other economic operator is established in the EU. This scheme represents the hierarchy of economic operators (a waterfall of responsibility), which becomes greatly abused when responsibility for product safety (non-fiscal measure) is imposed on deemed importer in the meaning of the nUCC by the sole reason of legally equalizing its business model (consisting in hosting / intermediating) with importer in the meaning of GPSR (consisting in actual placing the goods from a third country on the Union market)[25].

[23] The GPSR applies to all consumer products intended for use by consumers or likely to be used by them under reasonably foreseeable conditions. This includes products that are new, used, repaired, or reconditioned. The regulation encompasses a wide range of consumer goods, including but not limited to: household items, electronics, clothing and textiles, toys (although toys are also subject to specific regulations), personal care products. Exclusions cover medicinal products for human or veterinary use, food and feed, living plants and animals, genetically modified organisms, and their derivatives, equipment operated by service providers (e.g., transport services), military equipment and parts (which all are subject to other specific legislation also foreseeing the role of customs authorities in enforcing).

[24] In essence: verifying that the EU declaration of conformity or declaration of performance and technical documentation have been drawn up, keeping the declaration of conformity or declaration of performance at the disposal of market surveillance authorities for the period required and ensuring that the technical documentation can be made available to those authorities upon request.

[25] See: GPSR Article 3 point (10).

It is logical that all of the economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only make available on the market products which are safe and in conformity with the rules of GPSR. However, this legislation provides for a clear and proportionate distribution of obligations corresponding to the role of each operator in the supply and distribution process. Specifically, point 32 of the GPSR's preamble clearly states that economic operators should have proportionate obligations concerning the safety of products, in relation to their respective roles in the supply chain, so as to ensure a high level of protection of the health and safety of consumers, while also ensuring the efficient functioning of the internal market. For these reasons, GPSR Articles 19 (Obligations of economic operators in the case of distance sales) and 22 (Specific obligations of providers of online marketplaces related to product safety) provide for clear legal obligations to be met by e-commerce businesses interlinked with liabilities for violating them. Such approach provides solid demarcation lines between various actors in the product supply chain as far as their responsibility is concerned, contributing to transparent division of roles and increasing business confidence - this approach recognizes e.g. the appropriate role of a marketplace in enabling their sellers' compliance with product safety laws through their interface, and proportionate regulated responsibilities to promote compliance. In this light, singling out deemed importers / marketplaces to be responsible for non-fiscal measures as if they are actually manufacturers / importers causes considerable doubts about consistency of the Commission proposal amending the UCC and the existing law on product safety.

Additionally, the recently adopted rules of ESPR oblige providers of online marketplaces with very specific tasks, which are related to cooperation with market surveillance authorities 'to facilitate any action taken to eliminate or, if that is not possible, to mitigate the non-compliance of a product that is or was offered for sale online through their services'[26]. What's worth underlining, this obligation is on top of other duties directly derived from DSA Articles 11 (establishment of points of contact) and 30 (traceability of traders), which thus confirms the approach that acknowledges the proper role of marketplaces also when it comes to sustainability and climate protection (ESPR focus) - it establishes due diligence requirements for online marketplaces, instead of holding platforms accountable for all third-party content.

The DSA is actually going further than MSR, GPSR or other above-mentioned regulations, when it comes to attempts on shaping the business models of online intermediaries as per wishes of the Union legislator. It provides a number of requirements that need to be met (subject to fine/sanction) by businesses, which want to operate in the EU. Notably DSA Article 31 requires providers of online platforms allowing consumers to conclude distance contracts with traders (i.e. marketplaces) to design and organize their online interface in such a way that it allows those traders (sellers) to meet their obligations related to provision of contact details to responsible person, identification of products and traders, labelling and marking in compliance with rules of applicable Union law on product safety and product compliance. It also imposes additional best-efforts obligations on marketplaces related to checks on their traders' compliance. But it does not go as far as the EC in the nUCC to force a direct change in the business model by regulation imposing obligations beyond the capabilities of given business type.

[26] ESPR Article 35 second paragraph.

Having demonstrated that the Commission's approach in addressing compliance with the other legislation applied by the customs authorities through deemed importers is not the most appropriate, it is worth proposing an alternative. Taking into consideration the potential (albeit highly probable) future problem with execution of the new rules as well as potential (though rather clearly visible) inconsistencies of the EU Customs reform proposal with other regulations on one side, and the obvious and unquestionable need to address the issues related to introduction of non-compliant goods through the e-commerce flows to the EU internal market on the other, we offer a solution that on one hand proposes to keep the level of consistency between various legislative files more tight, and on the other looks beyond addressing just the current problem (e-commerce) by tackling the issue in a more comprehensive and thus future-oriented and sustainable way.

The idea is based on combination of two factors: i) possibility for any person to appoint a representative acting as responsible person / economic operator within the remit of any EU regulation related to internal market and ii) ability and experience of customs authorities to perform thorough checks on any person (whether economic operator or representative) and authorize it to perform certain tasks. The key lies in making the representative (responsible person / economic operator) truly meaningful, so that it may be actually held responsible for compliance with the 'other legislation applied by the customs authorities'. This can be achieved by creating a new type of Authorised Economic Operator (AEO) under the EU customs law - an AEO that would be responsible for non-fiscal matters ('an authorised economic operator for compliance with non-customs legislation', AEO non-fiscal, AEO-NF[27]), following the successful and internationally recognized scheme already utilized in the EU by customs authorities and businesses since several years. What is important, this AEO-NF concept can be used to massively improve compliance without the need to amend any of the 350+ different pieces of Union legislation applied by the customs authorities.

Before discussing how to make the representative a meaningful responsible person for the purposes of compliance with the 'other legislation applied by the customs authorities', it is worth to mention that the notion of representation is well embedded in the law of EU member states and the EU itself. Different EU laws provide the legal basis for this, depending on the context in which the appointment of a representative takes place (usually in the context of the non-EU companies that are required to appoint a representative within the EU):

- under the General Data Protection Regulation (GDPR)[28], the representative acts as an intermediary between the company and data protection authorities and data subjects;
- representation may also be established under EU tax law; non-EU companies can appoint a tax representative in member states to manage their tax obligations; the VAT Directive[29] Article 205 allows member states to hold a representative jointly and severally liable with the taxpayer for VAT obligations, particularly in cases where a non-established business appoints a tax representative for VAT compliance within the EU;
- customs law makes the (indirect) representative liable as importer both under the currently applicable regime and within the nUCC proposal;

[27] Currently existing and preserved in the nUCC by the European Parliament types of AEO are: Authorized Economic Operator for Customs Simplifications (AEO-C) and Authorized Economic Operator for Security and Safety (AEO-S).
[28] Regulation 2016/679
[29] Council Directive 2006/112/EC

- in the context of consumer protection, various EU directives and regulations require companies, especially those outside the EU, to appoint a representative who ensures compliance and is responsible for communicating with consumers in the Union; for example:
    - the GPSR requires the designation of a person responsible for product compliance with EU standards;
    - similarly, the DSA Article provides that the '(p)roviders of intermediary services which do not have an establishment in the Union but which offer services in the Union shall designate, in writing, a legal or natural person to act as their legal representative in one of the Member States where the provider offers its services'; such representative can be held liable for non-compliance with obligations under the DSA, without prejudice to the liability and legal actions that could be initiated against the provider of intermediary services;
    - further, the MSR - which provides a framework for controls on products entering the Union market - also allows for such possibility.

However, these regulations do not clearly state what are the requirements for a person (which can be even a natural person, i.e. an individual, as allowed for in the DSA) to become such a representative besides mentioning sometimes (as in e.g. MSR Article 5(3)) that '(a)uthorised representatives shall have the appropriate means to be able to fulfil their tasks'. Without specific conditions to be fulfilled, there is no process (and no authority) to check who becomes the representative and whether it is actually capable of fulfilling this function. REACH seems to be going a bit further in that respect, requiring from the representative a sufficient background in the practical handling of substances and the information related to them on top of keeping available and up-to-date information on its sales and its products' safety data sheets. Still, it does not list all qualifications required. Therefore, the European Chemicals Agency (ECHA) provides guidance suggesting that REACH representatives should possess a solid background in chemistry, toxicology, environmental science, or related fields, enabling them to accurately communicate the properties, hazards, and safe use of the substances in question. ECHA's guidance also emphasizes the importance of ongoing knowledge of REACH requirements, as well as the ability to maintain accurate records and respond to potential inspections or requests from regulatory authorities. Even though, REACH does not mandate a formal approval process for verifying the representatives (it is up to the competent authorities within EU MS to conduct such checks, including verifying representatives' qualifications and ensuring they fulfill their compliance obligations under REACH).

Customs law (whether the current or the proposed nUCC) also does not stipulate conditions that must be fulfilled by a (customs) representative to become one. Nonetheless, if such a representative (or any other person dealing with customs authorities in the EU, including customs brokers) wishes to enjoy some simplifications and facilitations in the application of customs law, it needs to become an AEO. Companies eligible for AEO certification must demonstrate compliance with customs regulations, maintain reliable commercial records, and have financial stability. Their businesses must undergo a rigorous assessment by customs authorities, who review the company's compliance history, record-keeping standards, and adherence to security protocols, on recurring basis (at least every 3 years). Those within transportation, logistics and supply chain must demonstrate robust security practices, such as securing their facilities, ensuring the integrity of goods in transit, and implementing procedures to prevent unauthorized access to cargo. These requirements help EU customs authorities ensure that certified operators follow customs rules responsibly, thereby reducing the risk of non-compliance, enhancing security in trade and facilitating smoother customs procedures.

We believe that use of the AEO concept is a proper method to make the economic operator or his representative a meaningful responsible person for all the 'other legislation applied by the customs authorities'. The EUCR is a very useful and efficient solution to enforce these non-fiscal rules and regulations at the EU borders in a consistent way that enables compliance for all sellers from third countries using intermediaries (marketplaces / platforms / dropshippers) to offer their goods to the EU consumers. The nUCC is thus able to improve professionalization of the responsible persons / economic operators and their representatives - the authorised economic operator for compliance with non-customs legislation (AEO-NF) can be a general possibility for all producers, distributors, importers or other actors such as representatives that are established in the territory of the EU and appointed as authorized representatives under any, some or all of the 350+ different pieces of Union legislation applied by the customs authorities. It should however be obligatory to be obtained in case of imports of non-Union goods intended for consumption within the customs territory of the Union, i.e. providing a reference to a person certified as an AEO-NF, and thus responsible for certain products intended for consumption (destined to individuals / consumers in the EU), would be necessary in order to import these products to the EU.

If the responsible person for products placed on the Union market is made truly meaningful through their authorization by customs authorities, this will improve the European safety framework in a way that marketplace / platform / intermediary (deemed importer) liability will not.

Looking at this solution through the lenses of consumer protection / product safety legislation (GPSR in particular), it is worth to recall the waterfall of actors responsible for product placed on the territory of the Union: the responsible economic operator is first of all an EU established manufacturer, or an importer where the manufacturer is not established in the EU, who is already responsible for product safety. If neither of those parties are established in the EU, then the responsible economic operator may be an authorized representative who has a written mandate from the manufacturer to perform certain tasks, or a fulfilment service provider who effectively becomes the authorized representative where no other economic operator is established in the EU. Within the nUCC proposal, the Commission wants to add the product (and other non-fiscal) responsibilities to non-UE based intermediaries (platforms, marketplaces, dropshippers), equalizing them with importers under the function called 'deemed importers'. This would - as we mentioned above - require them to either establish their permanent business presence in the EU (less likely) or appoint an EU-based representative (more likely, at least in short- to medium-term). Should the late be chosen, we propose that such representative-responsible person is meaningful, i.e. capable of taking the responsibilities and being held liable for compliance with them. The deemed importer would then remain responsible for the fiscal matters related to imports of goods to the EU.

Notwithstanding, we believe that intermediaries (platforms, marketplaces, dropshippers) i.e. economic operators making products available on the Union market online or through other means of distance sales, should still play a role in this framework, and think that a robust representative-responsible person provisions should be supplemented with specific intermediaries' obligations (especially in respect of providing information, reporting and reciprocal data sharing), instead of general deemed importer liability or a general monitoring obligation. Those intermediaries should have specific legal obligations to meet, and if they do not meet those obligations, they should only be held liable for that specific violation.

It Is our view that imposing non-fiscal liability on economic operators making products available on the Union market online or through other means of distance sales is not an appropriate policy solution to address the issue of imports of non-compliant products to the EU as:

- it is not proportionate given the role of such entities (i.e. they do not sell products or in general act as representative-responsible person for the products); and
- given the challenges of enforcing liability on non-EU based or established intermediaries (platforms, marketplaces, dropshippers), putting liability on an intermediary without enhancing its role through robust accreditation regime will not met the goals of the EU customer safety policy.

