

EU CUSTOMS REFORM IN 2023: THE DATA- DRIVEN APPROACH

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1. INTRODUCTION: FROM THE EU VAT REFORM TO THE EU CUSTOMS REFORM

In May 2023 the European Commission released the proposal of reforming the EU Customs Union. This reform proposal is the most ambitious and comprehensive reform since 1968.¹ The EU Customs Reform Package in 2023 has several policy objectives: (1) Providing traders an EU-level centralized electronic interface 'EU Customs Data Hub' (in the impact assessment report it is called EU Customs Data Spaces) so traders can upload information and have the overview of the whole supply chain and reduce compliance costs; (2) Establishing a new EU Customs Authority to perform more harmonized customs controls and risk management (3) Providing a tailored solution for e-commerce imports, especially transactions via online platforms.

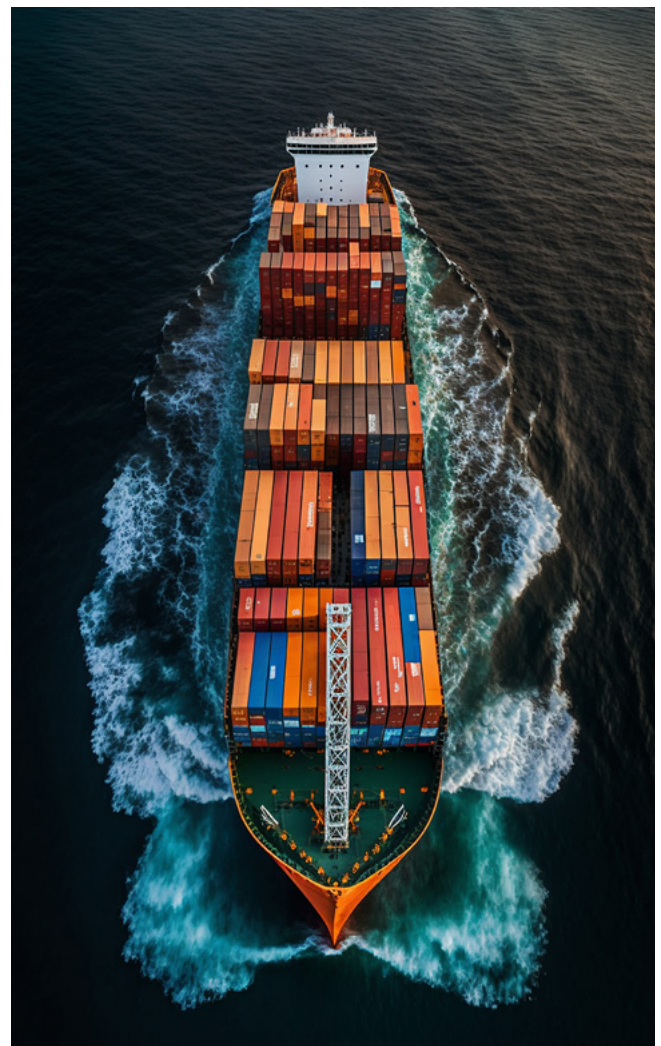
The EU Customs Reform Package addresses the ultimate dilemma faced by customs authorities. On the one hand customs are expected to ensure EU's financial interests by correctly levying duties, whereas it is impossible nor plausible to conduct checks on every single imported item, because over-excessive checks will hinder trade flows and waste customs' administration resources. The rapid development of e-commerce makes it even more difficult for customs authorities to strike this balance because the volume of the product flow and data flow in the digital economy easily exceed traditional customs' capacity.

The essential step to seek healthy balance in the digital economy is to effectively collect and process data. The European Commission refers this rationale as 'the data-driven approach' and emphasizes

it as the new paradigm that collecting the data as early as possible, and all the simplification measures also aim to facilitate the data collection process.

This paper inquires how the EU Customs Reform Package will address the problem of under-levy of custom duties of imported goods, especially low-value (up to EUR 150) goods from non-EU jurisdictions via online marketplace platforms (such as eBay, Amazon, AliExpress). This aspect is also where customs law, VAT legislation and the platforms' reporting obligations in the field of direct taxation (DAC 7) intersect closely.

