

# Ecommerce Europe's feedback on the UCC Revision proposal

Ecommerce Europe welcomes the opportunity to provide feedback on the European Commission's proposal for a revision of the Union Customs Code (UCC). This proposal is a clear step forward to strengthening the legal framework for customs and to making it suitable to address the challenges that have emerged in recent years.

In this paper, we will structure our position into a general section on the Customs Reform proposal and other sections addressing some specific measures of the proposed revision.

## 1. General feedback on the UCC revision

From a general perspective, Ecommerce Europe welcomes the European Commission's initiative to introduce further simplification to the customs processes for businesses. The UCC revision lays down several measures that could potentially lead to achievement of a world-leading and data-driven EU Customs, which would provide the benefit of businesses and EU citizens alike. This reform outlines proposals for a simplification of the customs procedures and relief for both authorities and traders, allowing them to navigate efficiently the Customs Union.

It is worth commending the EU's efforts in adapting the customs framework to the developments in the e-commerce and focusing on aligning these rules with the VAT framework. The UCC in combination with the VAT in the Digital Age proposal are a necessary and welcome next step of VAT e-commerce package implemented in 2021. The proposals in the UCC could have the potential to further strengthening fair competition and levelling the playing field in e-commerce. Whether this objective is achieved and whether newly introduced obligations are proportional for e-commerce actors will depend on a lot of operational details which are currently missing. We encourage the European Commission and EU countries to set up structural feedback mechanisms with impacted businesses early in the legislative process, to ensure the legislation is fit for purpose to achieve the desired results. Sufficient lead time for businesses will also be key. Depending on the length of the legislative process, the earliest timelines included in the proposal 2028 may need further extending to make sure businesses have sufficient time to prepare.

## 2. Feedback concerning the €150 threshold removal

Ecommerce Europe supports the European Commission's ambition to introduce a more modern framework for customs that cuts down on the levels of fraud in the sector while introducing more transparency for traders and consumers. Among the several policy proposals, the UCC revision suggests removing the customs duty exemption for goods valued up to €150. Ecommerce Europe understands the European Commissions' ambition to level the playing field between e-commerce within the EU and from third countries. Additionally, Ecommerce Europe would also like to draw the attention on potential counter-effects that the removal of the €150 threshold could cause on several grounds below.

While the removal of the customs threshold has the potential to level the playing field between EU e-commerce businesses competing with third country direct imports to EU consumer (as these third country sellers are often subject to less regulatory oversight and compliance obligations as well as benefiting from more favourable domestic economic incentives (subsidies, lower tax rates) than EU companies), the aim of levelling the playing field may also be achieved by other means, more direct and efficient than the de minimis removal.

On the one hand, the Report of the EU Wise Persons Group on Challenges Facing the Customs Union clearly acknowledges the fraud potential caused by the €150 Euro threshold and explicitly recommends the removal. On the other hand, the Copenhagen Economics study (2023) on Customs duty de minimis<sup>1</sup> clearly shows that a removal of the EU de minimis could have negative impacts on businesses (esp. small and medium enterprises, SMEs), EU customers and more broadly, the EU's position in the global trade arena. This recent study does not take into account the EU Customs reform proposal (which includes some trade facilitation measures and simplifications, see next sections) but we believe it is important to highlight the potential impact of the threshold removal.