Therefore, the first step to enhancing this representative-responsible person is to make it 'reliable' by professionalizing their role as authorized representative. We recommend establishing a minimum set of criteria for authorized representatives, accredited as the 'authorised economic operator for compliance with non-customs legislation' (AOE non-fiscal or AEO-NF). Such accreditation would confirm that entity as one which is both legitimate (i.e. remove the ability to assign 'anyone' to act as a representative-responsible person) and possesses sufficient understanding of the (product and other non-fiscal) compliance requirements, along adequate substance, human and system capabilities, financial solvency etc., to be responsible. While the Commission already has mechanisms for accrediting certain entities (for example Notified Bodies[30]), there is also substantial knowledge and experience on the EU customs authorities in accreditation programs such as AEO, which can be utitlised in respect of authorizing representatives-responsible persons. As is the case with Notified Bodies or current customs and/or security AEOs, it is essential that the new AEO-NF has access to personnel with sufficient and relevant knowledge and experience to be able to collect more compliance information, such as test reports and safety signals. They should also possess the necessary skills and expertise to be able to verify those documents and ensure they are not fraudulent; and if documents are found to be fraudulent, AEO-NF should be held (alone or jointly and severally with the producer, manufacturer or importer) liable for non-compliance.

While the AEO-NF will never be as close to the product as the manufacturer (as set out in the hierarchy of economic operators for product safety above), and therefore should not have their own testing obligations, they shall be the European point of contact responsible for the product in the EU and have access to (and be able to provide) technical compliance documentation, including test reports and other technical documentation, if requested by customs or other entitled authority. They should also have a responsibility to monitor safety signals related to the products they are responsible for, and when they have a reason to believe that a product presents a risk, they should inform market surveillance authorities (and/or Customs) accordingly. They should cooperate with respective authorities, which includes taking corrective measures to non-compliance with their products, including acting as a backstop for product recalls (including customer communication, redress, and arranging reverse logistics), if another economic operator does not act in this respect.

The accreditation of the AEO-NF would be provided through customs authorities working in cooperation with market surveillance and other authorities responsible for the 350+ different pieces of Union legislation, making the whole solution robust. It would also enhance the cooperation between customs and the other authorities mentioned above to the level beyond just the framework for cooperation envisaged in the nUCC Article 240, providing for a systemically (and practically) interlinked solution, which would strengthen the capacity of customs and other authorities to supervise and control which goods enter the Union.

[30] https://single-market-economy.ec.europa.eu/single-market/goods/building-blocks/notified-bodies_en.

The next step is to enable verification of the new AEO-NF as representative-responsible person for non-fiscal issues so that consumers and regulators can confirm its status through simple access to publicly open 'registration database', which will enable interested parties to view all relevant and necessary information efficiently and at scale. Such a publicly accessible mechanism would help to incentivise a high standard for the AEO-NF. At present, a rogue actor wishing to appoint a phantom representative-responsible person can easily create fake contact details, which presents challenges to businesses or market surveillance authorities to confirm the presence of a valid representative-responsible person. Having a centralised database would mean that this system of verification would be much more vigorous and also give the option of automating this verification.

In our view, such a mechanism is already existing - there is a publicly available database of AEO accredited entities in the Union. The Commission maintains an online database called the 'AEO Database'[31] that provides information on economic operators who have been granted AEO status. This database allows for searching for and verifying AEO-certified companies across the EU and shall allow for similar actions to be made with respect to the new AEO-NF.

The establishment of the AEO-NF as the person responsible for non-fiscal matters related to imports of (at least) goods intended for consumption in the EU instead of deemed importer would additionally bring changes to the import process as currently envisaged by the Commission in the nUCC proposal. It would also offer unique opportunity to further interlink the customs code with the ESPR rules related to DPP and possibly broaden the mechanism envisaged in ESPR Article 15 to all imported goods destined for consumption in the EU. This would mean that the tariff classification of goods as well as their origin would be known to the EU customs authorities way ahead of the related goods entering the Union (not at the time of distance sales or actual import as currently foreseen), causing - in effect - the (questionable - see Chapter 7 of this report) 'simplified tariff treatment for distance sales' solution no longer necessary. Simultaneously, as the DPP registry will be returning a unique registration identifier of the product to the person uploading product data (product card)[32], it would be possible to link it with the rest of the distance sales process (sales transaction, logistical data / customs notification of arrival and clearance). Additionally, it would make the obligation provided for on EU customs authorities by the nUCC Article 2 (2)(b)[33] possible to be fulfilled through equivalent of a 'do not load' message currently used in ICS2.0 customs systems, i.e. actually stop non-compliant (illicit) goods at the origin, contributing - among others - to lowering the carbon footprint of transporting small shipments to the EU (which is done mostly by air nowadays)[34].

Respective amendments to the nUCC that are required to the above to be implemented are presented in Annex 1 (proposed amendments in bold and marked with yellow background are presented on the text of the nUCC as amended by the EP. EP amendments marked in bold italics).

[31] https://ec.europa.eu/taxation_customs/dds2/eos/aeo_home.jsp?Lang=en

[32] See ESPR Article 13.5.

*[33] 'ensuring that goods **that are destined for circulation in the internal market but present** a risk for the safety of citizens and residents do not enter the customs territory of the Union, by putting in place the appropriate measures for controls of goods and supply chains' (as **amended** by the EP).*

[34] And amounting to 2.3 billion items directly imported to the EU in 2023 and 4 billion expected in 2024 as per Maroš Šefčovič (Questionnaire to the Commissioner-Designate, November 2024, available at https://hearings.elections.europa.eu/documents/sefcovic/sefcovic_writtenquestionsandanswers_en.pdf)

6. OTHER MECHANISMS TO ENHANCE COMPLIANCE OF GOODS DESTINED FOR CONSUMPTION AND TO ASSURE MORE EQUAL TREATMENT OF B2C (E-COMMERCE) AND B2B FLOWS

Our report presents solutions that, alongside the core pillars of the EUCR (CDH, EUCA, and simplifications for economic operators[35]), aim to address a key objective of the reform: enhancing compliance with both fiscal and non-fiscal standards. This, in turn, will help ensure that European consumers receive legal and safe products manufactured in line with EU regulations and will promote level-playing field within the European market by reducing unfair competitive practices.

These solutions are primarily:

- the introduction of AEO-NF as a professional and certified entity responsible for providing reliable and good quality data on the requirements to be met by goods imported into the EU (as described in Chapter 5 of this report);
- the obligation to provide CDH with the above-mentioned data at an early stage of the import process in the form of a product card (ultimately Digital Product Passport (DPP)), which will enable a comprehensive risk analysis focused on non-fiscal aspects and provide EUCA with the opportunity to respond before the goods begin their journey to the EU;
- providing mechanisms for the effective supervision and practical verification of goods imported into the EU through distance selling for EU consumers.

To illustrate the impact and concrete benefits of our proposals, consider the following description of the process for importing a product intended for free circulation within the EU internal market and for consumer use (consumption).

- Provision of data confirming that goods meet the legal requirements for release for free circulation and placing on the EU market - product card (ultimately DPP).

[35] Not discussed in this report due to the fact that we support general business position expressed among other in the 'Joint Industry and Trade Statement on the EU Customs Reform' published in December 2024. It addresses, among others, the issue of customs facilitations to trusted partners, noting that linking all future trade facilitations to a single 'Trust and Check' (T&C) status is problematic. We share the view that - in general - the idea of a T&C status, which aims to offer trusted traders streamlined customs processes and reduced checks, is welcomed as a step toward encouraging compliance while rewarding low-risk traders with more efficient customs procedures. Nonetheless, the proposed advantages of that status are very limited (and not extending much beyond those available to any economic operator under the current customs legislation). Therefore, we agree that there is a need to enhance the existing, globally recognised AEO framework to better reflect the roles of supply chain actors and ensure accurate data provision. This can be achieved through a tiered accreditation-facilitation structure that aligns with business realities and builds on the strengths of the current UCC's facilitation framework. Rather than replacing the status of 'economic operator authorised for customs simplification' (AEOC), additional variations could be introduced with further facilitations tailored to different supply chain actors. The AEOC status is a tried-and-tested, internationally agreed and recognized certification that provides significant trade facilitation benefits, and it's essential for minimizing customs disruptions for compliant traders. Similarly, the status of the 'economic operator authorised for security and safety' (AEOS) shall be retained under the nUCC.

product data is uploaded to the EU database by a responsible person intending to place it under the customs procedure 'release for free circulation'; in case of distance sales, this person has to be AEO-NF accredited

For goods from third countries to be approved for free circulation and placed on the EU market, data must be submitted to CDH (either directly or via other EU databases, such as the DPP registry) verifying that these goods comply with the legal requirements for release and market placement within the EU. In the context of e-commerce sales, this data transfer should occur no later than when the sales offer is presented to the EU customer (consumer). This data is instantaneously available to customs authorities and - through the Single Window Environment[36] or other means (CDH access) - also to other authorities EU-wide.

product data covers all the required and necessary elements, including tariff classification (commodity code) at the level of 8-digits CN codes and origin in the meaning of customs provisions

The data catalogue is defined in the nUCC. This part of the whole import data is referred to in Article 88(4)(a) as amended according to our proposal, namely: the manufacturer, the product supplier where this is different from the manufacturer, the responsible economic operator in the Union pursuant to Article 4 of Regulation (EU) 2019/1020 and Article 16 of the Regulation of the European Parliament and of the Council (EU) 2023/988 (AEO NF as proposed in this report), the origin, the tariff classification (8-digits CN codes) and a description of the goods, the list of relevant other legislation applied by the customs authority (data related to the requirements that goods must meet under sectoral legislation, e.g. certificates, quality certificates, etc.) and the product identification / reference number. This set of data is called a product card for the purpose of this report. (See Annex 2 on the proposed amendment to the nUCC Article 88).

A product card can represent a specific category of goods, e.g. sports shoes from a particular brand and colour, grouped under a single manufacturer's code/product code (the element connecting the products within the product card is the manufacturer and the category of the product). In this case, multiple pairs of shoes from the same category and manufacturer would equate to one product card. The data making up the product card should ideally come from certified product databases used in standardized market transactions, such as GS1, REACH registers, or ultimately Digital Product Passport (DPP), which incorporate commonly used product identification systems (EAN, GTIN, SKU, UPC, ASIN, etc.). This approach will not only enable data reuse but, crucially, will ensure that the data processed in CDH is derived from reliable and authorized databases and repositories.

[36] Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 (OJ L 317, 9.12.2022, p. 1).

The responsibility to submit product card data to the authorities lies with AEO-NF (following the approach outlined in the report). Typically, AEO-NF is an entity independent of the (deemed) importer - in particular, the manufacturer of the goods, their distributor/supplier for the EU territory or their representative. It may also be an (deemed) importer acting directly or as a representative of the manufacturer or distributor/supplier of the goods. Notably, AEO NF must be established in the EU and have this special status granted by the customs authority in cooperation with the competent authorities responsible for the compliance of goods with EU sectoral regulations. For the import process, a reference number must be provided to link the product card to the specific transaction, allowing it to be connected to the seller/importer/(deemed) importer in accordance with the applicable business procedure. As explained in Chapter 5 of this report - such a functionality is anticipated under the ESPR Article 13(5), where the DPP registry will issue a unique registration identifier for the product to the individual uploading the product data.

Using the data from the product card, CDH conducts a risk analysis.

if the product data does not meet specific requirements for product's introduction to the EU, customs authorities can issue an equivalent of a 'do not load' (i.e. 'do not offer/do not sell') message to inform the responsible person / AEO-NF that such products cannot be imported

This analysis may lead to a message from the EUCA that a particular category of goods cannot be placed on the EU market due to non-compliance with requirements (similar to the ICS2 'do not load' message but sent earlier in the import process 'do not offer/do not sell'). Alternatively, it may indicate the need for a post-entry inspection, requiring that the goods must be presented to the customs or other authorities within specific time after entry to the EU.

If the product meets the compliance criteria, it can be offered for sale in the EU, in particular made available for purchase by the EU consumers on the electronic interfaces of intermediaries / persons who facilitate distance sales of imported goods. As per the rules of GPSR among others, such listing would then need to link to the responsible person (AEO-NF or manufacturer/distributor).

- The sale of goods to be released/placed on the EU market.

at the moment of the sale transaction, the deemed importer collects respective duties and taxes, applying tariffs along the 'simplified tariff treatment for distance sales'

The importer is required to provide additional data on goods intended for release for free circulation at the latest before the release of the goods (the nUCC Article 20(1)(a)). According to Article 21(1) of the nUCC, a deemed importer must provide or make available information regarding distance sales of goods imported into the Union's customs territory at the latest on the day following the date when the payment was accepted and in any event prior to the release of the goods. Article 88(3) of the nUCC outlines the essential data that must be available in the CDH (for proposed amendments to Article 88 nUCC, see Annex 2).