The structure of the paper is designed as follows: Section 2 explains the key elements in the EU Customs Reform Package. Section 3 discusses experiences from implementing EU VAT since the EU VAT reform is a claimed success that EU Customs Reform Package is based upon. Section 4 concludes this paper.



2. THE PROPOSED MEASURES AGAINST UNDERVALUATION OF LOW VALUE IMPORTED GOODS

2.1 Online Marketplace Platforms Become Deemed Importers

The rapid development of e-commerce results in not only the problem of under-levying VAT on distant sales of goods imported from non-EU jurisdictions, but also under-levy of customs duty.² This is the so-called VAT gap and customs duty-gap. Customs duty-gap largely resulted from undervaluation of low value (under EUR 150) imported goods.

In order to address this issue, the EU Customs Reform package defines online platforms as 'deemed importers' i.e. they will bear the obligation to declare and pay customs duties of imported goods when EU customers use online marketplace platforms to order goods from non-EU jurisdictions.

The strategy of deemed importers is comparable to the EU VAT reform in 2021 that defines online platforms as 'deemed suppliers' to have the obligation to collect VAT. In addition to the reporting and collection obligations in the EU VAT Directive, online platforms will also have to report import data and collect customs duty.

2.2 Simplification Measures With The Aim Of Collecting Data

There are several simplification measures proposed in EU Customs Reform Package. The first proposed simplification is to remove the current duty exemption threshold of EUR 150. In other words, all goods are subject to customs duty. The incentives to (abusively or fraudulently) declare low value of imports should be reduced after the removal.

Moreover, EU Customs Reform Package proposes to expand the applicable scope of the I-OSS (Imported One Stop Shop) for VAT. With the I-OSS number, VAT is levied when the suppliers or online platforms sell the imported products and the subsequent import will be exempted from VAT, so the declaration and payment will be simplified. Currently, the I-OSS is only applicable for distant sales of low value goods shipped

from non-EU jurisdiction. After removing the duty exemption threshold, the I-OSS option is also open for all e-commerce goods.

For calculating the customs duties, a simplified tariff for the low value goods of distance sales will be adopted. The low value goods will only be subject to different tax rates according to the four-tier bucketing system. Therefore, it would be easier to decide the tariff and reduce traders' compliance burden accordingly. For valuation, while still using the transaction value method as the main method, the EU Customs Reform Package also have simplified customs valuation rules for low value imported goods. The traditional concept of intrinsic value that means the actual value of good will no longer apply to low value imported goods. Apart from increasing revenue and reducing compliance burden, an important goal of adopting these simplified administration measures is to increase the data submitted from traders to the customs authorities. The benefit of making use of simplification measures becomes an incentive to increase traders' cooperation to customs data collection. This underlying rationale is reiterated throughout the proposal.

2.3 EU Customs Data Hub: The Game Changer?

The need to collect more customs data is urgent because the size of customs duty gap of European Union is hard to estimate due to lack of data. According to Wise Persons Group (WPG) that provides advice to the European Commission on EU Custom Reform, 'Efforts at calculating the Customs Gap by the Wise Persons Group have failed due to the poor quality of data and the absence of methodology. It is of particular concern as one cannot manage what one cannot measure.'³ This is also the reason that the data collection has been the centre of the EU Customs Reform package and creating EU Customs Data Hub is the policy priority.



The proposed 'EU Customs Data Hub' is one single harmonized EU-level electronic interface to replace the current 111 separate systems across EU for all traders to submit their customs declarations and to reduce the compliance costs.

More importantly, the EU Customs Data Hub can provide the necessary IT infrastructures so the customs controls could be conducted strategically, and EU-level risk management can be performed consistently, and monitors can take place even before the goods' arrival.⁴ The EU Customs Data Hub is expected to become a data space where AI and machine learning algorithms can function 24/7 to conduct risk analysis.

EU Customs Data Hub is also technically inclusive for different stakeholders: it will accept any type of data formats and raw data, so data can be re-used for other purposes. The burden of submitting the same data would be reduced accordingly. The ideal EU Customs Data Hub looks promising, but the proposed implementation timeframe is unfortunately quite long. EU Customs Data Hub is expected to be launched in 2028 for e-commerce goods importers, become optional for all traders in 2032 and become mandatory for all traders in 2038. While acknowledging the depth of reform, the

proposed reform timeframe is still too slow considering the speedy development of technology.