- Firstly, from a general perspective, increased costs on low value consignments could risk **hampering trade opportunities and exports towards the EU** especially for the businesses which heavily rely on the EU's tariff-free regime to profit margins and stay afloat. Many developing countries, particularly those with smaller economies, heavily rely on exports of low-value goods to the EU to stimulate economic growth and create employment opportunities. The increased costs associated with customs duties and the removal of the de minimis can hinder their ability to compete in the EU market. Moreover, the removal may further widen the trade imbalance between developed and developing countries, by placing a disproportionate burden on exporters from less economically advanced regions. As this customs policy reform may provide for less incentives for businesses to export to the EU, this could result in them seeking new opportunities in other third countries. Furthermore, often SMEs utilise the de minimis threshold to import intermediary goods and other items that are important for their business, such as prototypes. In fact, an article recently published in The Well News stated that small and medium size business rely on de minimis to import cutting-edge technology in order to bring ideas to life. Further, many of these companies then “bring their prototypes back [...] for manufacturing. De minimis drastically reduces their time to market, supporting the next generation of manufacturing”.
- In addition, the removal of the customs exemption could trigger **other non-EU countries to introduce similar provisions and retaliatory measures**. For example, legislation pending before the U.S. Congress (proposed by Louisiana Senator Cassidy) would impose “reciprocal” de minimis treatment on goods entering the U.S. if the European Commission pursues the elimination of the remaining de minimis treatment, the U.S. could be more inclined to adopt the pending bill – thereby removing de minimis treatment for EU products coming to the U.S. which currently stands at 800 USD.
- Under the new customs system, the H7 declaration would no longer be applicable, which will compel large number of companies, especially SMEs that do not necessarily get the Trust & Check

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<sup>1</sup> Copenhagen Economics study for EU Express Association (2023) on Customs Duty de minimis. Available at: <https://copenhagoneconomics.com/publication/study-on-customs-duty-de-minimis/>

status, to abandon the super-reduced dataset and adopt the H1 full declaration dataset. This shift could cause several difficulties and administrative burden on companies, marketplaces and postal and logistics operators.

- On another note, the removal of the de minimis is presented as the solution that will tackle undervaluation. Whilst the issue of undervaluation cannot be denied, pieces of research questions whether it is driven by the de minimis threshold<sup>2</sup>. While the low value consignments will generate customs duty revenue, it may still not reflect actually import values since suppliers of low value goods could still declare a lower value to keep the duty impact as low as possible. It is also worth pointing out that today, Customs Authorities are able to run risk assessment on low value consignments, as all shipments into the EU are subject to an Entry Summary Declaration (containing merchandise descriptions, 6-digit HS codes and EORI numbers) and are subject to either a H7 (IOSS) or H1 (Special Arrangement) declarations. ICS2 and IOSS/Special Arrangement procedures allow for customs authorities to apply multiple risk criteria, allowing them to detect fraudulent shipments.

An additional point that Ecommerce Europe would like to raise with regards to the removal of the customs exemption is the **alignment with other existing legislations**. In fact, Ecommerce Europe would like to point out that an international framework for customs relief is already in place at the World Trade Organisation level. Legal uncertainty between the EU and the global framework for taxation and customs could lead to loopholes and further unfair trading practices, exerting the opposite of fraud discouraging. Consistency and harmonisation between the EU and the global legal framework should be a priority in the policy-making process.

As a last point, Ecommerce Europe supports the idea of increasing the sustainability of the e-commerce delivery sector by encouraging bulk shipments. However, Ecommerce Europe would like to point out that the European Commission has already proposed a substantial game-changing factor in the ViDA proposal, which is the introduction of a Single VAT Registration (SVR) in the EU. A regime covering pan-EU inventory storage in e-commerce would encourage bulk inventory placements close to customers, which cause considerably lower CO<sub>2</sub> emissions than orders individually shipped for long distances.

To conclude, Ecommerce Europe would like to call on the European Commission and the EU Countries to conduct a wider exercise of reflection of the pros and cons of removing the customs exemption for goods up to €150, which has been so far a great enabler of trade opportunities from and towards the EU, as many disadvantages don't seem to be included in the EU Commission's impact assessment

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<sup>2</sup> Research by Pope, Sowiński and Taelman (2014), found that there exists no link between the duty and import tax de minimis level for the EU and the undervaluation practices executed by foreign traders. Source: Pope, S., Sowiński, C., & Taelman, I. (2014). Import value de minimis level in selected economies as cause of undervaluation of imported goods. *World Customs Journal*, 8(2), 75-90.