Part of the complete set of data required for import has already been submitted at an earlier stage in the form of a product card. Further, additional data relating to the sales transaction, is transmitted to CDH at this stage. It covers: the importer responsible for the goods (deemed importer), the seller, the buyer, the value, the unique reference of the consignment and data required under VAT regulations, pursuant to Article 21(2) nUCC, i.e. data specified in Article 63c(2) of Implementing Regulation (EU) No 282/2011.

It is essential to connect the sales data of goods intended for final release or placement on the EU market with the product card data for those goods. The product card reference number can be linked to the sales reference number[37] through the DPP registry or reference to other database as explained in Chapter 5 of this report.

- Transporting goods to the EU

The transport of goods to the EU is usually outsourced to a carrier. The carrier fulfils the obligations related to the provision of the so-called safety and security data (Title VI of the nUCC, advance cargo information, notification of the arrival of goods) in accordance with the applicable regulations. The data is combined in CDH with transaction data and the product card as per the provisions of Article 80(2) and (3) of the nUCC, virtually limiting the data submitted by the carrier to: the importer responsible for the goods (deemed importer), the unique reference for the consignment (order), the consignor, the consignee, the data on the route and the nature and identification of the means of transport bringing the goods.

- Goods brought into the customs territory of the EU

at their arrival, the goods can be checked for compliance with data provided at earlier stages

According to Article 85(1) of the nUCC, if required by the customs authorities or other regulations applied by the customs authorities, the carrier shall present to the customs authorities the goods brought into the customs territory of the Union upon arrival of the goods at the designated customs office or other place designated or recognised by the customs authorities or in the free zone.

[37] In the case of deemed importers, this sales reference number is the so-called order number or unique transaction number referred to in Article 63c(2)(l) of the Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, referred to in Article 21(2) of the nUCC.

As a rule, the release of goods for the procedure takes place in accordance with Article 60(2) of the nUCC if the following conditions are met: (i) the importer is responsible for the goods; (ii) all the information requested and the minimum information necessary for the particular procedure has been provided or made available to the customs authorities; (iii) the conditions for placing the goods under the procedure concerned are fulfilled and (iv) the goods have not been selected for any control.

The customs authorities decide whether to release the goods taking into account the results of the risk analysis based on the data provided by the importer or exporter and, where applicable, the results of any controls (Article 60(1) of the nUCC).

As part of our proposals, we do not introduce solutions that would modify the course of the import process in the case of B2B transactions at this stage.

However, we put forward a proposal to establish mechanisms that ensure effective supervision and verification of goods imported into the EU as part of distance selling (e-commerce) intended for consumers in the EU. Such solutions are aimed, inter alia, to level the playing field with 'standard' B2B imports and processes for the import of B2C goods (e-commerce).

In the case of distance sales of goods under the proposed Article 60(6) of the nUCC, the customs authorities shall be deemed to have released the goods if they have not selected them for any control within a reasonable period of time after the arrival of the goods of deemed importers in the customs territory of the Union, subject to other provisions applied by the customs authorities. Based on this provision, we can distinguish the following two situations:

1. The e-commerce goods were selected by the customs authority for control upon arrival in the customs territory of the Union or within a reasonable period of time after arrival. In such a case, these goods are subject to fiscal or non-fiscal control on the basis of a decision of the customs authority, depending on the indications of the risk analysis.
2. The e-commerce goods have not been selected by the customs authority for control within a reasonable time after their arrival in the customs territory of the Union, so they are considered released for the procedure in accordance with Article 60(6) of the nUCC.

According to Article 88(2) of the nUCC, the release of goods for free circulation is not considered as proof of the conformity of the goods with the relevant other regulations applied by the customs authorities. Based on this provision, we believe that in the latter situation (point 2 above), in order to strengthen consumer protection and the competitiveness of the EU market, an obligation should be introduced to make goods intended for consumption available to customs authorities for a certain period of time (we propose 24 hours), in order to enable possible verification/control in terms of compliance of the goods with the relevant other regulations applied by the customs authorities. Failure to comply with the above-mentioned obligation will result in a sanction (Title XIV, Chapter 2 Union customs infringements and non-criminal sanctions) consisting in the need to pay an amount corresponding to a percentage of the value of goods that have not been made available for customs authorities' verification/control in the annual settlement period.

goods are customs cleared for free circulation but remain under customs supervision for another 24 hours before being provided to the end-user; this allows customs and other authorities to effect additional control to check the physical goods compliance with data provided at earlier stages

As part of the regulations concerning AEO and TCT (authorised economic operators), the possibility of exempting authorised entities from the above-mentioned obligation should be introduced based on the fulfilment of certain conditions (e.g. the existence of mechanisms or the use of technologies enabling the verification of imported goods and the periodic provision of data to customs authorities on the verification activities carried out and their results), possibly in delegated acts.

We believe it is clearly visible from the above that the approach of combining existing rules and regulations in a holistic system is a better ultimate solution comparing to the one presented by the Commission in the nUCC proposal. It not only assures that specific duties and obligations are fulfilled by persons suitable to comply (objectively capable of such compliance), which can be properly controlled, but also tightens the cooperation between customs authorities and other EU authorities in line of the Commission's vision provided for in the nUCC Articles 239 - 242. Details of such cooperation should however be detailed based on the nUCC Article 242(5)[38].

Respective amendments to the nUCC that are required to the above to be implemented are presented in Annex 2 (proposed amendments in bold and marked with yellow background are presented on the text of the nUCC as amended by the EP. EP amendments marked in bold italics).

In order to better illustrate the ideas presented in the proposal, the comparative table has been prepared showing the stages of the B2C e-commerce importation process as per the Federation of Polish Entrepreneurs' (FPP) proposal, as it looks at the present Union Customs Code situation and finally how the process is designed according to the EUCR proposal. The table is presented below:

[38] 'The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining any other complementary action as referred to in paragraph (1), point (j).'

Stage of the import process (B2C e-commerce)		FPP proposal	Present Union Customs Code situation	EC EUCR proposal
Assuring product compliance (before product offer/listing on a platform)	**Responsible party**	MEANINGFUL AEO non-fiscal (AEO NF) / 'responsible person' - according to the scheme provided in the sectoral product legislation for the hierarchy of economic operators (a waterfall of responsibility) the responsible economic operator is first of all an EU established manufacturer, or an importer where the manufacturer is not established in the EU, who is already responsible for product safety. If neither of those parties are established in the EU, then the responsible economic operator may be an authorized representative who has a written mandate from the manufacturer to perform certain tasks, or a fulfilment service provider who effectively becomes the authorized representative where no other economic operator is established in the EU. FPP proposal makes the 'responsible person' meaningful through certification along the AEO customs rules.	ANY Respective entities as defined in the sectoral product legislation. Can be virtually any person established in the EU (bogus/dummy companies); no guarantees / certification in most cases; no link with Customs prior to goods' entry to the EU.	ANY Respective entities as defined in the sectoral product legislation. Can be virtually any person established in the EU (bogus/dummy companies); no guarantees / certification in most cases; link with Customs through DPP for very limited number of products.

	Data	BEFORE OFFERING IN THE EU (allowing for a complete product compliance checks) Product card data as required on the basis of the relevant sectoral product legislation plus data defined in the new UCC (EUCR) art. 88(4)(a) as amended according to FPP proposal, namely: the manufacturer, the product supplier where this is different from the manufacturer, the responsible economic operator in the Union pursuant to Article 4 of Regulation (EU) 2019/1020 and Article 16 of the Regulation of the European Parliament and of the Council (EU) 2023/988 (AEO NF as proposed by FPP), the origin, the tariff classification (8 digits CN) and a description of the goods, the list of relevant other legislation applied by the customs authority (data relating to the requirements that goods must meet under sectoral legislation, e.g. certificates, quality certificates, etc.) and the product identification - unique reference number (product). Important: tariff classification at 8-digits CN codes as well as indication of goods origin at the time of DPP's creation is proposed to allow for proper recognition of the goods and compliance verification.	NOT AVAILABLE TO CUSTOMS PRIOR TO IMPORT Data defined and required under relevant sectoral product legislation (not available to Customs).	PARTIALLY AVAILABLE TO CUSTOMS PRIOR TO IMPORT Data defined and required under relevant sectoral product legislation (not available to Customs with exception of some DPP covered goods).

	Description of the process	The process starts when there is a decision that certain product/goods are to be exported to the EU market (destined for the EU market). AEO non-fiscal (AEO-NF) / 'responsible person' shall complete the data required for the product compliance confirmation according to the relevant sectoral product legislation (important: tariff classification at 8-digits CN codes as well as indication of the origin of the goods is to be provided at this stage). This data shall be sent by AEO-NF to the proper database (according to the relevant sectoral product legislation - e.g. Digital Product Passport data base) for verification. The unique reference number (product) is issued for the product and returned to the AEO-NF / 'responsible person', if the product is verified as compliant with the EU legislation. If the product does not fulfil the EU requirements, then it cannot be offered for sale to the EU (cannot be imported to the EU) - the Digital Product Passport data base returns 'do not offer/ do not sell" message to the AEO-NF / 'responsible person'. The technical solution shall be designed for interoperability of sectoral data bases and customs central data hub (CDH). The sectoral data base shall communicate with the CDH sharing the unique reference product number (allowing access to the related product data) for risk analysis before this number is communicated to the AEO-NF / 'responsible person'.	Requirements deriving from sectoral product legislation are not directly related to the goods flow as part of the customs importation process at this stage. There is no mechanism allowing for exchange of information between customs systems and other administrations at this stage (before products are offered for sale to the EU).	Requirements deriving from sectoral product legislation are not directly related to the goods flow as part of the customs importation process at this stage. There is no mechanism allowing for exchange of information between customs systems and other administrations at this stage (before products are offered for sale to the EU). Limited exchange data between sectoral product data bases and CDH.

		The unique reference number (product) needs to be shared with the e-commerce platform (deemed importer) by the person placing the goods for distance sale (seller) to allow for listing of the product and indicating person responsible for the product/goods (as required e.g. by GPSR regulation).		
Transaction - the sale of goods destined for the EU market	**Responsible party**	DEEMED IMPORTER Important: the deemed importer definition shall apply equally across the sector and be efficiently enforceable on all marketplaces or other actors involved in distance sales of goods to EU consumers, regardless of their size, business model and place of establishment. Therefore, deemed importer definition shall allow to be broadly extended to persons engaged in distance sales of goods, including recognised suppliers operating in the IOSS. The amendment proposed by the EP goes in this direction.	E-COMMERCE PLATFORM REGISTERED IN IOSS (registration is not obligatory)	DEEMED IMPORTER According to the EC proposal IOSS system is not obligatory for the low value B2C imports due to the fact that the scope of IOSS depends on the VAT Directive provision (Council did not agree so far to make IOSS obligatory). According to the EP amendment to the EUCR deemed importer definition has been broadly extended to persons engaged in distance sales of goods, including recognised suppliers operating in the IOSS.

	Data	DATA RELATED TO THE SALES TRANSACTION (allowing for a complete value compliance checks): the importer responsible for the goods (deemed importer), the seller, the buyer, the value, the unique reference of the consignment (order) and data required under VAT regulations, pursuant to Article 21(2) nUCC, i.e. data specified in Article 63c(2) of Implementing Regulation (EU) No 282/2011.	IOSS REQUIRED DATA, i.e. data specified in Article 63c(2) of Implementing Regulation (EU) No 282/2011.	DATA RELATED TO BOTH THE PRODUCT AND SALES TRANSACTION (available to customs only after the transaction): as per Article 88(3)(a) of nUCC, the data must include at least the importer responsible for the goods, the seller, the buyer, the manufacturer, the product supplier where this is different from the manufacturer, the responsible economic operator in the Union pursuant to Article 4 of Regulation (EU) 2019/1020 and Art. 16 of Regulation of the European Parliament and of the Council (EU) 2023/988, the value, the origin, the tariff classification and a description of the goods, the unique reference of the consignment and its location, and the list of relevant other legislation applied by the customs authorities.

Transaction - the sale of goods destined for the EU market	**Description of the process**	At the moment of the sale transaction, the deemed importer collects respective duties and taxes, applying tariffs along the 'simplified tariff treatment for distance sales'. The deemed importer must provide or make available to the CDH relevant fiscal data (generally on customs duty and VAT) regarding distance sales of goods imported into the Union's customs territory at the latest on the day following the date when the payment was accepted and in any event prior to the release of the goods (Article 21 (1) of the nUCC). Deemed importer shall provide unique reference number for the specific transaction - unique reference number (order). Important: IOSS shall be obligatory in case of e-commerce distance sales of goods. And the deemed importer definition shall apply equally across the sector and be efficiently enforceable on all marketplaces or other actors involved in distance sales of goods to EU consumers, regardless of their size, business model and place of establishment.	At the moment of the sale transaction, the e-commerce platform registered in IOSS needs to calculate import VAT. The VAT Directive rules need to be followed (for collection and declaration). Customs duty is not due for low value consignments up to EUR 150 de minimis threshold. E-commerce platforms are obliged to inform about responsible person for certain product (GPSR). Data regarding such responsible persons (anyone can be appointed as one) shall be provided to the platform by the seller.	At the moment of the sale transaction, the deemed importer collects respective duties and taxes, applying tariffs along the 'simplified tariff treatment for distance sales'. Customs duties are also being calculated due to the EUR 150 de minimis threshold removal (which according to the information presented by the Dutch customs might cause several times increase of customs declarations). The deemed importer must provide or make available to the CDH all the data mentioned in Article 88(3)(a) of the nUCC regarding distance sales of goods imported into the Union's customs territory at the latest on the day following the date when the payment was accepted and in any event prior to the release of the goods (Article 21

				(1) of the nUCC). Customs can provide risk analysis on these data submitted to the CDH but the decision concerning the goods control or verification can be executed only after the goods arrive in the EU. This is due to the fact that this information is available to customs after the goods has been sold to the EU consumer and dispatched to be delivered. Deemed importer is responsible not only for the fiscal compliance but non-fiscal liabilities which is not consistent with the sectoral legislation concerning products compliance

Transport of the goods to the EU	**Responsible party**	CARRIER	CARRIER	CARRIER
	Data	Supplementary ICS2 security and safety data plus unique reference data (product), unique reference data (order). As per Article 80(3) of the uUCC, the carrier shall link its own additional information to the importer's information provided at the earlier stage.	ICS2 data as defined in UCC Implementing regulation.	ICS2 security and safety data as defined in the nUCC Article 80(2): the advance cargo information shall include at least the importer responsible for the goods (deemed importer), the unique reference for the consignment, the consignor, the consignee, a description of the goods, the tariff classification, the value, the data on the route and the nature and identification of the means of transport bringing the goods and the transportation cost.
	Description of the process	The transport of the goods to the EU is usually outsourced to the carrier by the seller of the goods on the e-commerce platform. The seller of the goods provides shipping data to the carrier. Important: product- and sales-related data are already available to customs in CDH (provided by the AEO-NF /	The transport of the goods to the EU is usually outsourced to the carrier by the seller of the goods on the e-commerce platform. The seller of the goods provides shipping data to the carrier.	The transport of the goods to the EU is usually outsourced to the carrier by the seller of the goods on the e-commerce platform. The seller of the goods provides shipping data to the carrier.

		'responsible person' (product) and by the deemed importer (order) respectively). The carrier lodges advanced cargo information data through ENS (linking it with previous data provided to the CDH by the seller / deemed importer)) within the timeframes stated in the legislation. According to Article 79 of the nUCC, goods may enter the customs territory of the Union only if the carrier or other persons have provided or made available to the competent customs authorities the advance cargo information. The specific time limits to provide advance cargo information data will be defined in the delegated acts to the nUCC. As for now these deadlines relate to the mode of transport and in case of the air transportation (most frequent in case of e-commerce low value parcels) the ENS shall be lodged as early as possible (for flights with a duration of less than four hours, at the latest by the time of the actual departure of the aircraft; for other flights, at the latest four hours before the arrival of the aircraft at the first airport in the customs territory of the Union). Reception of the complete ENS triggers the time for customs authorities to take decision on basis of risk analysis. 'Do not load' decision issued by customs means that goods may not enter EU territory due to 'safety and security' risks (limited strictly to 'bomb-on-the-plane' situation).	'Safety and security' data needs to be provided usually by a carrier via ENS lodged in ICS2 system. Important: ENS data are the first data provided to customs in the e-commerce importation process (first information about the goods destined for consumers in the EU).	'Safety and security' data needs to be provided usually by a carrier via advanced cargo information (ENS).

Goods brought into the customs territory of the EU	**Responsible party**	CARRIER - to provide notification of arrival data (ICS2) DEEMED IMPORTER	CARRIER - to provide notification of arrival data (ICS2), present the goods to customs and to lodge customs declaration, if acting as a customs representative on behalf of importer. CUSTOMS REPRESENTATIVE (carrier, postal operator, customs agent) IMPORTER - CONSUMER	CARRIER - to provide notification of arrival data (ICS2) DEEMED IMPORTER
	Data	Notification of arrival (scope of data will be defined in the delegated or implementing acts) but it shall be limited to unique consignment reference (order), so that customs can recognise the particular shipment and find it's details in the CDH. No additional data required at this stage. Risk analysis and control decision concerning goods presented based on the data available in the CDH (provided in previous stages of import process).	Customs declaration data: 1. In case of IOSS - simplified declaration with IOSS number and limited scope of data. 2. In case of non-IOSS either simplified declaration with VAT calculation (special arrangements) or standard customs declaration with VAT calculation). No customs duty data required due to the release up to EUR 150 de minimis threshold.	No additional data required at this stage. Risk analysis and control decision concerning goods presented based on the data available in the CDH (provided in previous stages of import process - mainly after the sale transaction).

	Description of the process	At their arrival into the EU, the goods can be checked for compliance with data provided at earlier stages. According to Article 85(1) of the nUCC, the carrier shall present to the customs authorities the goods brought into the customs territory of the Union upon arrival of the goods. In the case of distance sales of goods, the deemed supplier goods are deemed to be released for free circulation if the customs authorities have not selected them for any control within a reasonable period of time after the arrival of the goods in the customs territory of the Union (Article 60(6) of the nUCC). Two situations are possible: 1. The e-commerce goods were selected by the customs authority for control upon arrival in the customs territory of the Union or within a reasonable period of time after arrival. In such a case, these goods are subject to fiscal or non-fiscal control on the basis of a decision of the customs authority, depending on the indications of the risk analysis. 2. The e-commerce goods have not been selected by the customs authority for control within a reasonable time after their arrival in the customs territory of the Union, so they are considered released for the procedure in accordance with Article 60(6) of the nUCC.	The carrier shall present to the customs the goods brought into the EU territory (arrival notification). Customs declaration shall be lodged to the customs IT system by the importer or customs representative (on behalf of the importer). Usually, carriers or customs agents clear the goods on behalf of importers being consumers (private persons). The form of the customs declaration and the set of required data depends on the IOSS or non-IOSS regime. On basis of the customs declaration data risk analysis might be carried out by customs authorities and control or verification decision issued.	According to Article 85(1) of the nUCC, the carrier shall present to the customs authorities the goods brought into the customs territory of the Union upon arrival of the goods. In the case of distance sales of goods, the deemed supplier goods are deemed to be released for free circulation if the customs authorities have not selected them for any control within a reasonable period of time after the arrival of the goods in the customs territory of the Union (Article 60(6) of the nUCC). Two situations are possible: 1. The e-commerce goods were selected by the customs authority for control upon arrival in the customs territory of the Union or within a reasonable period of time after arrival. In such a case, these goods are subject to fiscal or non-fiscal

		In the case the goods were not selected for control (point 2) they are customs cleared for free circulation but remain under customs supervision for another 24 hours before being provided to the end-user. This allows customs and other authorities to effect additional control to check the physical goods compliance with data provided at earlier stages. This 24-hour supervision over the goods means that deemed importer shall implement solutions allowing for potential verification of the goods or data by the competent authorities (we do not define specific solutions as this shall depend on the business models and competent authorities requirements). Failure to comply with this obligation shall result in a sanction which is severe. We refer to the Title XIV, Chapter 2 Union customs infringements and non-criminal sanctions (where the customs infringement has been committed intentionally, the pecuniary charge shall comprise an amount equal to between 100% and 200% of the amount of customs duties and other charges eluded. In other cases, the pecuniary charge shall comprise an amount equal to between 30% and 100% of the amount of customs duties and other charges eluded). In case this provisions will not be in place in a final text, specific effective sanction needs to be defined. We propose that amount due shall be paid in the annual settlement period.	Due to limited scope of declaration data and the volumes of goods declared (in single consignments) efficient controls are difficult, especially as far as compliance of goods with the EU regulations is concerned. There are no dedicated mechanisms for sanctions or consequences in case the goods are not compliant with EU regulations.	control on the basis of a decision of the customs authority, depending on the indications of the risk analysis. 2.The e-commerce goods have not been selected by the customs authority for control within a reasonable time after their arrival in the customs territory of the Union, so they are considered released for the procedure in accordance with Article 60(6) of the nUCC. Due to the increasing amounts of e-commerce importations, stages in the process when customs authorities have an access to the data to provide risk analysis and perform actions, and the definition of responsibilities (single responsibility for fiscal and non-fiscal obligations on deemed importer being intermediary), control capabilities

		AEO and Trust and Check authorised economic operators might be exempted from the 24 hours supervision obligation if they fulfil certain conditions (e.g. the existence of mechanisms or the use of technologies enabling the verification of imported goods and the periodic provision of data to customs authorities on the verification activities carried out and their results). 24 hours supervision clause is an important solution providing for effective tool allowing for verification of the e-commerce goods compliance with the EU regulations.		of customs and other authorities will be limited. Therefore proposed solutions might not be as effective as planned.

7. SIMPLIFYING TARIFFS BUCKETS SYSTEM

Alongside the proposed removal of the 150 EUR de minimis threshold, the Commission brought forward a solution related to alleged simplification of tariff classifications of goods imported to the Union under the 'distance sales' concept. It basically can be summarized as the possibility to calculate the customs duty due by applying one of the five new bucket tariffs in the Combined Nomenclature (CN) to a value calculated in a simpler way. The Commission's rationale for such a simplification (defined for in the nUCC Article 5 point 56)[39] is provided in point 5 of the nUCC proposal's preamble: '(...) calculating the applicable duty is a complex task based on the tariff classification, the customs value and the origin of the goods. Applying this method in e-commerce would often result in a disproportionate administrative burden both for customs and businesses. To avoid this, it is necessary to provide e-commerce intermediaries with the possibility to apply a simplified tariff treatment based on a five-tier bucket system, where each of the buckets is associated with a different duty rate in relation to goods sold to the final consumer.'

On the face of it, the tariff buckets solution sounds as a great simplification for the e-commerce flows in general. However, looking at the exact regulation provided in the proposed amendment of Article 1 of Council Regulation (EEC) No 2658/87[40] one must notice that certain goods are excluded from this simplification. These are goods subject to harmonised excise duties, goods subject to anti-dumping, anti-subsidy and safeguard measures and goods contained in Chapters 73, 98 and 99 of the CN (respectively iron and steel products, complete industrial plants and goods imported or exported under special circumstances). There is no question on the grounds of exclusion - due to the nature of these goods, they should not benefit from any simplification and are thus falling into the category of so called 'prohibitions and restrictions'.

However, the problem with calling the proposed solution 'a simplification' (in a part related to classification of goods, not the establishment of value for import purposes or exemption from indicating the origin of goods) lies elsewhere. It is related with the process of customs clearance of the goods on one side and a lack of consistency with some other Union legislation on the other.

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[39] 'simplified tariff treatment for distance sales' means the simplified tariff treatment for distance sales set out in Article 1, paragraphs 4 and 5, and Part One, Section II, point 6 of Annex I to Regulation (EEC) No 2658/87 (EU Customs tariff).

[40] (1) in Article 1, the following paragraphs 4 and 5 are added:

'4. By derogation from paragraph 3, upon request of the importer, customs duty shall be charged on the import of goods the supply of which qualifies as distance sales of goods imported from third territories or third countries within the meaning of Article 14(4),point (2), of Directive 2006/112/EC, in accordance with the simplified tariff treatment for distance sales set out in the table in Part One, Section II, point 6 of Annex I.

5. The simplified tariff treatment for distance sales referred to in paragraph 4 shall not apply to

(a) goods referred to in Article 1(1) of Council Directive (EU) 2020/262 ;

(b) goods on which measures in accordance with Regulation (EU) 2016/1036, or Regulation (EU) 2016/1037, or Regulation (EU) 2015/478 or Regulation (EU) 2015/755 have been imposed, irrespective of their origin; and

(c) any goods included in Chapters 73, 98 and 99.

(2) Annex I is amended in accordance with the Annex to this Regulation.'