### 3. Feedback concerning the deemed importer regime

Ecommerce Europe welcomes the European Commission's efforts to reduce fraud related to VAT and customs duties and at the same time to boost the competitiveness of the European economy. However, in order to bridge the customs revenues gap and ensure that goods sold online into the EU comply with all customs obligations, the UCC revision proposes to make electronic platforms key actors of this reform and increase their liability for collecting customs duties and for passing this revenue on to their Member State of registration. Ecommerce Europe believes that the new rules will exponentially increase the administrative and bureaucratic requirements and costs for the platforms due to the responsibility of promptly calculating, collecting, declaring and remitting customs duty revenues.

We emphasise the need to ensure that marketplace obligations are proportional. Cross-border e-commerce business models vary significantly, and marketplaces may not be involved with customs clearance or have access to data required to calculate duties under either current or proposed customs rules. Specific rules on customs duty calculation, determination of origin of goods, valuation, as well as ways to connect trade data between foreign sellers, marketplaces, EU customs and consumers, are therefore absolutely crucial to ensure the proposed reform works in practice and that the 'deemed importer' obligations are proportional. We welcome the simplifications proposed by the EU Commission, including the tariff buckets, optional origin rules, simplified customs value, but these need to be further worked out in close consultation with impacted businesses to make the revised scheme work.

The introduction of deemed importer concept for marketplaces and the extension of the VAT liability to high value imported distance sales will put considerable pressure on the Import One Stop Shop system. The system is today already used by marketplaces to collect and remit VAT on third party imported distance sales (and by businesses selling through their own sales channels). **Two years after its go-live, there are still fundamental issues with the IOSS system (e.g., double taxation, potential for IOSS misuse, readiness of IT infrastructures) which** need to be urgently addressed before expanding it to customs duties (or even VAT on higher value shipments) as this will only exacerbate existing problems.

Another point that Ecommerce Europe believes of utmost importance is the **alignment of the implementation dates between the UCC reform and the mandatory IOSS for marketplaces as part of the ViDA proposal**. While the ViDA proposal suggests extending the deemed supplier regime and mandating an IOSS registration for marketplaces as of January 2025 (which comes with VAT collection responsibilities), the UCC customs reform proposes to apply the deemed importer regime as of 2028 (which comes with customs collection responsibilities). Ecommerce Europe would like to point out that a 3-year gap between the implementation of these two massive changes could cause several compliance issues and mismatches for the electronic marketplaces which would fall under the scope of both legislations. In this case, Ecommerce Europe suggests aligning the implementation deadlines or considering a postponement in order to ensure a synchronised approach and application. In any case, the IOSS will need to be mandatory at the latest by the time the deemed importer concept enters into effect to ensure a level playing field among marketplaces (current proposal applies deemed importer to marketplaces 'authorized' to use the IOSS).

Finally, it should be acknowledged that the current deemed supplier rules are in their early years. While benefits on tax collection may have been measurable, the new system has not passed any tax audits in practice. Neither tax administrations nor platforms have any practical experience with this new set of rules and the resulting changes in data collection, storage or liability.

In any case, the deemed importer provision, if maintained, should apply equally across and be efficiently enforceable all marketplaces, regardless of their size, business model and place of establishment in order to preserve a level playing field.

When it comes to non-fiscal liabilities regarding products imported into the EU, the EU Commission has spent the last 5 years building up a domestic acquis to address products sold via e-commerce coming from outside of the EU. The clear choice in these non-fiscal measures is to focus on having a “responsible person” within the EU. This will now be the case for all products under the General Product Safety Regulation. This approach recognises the appropriate role of a marketplace in enabling seller compliance through their interface, and proportionate regulated responsibilities to promote compliance. Executive Vice President Vestager confirmed that the EC was not making marketplaces liable for sellers and their products during the public exchanges with the European Parliament over the Digital Services Act. The Customs proposal is a method of enforcing these domestic rules at the border and should be consistent with this approach to enable simple compliance for sellers from third countries. The Customs proposal could consider how to improve professionalisation of the responsible person, to make it really meaningful, and the establishment of a database of these providers for up-to-date cross checking. To conclude, the Customs reform should explicitly state that the deemed importer status only carries obligations and responsibilities on the fiscal aspect of importation, not on the non-fiscal part.