Taking aside complete industrial plants and goods imported or exported under special circumstances, which are usually not traded through 'distance sales' solution, in order to apply the tariff classification simplification and 'put' a product into one of the five buckets proposed by the Commission, a trader would need to complete three-step procedure: 1) classify all of his or her goods to be able to ascertain whether any of them is excluded on the basis of the above-mentioned regulation; 2) classify the goods to one of the tariff buckets, and 3) establish the duty rate applicable to his product to calculate the amounts of duties and taxes due. To complete step 1), a tariff classification usually at the 8 digits CN codes level is required for any product; only then one can be sure that it does not fall under the exclusion / it is not prohibited or restricted when it comes to its import to the Union or export therefrom. Steps 2) and 3) would then be required for all the goods that are not prohibited or restricted. This means that the complex process of applying the correct tariff classification to a product needs to happen before it actually can 'benefit' from the proposed tariff buckets simplification, renting this solution - in many cases - completely not fulfilling its purpose (not actually simplifying much).

Further, there is a visible lack of consistency of the 'simplified tariff treatment for distance sales' solution with some other Union legislation, in particular ESPR. As mentioned in Chapter 5 of this report, ESPR establishes a mechanism, which would provide certain product data to the Digital Product Passport registry. According to ESPR Article 13 point 1 second paragraph: 'In the case of products intended to be placed under the customs procedure 'release for free circulation', the registry shall store the commodity code.' The commodity code will be the CN code as provided for in the Annex I to Council Regulation (EEC) No 2658/87 (i.e. EU customs tariff).

This reconfirms the above-mentioned conclusion that the tariff classification of goods (at least these covered by ESPR at this stage and all others intended for consumption, if the solution proposed in Chapters 5 and 6 of this report is adopted) would need to be taking place significantly before the duty rate calculation at import is made. The ESPR process' logic is as follows:

- the product data (product card / DPP including 8-digits CN code) is provided to the authorities by economic operator placing the product on the market (as per our proposal, in case of distance sales that would need to be AEO-NF);
- the registry automatically communicates to that economic operator a unique registration identifier associated with his or her specific product;
- the unique registration identifier of that product is then required to be provided or made available to customs authorities by a person intending to place the product under the customs procedure 'release for free circulation'.

Within the distance sales / e-commerce solution envisaged under the nUCC, the duty and VAT on imports are calculated at the moment of e-commerce sales and communicated to the customs authorities immediately afterwards[41], i.e. only slightly before the last of the above-mentioned stages takes place but much later that the ESPR's foreseen transmission of product data, which includes commodity code / tariff classification, to the DPP registry. In result, the given product would have its tariff classification already established at the level of 8 digits CN codes at the moment of sales and duty/tax calculation - whether it is then classified to its exact position in the tariff or to one of five buckets, does not really matter from technical perspective. Thus 'simplified tariff treatment for distance sales' at this stage would not change anything in terms of effort and burden on business.

[41] nUCC Article 59(2): 'Deemed importers shall provide or make available the information on distance sales of goods to be imported in the customs territory of the Union at the latest on the day following the date when the payment was accepted and in any event prior to the release of the goods.'

Further, as the proposed tariff buckets are designed in such a way that the duty rate applicable to the given one is the highest duty rate of the individual positions covered by the bucket, there may be a very little (or none) incentive to use 'simplified tariff treatment for distance sales' simply because the earlier classification of goods would reveal to the trader a lower duty rate for the particular product if declared to customs as such rather than with use of the buckets system.

Taking into consideration that the first step of the process (a classification of all goods imported to the EU with exclusion of prohibited and restricted ones) would need to happen anyway, a tariff simplification that may actually bring benefits by avoiding some of the disproportionate administrative burden both for customs and businesses, should at least limit the burden of the duty calculation itself to the greatest possible extent. This can be achieved through introduction of a single tariff rate for all e-commerce goods combined with preservation of simpler method for establishing value for import purposes and exemption from indicating the origin of goods. Given that an average EU import duty rate currently is below 2%, according to our estimates, the most preferable tariff rate for simplified tariff treatment for distance sales should be set at maximum at 7% ad valorem. These estimates are a result of establishing a volume-weighted duty rate of all the CN codes covered by the bucket system. Annex 4 presents the methodology and calculations.

Respective amendments to the nUCC that are required to the above to be implemented are presented in Annex 3 (proposed amendments in bold and marked with yellow background are presented on the text of the nUCC as amended by the EP. EP amendments marked in bold italics).

8. 150 EUR DE MINIMIS THRESHOLD

Art. 23 and 24 of the Council Regulation (EC) No 1186/2009 provide for the relief from import duties for goods sent directly from a third country to a consignee in the Union in consignments with a total intrinsic value not exceeding EUR 150, i.e. 'goods of negligible value'. Any consignments made up of goods of negligible value dispatched direct from a third country to a consignee in the Community shall be admitted free of import duties. The relief shall not apply to alcoholic products, perfumes and toilet waters, and tobacco or tobacco products.

Within the EUCR, the Commission has proposed to delete the 150 EUR de minimis threshold from Chapter V of Regulation (EC) No 1186/2009.

The EC presented several arguments supporting the de minimis threshold removal in its Impact Assessment (IA) and legislative proposal as part of the general goals of the reform, i.e.: to enable EU customs authorities to better protect the financial and non-financial interest of the EU and its MS as well as the Single Market (i.e. protecting EU citizens from non-compliant and dangerous goods and protecting European companies from unfair competition), enhancing EU competitiveness, simplifying and modernising customs procedures.
Below we provide for a critical assessment of the EC's proposal and its justification. The aim of this assessment is not to oppose the EUR 150 de minimis waiver but to raise awareness as to the possible risks connected with the removal and assuring that the threshold removal will be introduced together with introduction of other legal solutions proposed within the customs reform as only a coherent legal package could provide solution to the challenges of e-commerce.

- The customs duty exemption for low-value goods was implemented in 1983 (increased in 1991 and in 2008) and until 1 July 2021, there was also a VAT exemption on imported goods of negligible value (below EUR 22). Both exemptions, when introduced, were justified in the disproportionate administrative burden of handling (paper-based) customs declarations for charging low customs duties and VAT on low value goods. The EC claims that nowadays, the e-customs environment allows for significant administrative burden reduction due to digitalisation, automatization and simplification of customs processes, including those related with lodging and handling customs declarations. We do agree that in a digitalised customs environment where electronic data are available for all imported goods regardless of their value, maintaining a duty relief that was introduced to prevent the disproportionate administrative burden on customs authorities, businesses and private individuals, is no longer justified.

- It is also clear that the patterns of trade in goods have changed since the introduction of the minimis threshold in 1983. Especially, the increase in the volume of low value imports following the growth of e-commerce made it challenging for customs authorities to enforce compliance with fiscal and non-fiscal requirements. Despite the fact that from July 2021 (when the VAT de minimis threshold was removed) each consignment is being declared to customs digitally, customs authorities do not have the information to efficiently control whether the imported goods comply with EU non-fiscal requirements. Even checking compliance with fiscal requirements is challenging for customs mainly due to vast volumes of traffic (and lack of sufficient capacity). As a result, both competitiveness and EU consumers suffer because non-compliant goods enter the EU market.

- In 2017, with the adoption of the VAT e-commerce package Member States agreed to eliminate the VAT exemption for low-value imported goods and to provide a One Stop Shop (IOSS) for e-commerce platforms selling foreign goods to European consumers. The threshold removal was justified by the need to protect Member States' tax revenues, to create a level playing field for the businesses concerned and to minimise burdens on them. The VAT threshold has been removed but customs duty de minimis threshold stayed. The difference between VAT and customs rules on e-commerce makes the system complex for all involved (VAT applicable on all goods, customs duties applicable for goods in consignments of value below EUR 150). Additionally, with the IOSS system not being obligatory, VAT can be collected and declared at the point of sale by platforms as well by postal and express at delivery to consumers). Such levels of dualism lead to practical problems. Therefore, according to the EC, an alignment of the customs rules with VAT rules is necessary.

- Although the EC claims that there is evidence of the systematic abuse of the 150 EUR threshold through undervaluing and artificially splitting consignments, there is also evidence that undervaluation is not limited to consignments of negligible value, but a general phenomenon. Therefore, the EC's claim that the removal of the EUR 150 duty exemption will put an end to the practice of splitting orders of a high value into several consignments of value lower than EUR 150 each to profit from the duty exemption, does not hold. What's more, the EC's assessment that the removal of 150 EUR exemption threshold will also reduce the incentive for undervaluation, is questionable if (as studies suggest) incentive for undervaluation is not driven by the exemption threshold.

- Some positive environmental effect on transport emissions is also possible, according to the EU Wise Persons Group Report[42], due to cessation of the practice of splitting consignments. While indeed possible, the environmental effect will be rather negligible if there are no other economic policy measures applied than de minimis removal to limit the number of individual consignments arriving to the EU.

- We agree with the EC that - with the growth of e-commerce - the duty exemption might have given advantage to third country e-commerce operators over traditional trade and those EU retailers, which must pay customs duties when importing in bulk. As such it might have encouraged the establishment of e-commerce distribution centres outside the EU instead of keeping them (and jobs, and tax revenues in general) in the EU. Therefore, customs duty threshold removal might positively impact levelling the playing field between foreign sellers and the domestic market to some extent. However, if not combined with other incentives, this impact may be insignificant.

- Considering the significant volumes of low value imports, the EC believes that it has become necessary to protect the financial interests of the Union and its MS. Analysed in separation of other factors, the removal of 150 EUR threshold would result in revenue increase - additional revenue from customs duties on e-commerce are estimated by the EC at around EUR 13 billion over 15 years, i.e. approx. EUR 0,87 billion annually, which is as much as 0,46% of the total EU budget revenues of approx. EUR 190 billion in 2024. This makes the proposal questionable also from budget perspective.

[42] PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe; Report by the Wise Persons Group on the Reform of the EU Customs Union - Brussels March 2022

- In order to address the specific challenges posed by e-commerce goods, the EUCR proposes to introduce a simplified tariff treatment for goods imported under a business-to consumer (B2C) transaction qualifying as distance sales for VAT purposes. The proposed facilitations in the calculation of the customs duty are expected to offset the effects of the removal of the duty relief threshold on the administrative burden for customs authorities and businesses and simplify processes and procedures for economic operators. As provided in Chapter 7 of this report, some of the simplifications proposed by the Commission would not fulfil these expectations.

- It should be emphasized that the logic of the EC's proposal also assumed amendments to the VAT Directive in the ViDA[43] proposal and within the customs reform package[44] (obligatory IOSS for deemed importers and removal of the EUR 150 threshold for the use of the IOSS). Final shape of the EUCR definitely needs comprehensive customs and VAT rules. However, it is crucial that issues with the functioning of the IOSS system under its current scope are addressed first (e.g. double taxation and fraud risk) as expanding it to customs duties will only exacerbate existing issues. On the other side, if the de minimis customs duty threshold was to be removed it must be introduced with maximum simplification and automatization (as a part of package solutions) to reduce potential costs for businesses, consumers and customs.

It shall be stressed that removing the threshold will not be a simple solution to the problems defined by the EC. Based on the positions presented on the reform package by different trade associations and businesses and on publicly available studies and reports concerning de minimis threshold issue[45], several concerns might be raised.

Probably the most important goal of the reform is to protect EU citizens from non-compliant and dangerous goods and protecting European companies from unfair competition. De minimis removal per se does not directly correlate with ensuring and strengthening consumer protection or efficient and effective execution of other compliance requirements. All imported low value goods are declared to customs today (via ICS2's ENS, with 6-digit HS[46] codes and EORI numbers via various types of customs declarations, such as H1, I1, H6 and H7) and customs authorities already apply multiple risk criteria, which allow them to detect fraudulent shipments. The challenge is the data quality and reliability to allow for, to a greater extent, automated detection of non-compliant goods (non-fiscal risk management) and effective controls. De minimis removal is not the remedy to ensure compliance.

[43] Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age

[44] Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT

[45] "The import VAT and duty de-minimis in the European Union - Where should they be and what will be the impact?" Final report 14 October 2014 Cross-border Research Association; Copenhagen Economics "Effects of removing the VAT de minimis on e-commerce imports" 11 October 2017; Copenhagen Economics „Study on customs duty de minimis" 8 June 2023; Copenhagen Economics "Study on the EU proposed customs de minimis removal" September 2024.

[46] HS stands for Harmonised Commodity Description and Coding System - a multipurpose international product nomenclature developed by the WCO, providing basis for the EU's CN.

Looking at the issue from the other goal, i.e. enhancing EU competitiveness and levelling playing field, it is clear that the EU e-commerce businesses are competing with third country direct imports to EU consumer. Third country sellers are often subject to less regulatory oversight and compliance obligations as well as benefiting from more favourable domestic economic incentives such as subsidies, lower tax rates, than EU companies. According to the EC, the duty exemption favours third country e-commerce operators over traditional trade and EU retailers, which must pay customs duties when importing in bulk, and encourages the establishment of e-commerce distribution centres outside the EU. This is true but on the other side low-value imports are also part of European SME's activities, especially small business owners and for them de minimis regime is important. Often SMEs utilise the de minimis threshold to import intermediary goods and other items that are important for their business and production in the EU. The de minimis waiver may be a barrier for smaller EU companies that are importers. Small, low-value consignments are imported by large firms, SMEs and private consumers. So, the market deals with both B2B and B2C trade.

According to new rules proposed by the EC within the reform package, in case of B2B low-value goods flows, the customs duty de minimis threshold will be removed and no extra simplifications for economic operators, mainly SMEs, will be introduced. Recital 5 of the proposal for amendment of the EU customs tariff[47] states that '...as regards the elimination of the customs duty relief threshold it is necessary to provide e-commerce intermediaries with the possibility to apply a simplified tariff treatment based on a five-tier bucket system, where each of the buckets is associated with a different duty rate in relation to goods sold to the final consumer.' Such wording suggests that in case of B2B importation of low-value goods tariff simplification may not be requested. These seems to be confirmed in proposed provisions of Article 1, paragraph 4 of the Council Regulation (EEC) No 2658/87: '4. By derogation from paragraph 3, **upon request of the importer**, customs duty shall be charged on the Import of goods **the supply of which qualifies as distance sales of goods imported from third territories or third countries within the meaning of Article 14(4), point (2), of Directive 2006/112/EC**, in accordance with the simplified tariff treatment for distance sales set out in the table in Part One, Section II, point G of Annex I.'

These article states that simplified tariff treatment may be requested in case of supply of goods which qualifies as distance sales of goods imported from third territories or third countries within the meaning of Article 14(4), point (2), of Directive 2006/112/EC. And according to the art. 14 (4) point (2) of Directive 2006/112/EC, the term 'distance sales of imported goods' means supplies of goods from third country to a consumer in a Member State (no to an economic operator).[48]

[47] COUNCIL REGULATION amending Regulation (EEC) No 2658/87 as regards the introduction of a simplified tariff treatment for the distance sales of goods and Regulation (EC) No 1186/2009

[48] Directive 2006/112/EC Art. 14 (4) point (2) 'distance sales of goods imported from third territories or third countries' means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a third territory or third country, to a customer in a Member State, where the following conditions are met:

(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;

(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

So, simplifications mitigating the effects of the EUR 150 de minimis removal are proposed only in case of B2C transactions. For economic operators engaged in B2B low value goods importation, the 'standard' procedures will have to suffice (till the entry into force of nUCC the relevant provisions applying to customs declarations and new rules regarding 'innovative partnership' with economic operators after that date). These means additional costs for economic operators, mainly SMEs. According to the data concerning e-commerce customs declarations lodged in Poland in years 2021 - 2024, 7,86% of all H7 declarations were so called 'B2B' declarations (constituting a 26,91% of the value of all goods declared via H7 declarations). For C07 declarations this numbers were even higher: 88,30% constituting 90,3% of the value of all goods imported via C07 declarations).

It is worth to stress that increased EU import costs resulting from de minimis removal will also act as a barrier to access to the European market for non-EU small businesses and may impact developing countries and migration policy by limiting opportunities for the development of entrepreneurship aimed at the EU market.

Removal of de minimis could impact not only import flows but also EU exports in case of retaliation from important EU trading partners. Trade facilitation provisions are essential to domestic firms' competitiveness and the de minimis threshold is one of instruments of this kind.

Removing this trade facilitation might have negative impact for the EU's position on the international market. Global organisations support de minimis regime and relevant provisions are incorporated in the international laws. De minimis thresholds are prescribed by the World Customs Organization (WCO) Revised Kyoto Convention (RKC) and encouraged by the OECD, and the International Chamber of Commerce (ICC). The World Trade Organization Trade Facilitation Agreement (TFA) to which the EU deposited an Instrument of Acceptance in October 2015, in respect to the de minimis, states in Article 7, Release and Clearance of Goods, subsection 8.2 d: '(d) provide, to the extent possible, for a de minimis shipment value of dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods.'

Taking the above into consideration, the removal of de minimis threshold on customs duties may cause further constraint to the competitiveness and productivity of companies in the EU and this has to be taken into account.

One of the main EC's arguments supporting de minimis removal, next to increasing compliance with both fiscal and non-fiscal rules and levelling playing field in the EU, is that the abolition of the threshold will contribute to solving the problem of undervaluation of customs duties. This thesis raises doubts.

European Commission in its 2016 Impact Assessment SWD (2016) 379 final, p. 31 as far as the assessment of the impact of the VAT de minimis threshold removal on tax compliance is concerned states that: 'however, as the volume of parcels subject to VAT increases, there is higher motivation for non-EU suppliers to undervalue and mislabel the parcels to reduce their VAT cost'. So, the abolition of the de minimis threshold may even encourage a greater scale of undervaluation in a situation where in each case the import of goods will involve the need to pay VAT and customs duty (i.e. with the EUR 150 threshold removed). There is no evidence that removal of de minimis delivers a significant reduction of frauds especially valuations frauds such as undervaluation of goods or splitting consignments. Pope, Sowiński and Taelman in their article[49] prove, that there is no link between duty and import tax de minimis level and the undervaluation practices.

[49] "Import value de minimis level in selected economies as cause of undervaluation of imported goods" Steven Pope, Cezary Sowiński and Ives Taelman, World Customs Journal, Volume 8, Number 2, September 2014

And what is also important, there are other provisions that create opportunities for abuse, e.g. gift exemption (C2C), deliberate misclassification of goods, use of IOSS numbers, or finally smuggling, even if they are partially limited by the system of authorised and recognised importers. And these provisions remain in the legal system. Also, in this case quality and reliability of data to allow for, to a greater extent, automated detection of undervalued goods and means allowing for effective controls might be a solution.

Simplifying and modernising customs procedures is an important goal of the reform allowing for enhancement of competitiveness and building economic resilience of the EU. The de minimis removal is not a simplification per se (rather opposite, taking into account that it is a trade facilitation measure from definition). IA lacks the detailed analysis as to the costs of the de minimis removal. Only aggregated effects on all stakeholders are taken into account showing cost of compliance for all economic operators. According to the IA customs reform as a whole would result in a net economic benefit. Innovative technologies and customs procedure simplification would allow for cost reduction and de minimis removal will result in increased revenues. Actually, new technologies and digitization in customs might significantly reduce revenue collection costs, but will not eliminate them. Removing of the customs duty exemption adds to complexity of customs processes. Especially that average value of low-value consignment is, according to the EC data, around 10.50 EUR. Despite the accompanying simplifications, it will mean increased costs of handling debt issues arising from e.g. goods returns. Or one-off costs of adapting to new regulations. It may also mean some additional costs for customers in case the increased duties or additional costs will be transferred onto them.

IA lacks estimations concerning impact on consumers. The IA (p. 105) only briefly mentions that survey evidence from an exploratory consultation carried out in the context of another study indicates that a small price increase (+5%) will not change consumers' incentive to order online from outside the EU. In particular, the survey finds that 'for about 40% of the respondents a price increase of about 5% will not at all change their incentive to order online from outside the EU, provided that the increase in the price can be paid at checkout.' Increased duties and additional costs related to the de minimis removal might transfer to consumer prices. Economic literature and reports allow to assume that pass-through of duties to import prices is highly probable.[50] Of course, how much the prices will increase depends on several factors like the competitive structure of the market, elasticity of supply and elasticity of demand. Increase of prices might also mean reduced choice for consumers. Low-income consumers who purchase affordable goods online might be most affected by the change. Reform aims at increasing safety and security of consumers by proper execution of non-fiscal requirements in case of goods importation but as it was already mentioned de minimis threshold removal is not the remedy to ensure compliance. The challenge is the data quality and reliability to allow for more efficient and automated detection of non-compliant goods and effective controls.

In our report we propose solutions which together with main pillars of the reform proposed by the EC (CDH, EUCA, simplifications for economic operators) answer to one of the main reform goal - increased compliance both fiscal and non-fiscal.

[50] "The return to protectionism" Pablo D. Fajgelbaum, Pinelopi K. Goldberg, Patrick J. Kennedy, Amit K. Khandelwal, The quarterly Journal of Economics, Vol. 135 2020 Issue 1; Australian Government Productivity Commission's Inquiry Report: Collection Models for GST on Low Value Imported Goods. 2017

9. REGULATORY 'SAND-BOXES' - ASSURING THAT THE nUCC PROVIDES FOR A PATH FOR INNOVATION

The EUCR is a means to respond to the changing global trade environment and - in general - a move into a right direction to assure that customs processes are adapted to address current challenges of digital trade and evolving business models. Nonetheless, international trade develops on an unprecedented pace and what's innovative today, may put a cap on new developments in the future. Therefore, the nUCC shall contain certain provisions that allow for the possibility to apply out-of-the-box processes and solutions to try new and innovative mechanisms for clearance of goods and their control. Evolving trade patterns, technological innovation, and increasing global interconnectivity demand that customs procedures adapt swiftly to remain effective and resilient. To address these challenges, it is necessary to establish controlled environments that allow for the testing and validation of innovative customs clearance processes. Such solutions shall be, in our view, designed to take a shape of so called 'regulatory sand-boxes' known from the legal provisions related to fintech or AI sectors (i.e. the EC's Digital Finance Package[51], Markets in Crypto-Assets Regulation[52] or AI Act[53]), which allow - in essence - to develop, test, and validate real-live solutions while ensuring compliance with the law. In particular, in customs, they shall allow legally-binding clearance of goods for import and/or export without a need to run parallel processes (i.e. clear the same goods according to the provisions currently in place).

The concept of a 'customs regulatory sandbox' enables undertakings to experiment with new and creative solutions under the direct supervision of competent authorities. By fostering innovation in customs procedures, such 'customs regulatory sandboxes' provide the flexibility needed to address emerging challenges, enhance the efficiency of customs operations, and contribute to the overall modernization of the customs framework. Under the oversight of competent authorities, 'customs regulatory sandboxes' would allow businesses to test solutions that address legal uncertainties, improve operational efficiency, and support the harmonization of customs practices across the EU.

Customs regulatory sandboxes would contribute to the EU's objectives by fostering regulatory learning and cooperation among stakeholders, enhancing the ability of the customs authorities to adapt to technological advancements and evolving trade dynamics. They could provide innovators with legal certainty and reduce barriers to market entry, particularly benefiting small and medium-sized enterprises (SMEs) and start-ups. By facilitating real-world experimentation, 'customs regulatory sandboxes' would ensure that innovative mechanisms are tested comprehensively and transparently, addressing any significant risks before broader implementation.

The Commission and the EUCA would play a vital role in supporting Member States in the establishment and operation of 'customs regulatory sandboxes'. This includes providing technical expertise, tools, and frameworks to ensure the consistent and effective operation of these environments across the EU. By integrating these developments into the customs framework, the EU can reinforce its commitment to innovation, efficiency, and resilience in customs operations.

Respective amendments to the nUCC that aim at introducing the concept of 'customs regulatory sandboxes' to the nUCC are provided in Annex 5.

[51] https://finance.ec.europa.eu/publications/digital-finance-package_en

[52] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937

[53] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)

ANNEX 1

Authorised Economic Operator for compliance with non-customs legislation - AEO non-fiscal, AEO-NF - amendments to nUCC

Importer and deemed importer

Article 20

Importers

1. The importer shall comply with the following obligations:

(a) providing, keeping and making available to customs authorities, as soon as it is available and in any event prior to the release of the goods, all the information required in respect of the storage or the customs procedure under which the goods are to be placed in accordance with Articles 88, 118, 132 and 135, or to discharge the outward processing procedure;

(b) ensuring the correct calculation and payment of customs duties and any other charges applicable;

(c) ensuring that the goods entering or exiting the customs territory of the Union comply with the relevant other legislation including Regulation 2023/988 applied by the customs authorities and providing, keeping and making available appropriate records of such compliance;

(d) any other obligation on the importer established in customs legislation.

2. **By way of derogation from paragraph 1, in case of non-Union goods intended for consumption within the customs territory of the Union, obligations referred to in Article 88(4), point (a), are to be complied with by an authorised economic operator for compliance with non-customs legislation.**

3. The importer shall be established in the customs territory of the Union.

4. By way of derogation from paragraph 2 the following importers or persons shall not be required to be established in the customs territory of the Union:

(a)an importer who places goods in transit or temporary admission;

(b)an importer bringing goods that remain in temporary storage;

(c)persons, who occasionally place goods under customs procedures, provided that the customs authorities consider such placing to be justified;

(d)persons who are established in a country the territory of which is adjacent to the customs territory of the Union, and who present the goods at a Union border customs office adjacent to that country, provided that the country in which the persons are established grants reciprocal benefits to persons established in the customs territory of the Union;

(e) a deemed importer who is represented by an indirect representative established in the customs territory of the Union.