## 4. Feedback concerning the EU Customs Data Hub and Trust & Check trader status

### (a) EU Customs Data Hub/Data-sharing

Ecommerce Europe welcomes the proposal to establish a single database for customs, *i.e.*, the Customs Data Hub, which promises that goods will be imported into the EU with minimum customs intervention, without compromising on safety, security or anti-fraud requirements.

In this framework, it is necessary to highlight the importance of data-sharing provisions which are proportionate, effectively enforceable also against non-EU businesses and ensure a level playing field. Marketplaces play an active role on securing borders against counterfeits and unsafe products. In general, they are committed to collect and share data and information with customs authorities with the aim of protecting European consumers and reducing fraud. However, they would require clearer guidelines and reciprocity to ensure the data collection is targeted and meaningful and adequately addresses the issues the Customs reform proposal is trying to address.

Ecommerce Europe believes that the data submission to the EU Data Hub should be limited to the core minimum required for smooth entry through the borders, with all other data provided in a separate mode, through direct access to traders’ systems as per the Customs 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 EU Data Hub 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 reliable.

## (b) Trust & Check trader status

Ecommerce Europe welcomes the introduction of new partnerships between customs and businesses based on transparency and responsibility, such as the “Trust & Check” scheme which is a powerful new tool to support EU businesses, trade and the EU's open strategic autonomy, and upgrades the Authorised Economic Operators programme for trusted traders.

However, Ecommerce Europe would like to point out that the proposal should have provided more sufficient trade facilitation measures for businesses, in particular SMEs. Only large businesses with sufficient resources will be able to comply with the requirements of the newly introduced Trust & Check trader status, and in particular the requirement to provide real-time access to data. Businesses who are not able to comply with the Trust & Check trader conditions will be confronted with the considerable administrative burden of having to deal with standard customs procedures.

In addition, the T&C trade facilitation model places insufficient trust on the traders, as post clearance audits can still take place. It doesn't create enough incentives to ensure that checks are being made by customs authorities in real time to avoid costly post release surprises.

## 5. Early consultation with business and lead-time

The EU Customs reform proposal is ambitious, but at the same time it merely sets the vision of the Commission, and lacks crucial level of details to be still developed within implementing and delegated acts, which were not provided to the public. Many details on how the reform will be operationalized still need to be worked out. To ensure the reform meets its desired results and is adapted to the realities of business and trade, continued consultation with industry is key. This public consultation is a first step, but the EU Commission should consider setting up expert groups to inform the debate already during the legislative process. For example, we would highly recommend to set up an expert group with marketplaces and logistics service providers, focused on the e-commerce related changes. Wider consultations with business, especially SMEs would also be highly desirable as they would be mostly affected by the new customs rules.

The long timelines foreseen are justified given the scale of the reform and might even need further extension depending on the duration of the legislative process and further implementation work. Businesses can only start preparing and adapting their processes based on final legislation and detailed implementing legislation and guidelines. In addition, learning from the delayed implementation of the 2021 Ecommerce VAT package, sufficient lead time is also needed to adapt customs systems and processes. The proposed timeline of 2028 for the ecommerce related changes might therefore even need further extension, depending on the speed of the legislative process.

## Conclusions

In conclusion, Ecommerce Europe also believes that certain aspects of the proposed UCC reform require a careful assessment of the pros and cons. In particular, the removal of the €150 threshold for customs duty exemption and the introduction of the deemed importer regime require a reasonable reflection of the compliance and administrative costs of implementation, as well as on the alignment between parallel legislations and concurrent implementation deadlines.

## About Ecommerce Europe

Ecommerce Europe is the sole voice of the European Digital Commerce sector, representing, via its national associations, more than 150,000 companies selling goods and services online to consumers in Europe. Ecommerce Europe acts at European level to help legislators create a better framework for online merchants, so that their sales can grow further.