Article 21

Deemed importers

1.By way of derogation from Article 20(1), point (a), deemed importers shall provide or make available the information on distance sales of goods to be imported in the customs territory of the Union at the latest on the day following the date when the payment was accepted and in any event prior to the release of the goods.

2. Without prejudice to the information required to release the goods for free circulation in accordance with **Article 88(4), point (b)**, the information referred to in paragraph 1 of this Article shall contain at least the requirements set out in Article 63c(2) of Implementing Regulation (EU) No 282/2011.

3. Where goods previously imported by a deemed importer under distance sales are returned to the original consignor's address or to another address outside the customs territory of the Union, the deemed importer shall invalidate the information on release for free circulation of those goods and provide or make available the proof of exit of the goods out of the customs territory of the Union.

Authorised economic operator and Trust and Check traders

Article 23

Application and authorisation for authorised economic operator

1.A person who is resident, incorporated or registered in the customs territory of the Union and who meets the criteria set out in Article 24 may apply for the status of authorised economic operator. The customs authorities shall, following consultation with other authorities, if necessary, grant one, **two or ~~both~~ all** of the following types of authorisations:

(a) that of an authorised economic operator for customs simplifications, which shall enable the holder to benefit from the simplifications in accordance with the customs legislation; or

(b) that of an authorised economic operator for security and safety that shall entitle the holder to facilitations relating to security and safety; or

(c) that of an authorised economic operator for compliance with non-customs legislation that shall enable the holder to be responsible for the compliance of goods entering or exiting the customs territory of the Union with the relevant other legislation applied by the customs authorities and providing, keeping and making available appropriate records of such compliance.

2. **Every** type of authorisation referred to in paragraph 1, second subparagraph, may be held at the same time.

3. The persons referred to in paragraph 1 shall comply with the obligations set out in Article 7(2) and (3). The customs authorities shall monitor the operator's continuous compliance with the criteria and conditions for the status of authorised economic operator in accordance with Article 7(4).

The customs authorities shall at least every 3 years perform an in-depth monitoring of the authorised economic operator's activities and internal records.

4. The status of authorised economic operator shall, subject to paragraph 5 of this Article and to Article 24, be recognised by the customs authorities in all Member States.

5. Customs authorities shall, on the basis of the recognition of the status and provided that the requirements related to a specific type of simplification provided for in the customs legislation are fulfilled, authorise the operator to benefit from that simplification. Customs authorities shall not re-examine those criteria which have already been examined when granting the status.

6. The authorised economic operator referred to in paragraph 1, **point (a) and (b)**, shall enjoy more facilitations than other economic operators in respect of customs controls according to the type of authorisation granted, including fewer physical and document-based controls. The status of authorised economic operator shall be taken into account favourably for customs risk management purposes.

7. The customs authorities shall grant benefits resulting from the status of authorised economic operator to persons established in third countries, who fulfil conditions and comply with obligations defined by the relevant legislation of those countries or territories, insofar as those conditions and obligations are recognised by the Union as equivalent to those imposed on authorised economic operators established in the customs territory of the Union. Such a granting of benefits shall be based on the principle of reciprocity unless otherwise decided by the Union, and shall be supported by an international agreement of the Union, or Union legislation in the area of the common commercial policy.

8. A joint business continuity mechanism to respond to disruptions in trade flows due to increases in security alert levels, border closures and/or natural disasters, hazardous emergencies or other major incidents shall be established providing that the customs authorities may facilitate and expedite to the extent possible priority cargos related to authorised economic operators.

9. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining:

(a)the type and frequency of the monitoring activities by both the persons referred to in paragraph 1 and the customs authorities referred to in paragraph 3;
(b)the simplifications for authorised economic operators referred to in paragraph 5;
(c) the facilitations referred to in paragraph 6.

10. The Commission shall specify, by means of implementing acts, the procedural rules for the consultations in respect of the determination of the status of authorised economic operators referred to in paragraph 1, second subparagraph, including the deadlines for replying. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Article 24

Granting of the status of authorised economic operator

1. The criteria for the granting of the status of authorised economic operator shall be the following:

(a)the absence of any serious infringement or repeated infringements of customs legislation, **the relevant other legislation referred to in Article 20(1) point (c) of this Regulation**, and taxation rules, and no record of serious criminal offences; the infringements and offences to be considered are those relating to economic or business activities;

(b)the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls and evidence that non-compliance has been effectively remedied; the applicant ensures that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;

(c)financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;

(d)with regard to the authorisation referred to in Article 23(1), point (a), practical standards of competence or professional qualifications directly related to the activity carried out;

(e)with regard to the authorisation referred to in Article 23(1), point (b), appropriate security, safety and compliance standards, adapted to the activity carried out. The standards shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain, including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners;

(f)with regard to the authorisation referred to in Article 23(1), point (c), qualifications, expertise, and experience related to the activity carried out. The criteria shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the compliance of goods entering or exiting the customs territory of the Union with the relevant other legislation applied by the customs authorities, including sufficient human resources, demonstrable professional qualifications and a proven experience in managing compliance.

2. The Commission ***is empowered to*** adopt ***delegated*** acts, ***in accordance with Article 261, to supplement this Regulation by laying down detailed arrangements*** for the application of the criteria referred to in paragraph 1.

Article 25

Granting the status of Trust and Check trader

1. ***A person,*** who is resident or registered in the customs territory of the Union, meets the criteria set out in paragraph 3 and has conducted regular customs operations in the course of that person's business for at least ***2*** years, may apply for the status of Trust and Check trader to the customs authority of the Member State where that person is established.

2. The ***EU*** Customs ***Authority*** shall grant the status following consultation with other authorities, if necessary, and after having had ***received and assessed*** the relevant data of the applicant for the last ***2*** years in order to assess compliance with the criteria in paragraph 3.

3.The ***EU*** Customs ***Authority*** shall grant, ***after assessing the audit of the competent national authority,*** the status of Trust and Check trader to a person who meets all the following criteria:

(a)the absence of any serious infringement or repeated infringements of customs legislation, ***relevant other legislation applied by customs authorities pursuant to Article 20(1) point (c) of this Regulation,*** and taxation rules and no record of serious criminal offences; the infringements and offences to be considered are those relating to economic or business activities;

(b)the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and transport records, which allows appropriate customs controls and evidence that non-compliance has been effectively remedied; the applicant shall ensure that relevant employees inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;

(c)financial solvency, which shall be deemed to be proven where the applicant has financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned. In particular, during the last 3 years preceding the submission of the application, the applicant shall have fulfilled his financial obligations regarding payments of customs duties and all other duties, taxes or charges which are collected on or in connection with the import or export of goods, including on VAT and excise duties due in relation to intra-Union operation;

(d)practical standards of competence or professional qualifications directly related to the type and size of activity carried out, including that relevant employees are instructed on how to interact with customs authorities through the EU Customs Data Hub;

(e)appropriate security, safety and compliance ***standards, including product safety*** standards, adapted to the type and size of the activity carried out, ***including requiring the applicant to participate in mandatory training provided by the competent authorities related to the type of activity; those security, safety and compliance*** standards shall be considered ***to be*** fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain, including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners;

(f) appropriate qualifications, expertise, and experience when it comes to managing product safety; those criteria shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the compliance of goods entering or exiting the customs territory of the Union with the relevant other legislation applied by the customs authorities, including sufficient human resources, demonstrable professional qualifications and a proven experience in managing compliance;

(g) having an electronic system, ***including systems managed by a third-party provider, that exceptionally makes*** available to the customs authorities real-time ***access to appropriate and relevant*** data on the movement of the goods and the compliance of the person referred to in paragraph 1 with all requirements applicable on those goods, including relating to safety and security and including where relevant sharing in the EU Customs Data Hub, ***in accordance with the detailed arrangements for the application of the criteria for such access set out in the delegated acts referred to in paragraph 10, point (b):***

(i) customs records;
(ii) accounting system;
(iii) commercial and transport records;
(iv) their tracking and logistics systems, which identifies goods as Union or non-Union goods and indicates, where appropriate, their location;
(v) licences and authorisations granted in accordance with other legislation applied by the customs authorities;
(vi) complete records needed to check the correctness of the establishment of the customs debts.

4. The persons referred to in paragraph 1 shall comply with the obligations set out in Article 7(2) and (3). The customs authorities shall monitor the operator's continuous compliance with the criteria and conditions for the status of authorised economic operator in accordance with Article 7(4).

The customs authorities at least every 3 years shall perform and in-depth monitoring of the Trust and Check trader's activities and internal records. The Trust and Check trader shall inform the customs authorities of any changes in its corporate structure, ownership, solvency situation, trading models or any other significant changes in its situation and activities. The customs authorities shall re-assess the status of the Trust and Check trader if any of these changes have a significant impact on the Trust and Check status. The customs authorities may suspend this authorisation until a decision on the reassessment is taken.

5. Where a Trust and Check trader changes its Member State of establishment, the customs authorities of the receiving Member State may reassess the Trust and Check authorisation, after consultation with the Member State that initially granted the status and having received the previous records on the operators. During the reassessment, the customs authority of the Member State that granted the initial authorisation may suspend it.
The Trust and Check trader shall inform the customs authorities of the receiving Member State of any changes in its corporate structure, ownership, solvency situation, trading models or any other significant changes in its situation and activities if any of these changes have an impact on the Trust and Check status.

6. Where a Trust and Check trader is suspected of involvement in fraudulent activity in relation to its economic or business activity, its status shall be suspended.

Where the customs authorities have suspended, annulled or revoked a Trust and Check trader authorisation in accordance with Articles 7, 9 and 10 they shall take the measures necessary to ensure that the authorisations referred to in paragraph 7 of this Article and the facilitations referred to in paragraph 8 of this Article are also suspended, annulled or revoked.

7. Customs authorities may authorise Trust and Check traders:

(a)to provide part of the data on his or her goods after the release of those goods, in accordance with Article 59(3);
(b)to perform certain controls and to release the goods upon receipt of those goods at the place of business of the importer, owner or consignee and/or upon delivery from the place of business of the exporter, owner or consignor, in accordance with Article 61;
(c)to consider that it provides the necessary assurance of the proper conduct of the operations for the purposes of obtaining authorisations for special procedures in accordance with Articles 102, 103, 109 and 123;
(d)to periodically determine the customs debt corresponding to the total amount of import or export duty relating to all the goods released by that trader, in accordance with Article 181(4);
(e)to defer the payment of the customs debt in accordance with Article 188.

8. The Trust and Check traders shall enjoy more facilitations than other economic operators in respect of customs controls according to the authorisation granted, including fewer physical and document-based controls. The status of Trust and Check trader shall be taken into account favourably for customs risk management purposes.

9. By way of derogation from Article 110, where the importer or the exporter of the goods entering or exiting the customs territory has the status of Trust and Check trader, the goods shall be considered under a duty suspensive regime and remain under customs supervision until their final destination without the obligation to place them in transit. The Trust and Check trader shall be liable for the payment of customs duties, other taxes and other charges in the Member State of establishment and where the authorisation was granted.

10. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the type and frequency of the monitoring activities referred to in paragraph 4 of this Article.

11. The Commission shall adopt, by means of implementing acts:

(a)the rules to consult other authorities for the determination of the status of Trust and Check trader referred to in paragraph 2;
(b)the modalities for the application of the criteria referred to in paragraph 3;
(c)the rules to consult the customs authorities as referred to in paragraph 5.

Those implementing acts shall be adopted in accordance with the examination procedure referred to Article 262(4).

ANNEX 2

Mechanisms allowing for increasing compliance of goods destined for consumption and allowing for more equal treatment of B2C (e-commerce) and B2B flows

Importer and deemed importer

Article 20

Importers

1. The importer shall comply with the following obligations:

(a) providing, keeping and making available to customs authorities, as soon as it is available and in any event prior to the release of the goods, all the information required in respect of the storage or the customs procedure under which the goods are to be placed in accordance with Articles 88, 118, 132 and 135, or to discharge the outward processing procedure;
(b) ensuring the correct calculation and payment of customs duties and any other charges applicable;
(c) ensuring that the goods entering or exiting the customs territory of the Union comply with the relevant other legislation including Regulation 2023/988 applied by the customs authorities and providing, keeping and making available appropriate records of such compliance;
(d) any other obligation on the importer established in customs legislation.

2. **By way of derogation from paragraph 1, in case of non-Union goods intended for consumption within the customs territory of the Union, obligations referred to in Article 88(4), point (a), are to be complied with by an authorised economic operator for compliance with non-customs legislation.**

3. The importer shall be established in the customs territory of the Union.

4. By way of derogation from paragraph 2 the following importers or persons shall not be required to be established in the customs territory of the Union:

(a)an importer who places goods in transit or temporary admission;
(b)an importer bringing goods that remain in temporary storage;
(c)persons, who occasionally place goods under customs procedures, provided that the customs authorities consider such placing to be justified;
(d)persons who are established in a country the territory of which is adjacent to the customs territory of the Union, and who present the goods at a Union border customs office adjacent to that country, provided that the country in which the persons are established grants reciprocal benefits to persons established in the customs territory of the Union;
(e) a deemed importer who is represented by an indirect representative established in the customs territory of the Union.

Article 21

Deemed importers

1.By way of derogation from Article 20(1), point (a), deemed importers shall provide or make available the information on distance sales of goods to be imported in the customs territory of the Union at the latest on the day following the date when the payment was accepted and in any event prior to the release of the goods.

2. Without prejudice to the information required to release the goods for free circulation in accordance with Article 88**(4), point (b)**, the information referred to in paragraph 1 of this Article shall contain at least the requirements set out in Article 63c(2) of Implementing Regulation (EU) No 282/2011.

3. Where goods previously imported by a deemed importer under distance sales are returned to the original consignor's address or to another address outside the customs territory of the Union, the deemed importer shall invalidate the information on release for free circulation of those goods and provide or make available the proof of exit of the goods out of the customs territory of the Union.

Release for free circulation

Article 88

Scope and effect

1. Non-Union goods intended to be placed on the Union market or intended for private use or consumption within the customs territory of the Union shall be placed under release for free circulation.

2. The release for free circulation shall not be considered a proof of conformity with the relevant other legislation applied by the customs authorities.

3. Non-Union goods intended for consumption within the customs territory of the Union shall be available to the customs authorities within the territory of the Union for at least 24 hours before being made available to the end-customer to ensure their availability for conformity control with the relevant other legislation applied by the customs authorities.

4. The conditions for placing goods under release for free circulation shall be the following:

(a)the required data has been provided or made available to customs authorities, which must include at least the economic operator responsible for the goods, the manufacturer, the product supplier where this is different from the manufacturer, the origin, the tariff classification and a description of the goods, the product identification reference number, and the list of relevant other legislation applied by the customs authorities within the time period referred to in paragraph 5;

(b)the required data has been provided or made available to the customs authorities, which must include at least the seller, the buyer, the value, the unique reference of the consignment and its location in the EU within the time period referred to in paragraph 5;

(c)any import duty or other charges due, including anti-dumping duties, countervailing duties or safeguard measures shall be paid or guaranteed, unless the goods are the subject of a drawing request on a tariff quota, or the importer is a Trust and Check trader;

(d)the goods have arrived to the customs territory of the Union; and

(e)the goods comply with the relevant other legislation applied by the customs authorities.

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement or amend this Regulation by determining the data provided or made available to the customs authorities for placing goods under release for free circulation as referred to in paragraph **4,** points (a) **and (b)**, of this Article.

Union customs infringements and non-criminal sanctions

Article 252

Union customs infringements

1. The following acts or omissions shall constitute customs infringements:

(a) failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that decision and to inform the customs authorities without delay of any factor arising after the taking of a decision by those authorities which influences its continuation or content, in accordance with Titles I and II;

(b) failure to comply with the obligation to provide information to customs in accordance with this Regulation, including the failure to lodge a customs declaration;

(c) provision of incomplete, inaccurate, invalid, inauthentic, false or falsified information or documents to customs;
(d) failure of the person responsible to keep the documents and information related to the accomplishment of customs formalities;

(e) removal of goods from customs supervision;

(f) failure of the person responsible to comply with the obligations related to customs procedures;

(g) non-payment of import or export duties by the person liable to pay within the period prescribed in accordance with Title X, Chapter 3;

(h) failure of the person responsible to comply with the obligation to make non-Union goods intended for consumption within the customs territory of the Union available to the customs authorities within the territory of the Union for at least 24 hours before being made available to the end-customer to ensure their availability for conformity control with the relevant other legislation applied by the customs authorities.

2. Without prejudice to paragraph 1, Member States may provide for further acts and omissions that constitute customs infringements.
3. Members States shall notify the Commission within 180 days from the date of application of this Article, of the national provisions in force, as envisaged in paragraph 2 of this Article, and shall notify it without delay of any subsequent amendment affecting those provisions.

Article 253

General requirements for sanctions

1.Without prejudice to the sanctions laid down in Article 254, Member States may provide for additional sanctions for customs infringements referred to in Article 252 and for all measures necessary to ensure that such sanctions are implemented. Such sanctions shall be effective, proportionate and dissuasive.
2.Members States shall notify the Commission within 180 days from the date of application of this Article, of the national provisions in force, as envisaged in paragraph 1 of this Article, and shall notify it without delay of any subsequent amendment affecting those provisions.

Article 254

Minimum non-criminal sanctions

Where sanctions to customs infringements referred to in Article 252 are applied, they shall take at least one or several of the following forms, while ensuring that sanctions are effective, proportionate and dissuasive and taking into account extenuating and mitigating circumstances referred to in Article 247 and aggravating circumstances referred to in Article 248:

(a) a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of a criminal penalty and calculated on the following minimum amounts or percentages:

(i) where the customs infringement has an impact on customs duties and other charges, the pecuniary charge shall be calculated based on the amount of customs duties and other charges eluded, as follows:

(1)where the customs infringement has been committed intentionally, the pecuniary charge shall comprise an amount equal to between 100% and 200% of the amount of customs duties and other charges eluded;

(2)in other cases, the pecuniary charge shall comprise an amount equal to between 30% and 100% of the amount of customs duties and other charges eluded;

(ii) where it is not possible to calculate the pecuniary charge in accordance with point (i), the pecuniary charge shall be calculated based on the customs value of the goods, as follows:

(1)where the customs infringement has been committed intentionally, the pecuniary charge shall comprise an amount equal to between 100% and 200% of the amount of the customs value of the goods;

(2)in other cases, the pecuniary charge shall comprise an amount equal to between 30% and 100% of the amount of the customs value of the goods;

(iii) where the customs infringement is not related to specific goods, the pecuniary charge shall comprise an amount equal to between EUR 150 and EUR 150 000;

(1)where the customs infringement has been committed intentionally, the pecuniary charge shall comprise an amount equal to between 100% and 200% of the amount of the customs value of the goods;

(2)in other cases, the pecuniary charge shall comprise an amount equal to between 30% and 100% of the amount of the customs value of the goods;

(b) the revocation, suspension or amendment of customs decisions held by the person concerned, when such decision is affected by the infringement;

(c)the confiscation of the goods and means of transport.
The acts or decisions on sanctions applied for any customs infringement shall be recorded in the EU Customs Data Hub alongside the outcome of the customs controls.

ANNEX 3

Simplifying tarrifs buckets system

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 and Regulation (EC)No 1186/2009 as regards the elimination of the customs duty relief threshold

ANNEX

(a) In Annex I [to Council Regulation (EEC) No 2658/87], Summary, the following point is inserted:

'G. SIMPLIFIED TARIFF TREATMENT FOR DISTANCE SALES'

(b) In Annex I [to Council Regulation (EEC) No 2658/87], Part One, Section II, the following point G is inserted:

'G. Simplified tariff treatment for distance sales

The duty rate for the simplified tariff treatment for distance sales **is 7% ad valorem** ~~**based on a five-tier bucket system. Each bucket includes a duty rate and a reference to the relevant chapters of Annex 1 Part Two [to Council Regulation (EEC)No 2658/87] to which the duty rate concerned shall apply.'**~~

ANNEX 4

Methodology for Calculating the Weighted Average Customs Tariff Rate

Objective:

The aim of the calculations was to determine the theoretical weighted average customs tariff rate for all imported goods into the European Union (EU). This assumes that all imported goods are subject to the erga omnes tariff rates assigned to specific product buckets as defined in the annex to the proposal amending Council Regulation (EEC) No 2658/87 and Council Regulation (EC) No 1186/2009.

Data Sources and Structure:

The annex categorizes products into specific buckets with assigned tariff rates (0%, 5%, 8%, 12%, and 17%), aggregated to the level of the first 2 digits of the CN code.

For the calculations, Eurostat data on the total value of imports into the EU from all non-EU countries in 2023 was used. This data was aggregated by product groups at the level of the first 2 digits of the CN code.

Calculation Steps:

1.Grouping and Aggregation:
For each product group, the total value of imports from non-EU countries was determined at the level of the first 2 digits of the CN code.

2. Assignment of Tariff Rates:
Each product group was assigned a tariff rate based on its classification in the annex, corresponding to the appropriate basket.

3. Calculation of Implied Customs Revenues:
For each product group, the total import value was multiplied by the assigned tariff rate to estimate the implied customs revenue for that group.

4. Weighted Average Calculation:
The weighted average tariff rate was calculated as the ratio of the total implied customs revenues (summed across all product groups) to the total value of imports (summed across all product groups).

Result:

Based on this methodology, the weighted average customs tariff rate for imported goods into the EU in 2023 was calculated to be **7.17%.**

ANNEX 5

Customs regulatory sandboxes

Article 5

Definitions

(65) 'customs regulatory sandbox' means a scheme that enables persons to test innovative customs clearance processes in a controlled real-world environment, under a specific plan, developed and monitored by a competent authority.

Article 59

Placement of goods under a customs procedure

6. Member States may, where appropriate, establish customs regulatory sandboxes. Customs regulatory sandboxes shall provide for controlled testing environments for innovative clearance mechanisms, and control of the goods for the purpose of complying with this Regulation for a limited period of time before the placing on the market. The customs regulatory sandboxes shall be set up under the direct supervision, guidance and support by the regulatory authorities. The customs regulatory sandboxes shall not affect the supervisory and corrective powers of the competent authorities.

7. The Commission and, where appropriate, the EU Customs Authority, may provide technical support, advice and tools for the establishment and operation of customs regulatory sandboxes.

8. Member States shall inform the Commission and the other market surveillance authorities of the establishment of a customs regulatory sandbox through EU Customs Data Hub.

9. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement or amend this Regulation determining:

(a) eligibility and selection criteria for participation in the customs regulatory sandbox;

(b) procedures for the application, participation, monitoring, exiting from and termination of the customs regulatory sandbox, including the sandbox plan and the exit report;

(c) the terms and conditions applicable to the participants.

ABOUT US

FEDERATION OF POLISH ENTREPRENEURS

We are a nationwide and cross-industry representative employers' organization. We are a social partner and a member of the Social Dialogue Council (government, business and labour unions).

Our goal is to represent the interests of our companies and member organizations before the administration and public authorities. We implement initiatives to shape responsible, sustainable policies - effective from the point of view of employers and guaranteeing high security for employees.

We listen carefully to the needs of our members. As a result, they are always assured that the solutions we propose are a viable answer to their needs.

Federation of Polish Entrepreneurs represents over 38 thousand companies employing over 2 million employees.

In April 2024 FPP **Customs Committee** has been established to create a platform for dialogue concerning customs reform proposal between economic operators involved in customs processes. Customs Committee formula allows also for presenting trade position to the customs authorities in Poland and to facilitate dialogue between all stakeholders of the reform. This report - proposal for amendments to the Customs Union reform package has been prepared as one of the FPP Customs Committee actions.

With a permanent presence in Brussels, the Federation of Polish Entrepreneurs is proactive in EU legislation. The activity of the Federation' office in Brussels helps to identify challenges, threats and opportunities from legislative proposals emerging in the European forum, as well as enables direct participation in numerous events, including debates and conferences, held with the participation of European decision-makers and stakeholders.

As part of its activities in Brussels so far, Federation of Polish Entrepreneurs, inter alia, organized in cooperation with POLITICO a conference at the European Parliament entitled "Solving Europe's Water Problem," with the participation of representatives of the European Commission, the European Investment Bank, the European Economic and Social Committee, members of the European Parliament, as well as representatives of numerous international NGOs. Only recently in December 2024 we organised together with the European Express Association conference on customs reform 'A level playing field through a green lane for compliant trade' with the participation of high rank representatives from EP, EC, MS Customs administrations and trade representatives.

ABOUT US

CALPE
CENTRUM ANALIZ LEGISLACYJNYCH
I POLITYKI EKONOMICZNEJ

Center for Analysis of Legislation, Policy and Economics (CALPE) is the only center in Poland specialising in comprehensive economic and legal evaluation of existing and proposed legal regulations, established by the Federation of Polish Entrepreneurs. It's mission is to support the process of formulating legislative solutions based on facts and evidence.

We offer support to stakeholders in the legislative process, translating the assumptions of changes in the law into specific drafts of statutory provisions and developing regulatory impact assessments in relation to them. We prepare reports, analyses and expert opinions on issues that affect, m.in others, the activities of entrepreneurs, the labour market and the public procurement market. We support strategic communication with the market and stakeholders in the area of business sector activities, non-governmental organizations, political parties, trade unions, business organizations and chambers of commerce.

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