3. THE DATA-DRIVEN APPROACH: CHALLENGES AND OPPORTUNITIES

3.1 The Reflections From Implementing EU VAT Reform 2021

It is widely accepted that the VAT reform on e-commerce platforms must be consistent with Customs law.⁵ At the same time, the experiences of the EU VAT reform can also provide insights for the EU Customs law reform. Despite of the claimed success of the EU VAT Reform, there have been concerns from both national customs authorities and taxpayers after implementation.

When EU VAT Reform imposes new reporting and record keeping obligations for platforms for distant sales of goods, it increases the number of declarations received by national customs. It will inevitably need (new) technology to deal with the increased workloads. Even for an EU Member State, like Estonia, that is famous for being technology savvy, Estonian customs also experienced difficulties and raised serious concerns about the data quality because the one (online platforms) submitted the data under the EU VAT Directive did

not even the one (sellers using online platforms) looking into the content of the consignment.⁶

The Poland experiences also indicate that adopting new technology to implement the EU VAT Reform has the undesirable impacts of making taxpayers bear extra costs and potentially block taxpayers' business operations.⁷ The Bulgarian customs face the problem that 'the customs formalities currently in force do not sufficiently cover the risks of fraud and error'.⁸

Besides concerns from national governments, scholars are critical with the EU VAT Reform for creating too heavy burden to online platforms.⁹ The new obligations for online platform required from EU VAT reform include invoicing, VAT-reporting and remitting, and record keeping. For smaller-scale platforms, EU VAT Reform has created disproportionately heavy administrative burden. For example, the reporting obligations of online marketplace platforms of DAC 7 and EU VAT Reform are not completely consistent with each other; the joint reporting of DAC 7 and EU is not possible either since the reporting period and the way of levying income taxes and VAT also differ.

Since the EU Customs Reform Package results in extra obligations for online platforms in addition to DAC 7 and EU VAT Reform, a similar concern will also arise. Even with all the simplification measures, it is undeniable that online platforms can still experience extra burdens. Therefore, more alignment and efficiency for reporting data required from different laws is necessary.

3.2 The Key To Enhance Efficiency: The Way Of Collecting And Processing Data

It is noticeable that the EU Customs Data Hub provides a more comprehensive exchange of information than the EU VAT Reform. Unlike DAC7, data collected due to EU VAT Reform are not automated exchanged as EU VAT system only allows exchange information upon request. The EU Customs Data Hub is expected to function as a real-time data space so collected data are automatically exchanged. If the EU Custom Data Hub can be integrated with the IT infrastructure

with EU VAT and DAC 7, it will streamline platforms' reporting obligations.

A comprehensive automatic exchange of information mechanism does not necessarily result in too heavy administrative burden for traders but reduce burden. When data can be naturally collected in the process of business activities, it will not create too heavy administrative burden and won't block business operations either.

Besides, maintaining a database at the EU level functioning 24/7 can relieve the burden due to 'retention obligation of data'. If the EU Customs Data Hub can accommodate data submitted by online platforms so they do not need to keep digital records themselves. In this regard, EU Customs Data Hub can further reduce the administrative burdens due to implementing the EU VAT Reform.

In my view, there could be another incentive for traders to actively cooperate with the EU Customs Data Hub when traders can benefit also from the fruits of data analysis. Data is the new resources in this era of digital economy but not all the economic operators are able to access and process the business data. Provided EU GDPR rules are fully complied, traders should have the access to the database of the EU Customs Data Hub. The IT



infrastructure not only for fulfilling their compliance obligations but also getting data and industrial overview and insights.

3.3 Using Statistical Values Method For Correcting Undervaluation Of Imported Goods

In addition to the simplified tariff and value method indicated in Section 2.2, in my view, the EU Customs Reform Package may consider going a step further to accept the statistical valuation method of the low value goods, since EU Customs Data Hub will be able to collect enormous business data.

The problem of 'undervaluation of imported goods' is quite common for levying customs duties on not only on the e-commerce imported goods but also traditional imports, because valuation of imported goods mainly depends on self-declared transaction value.

There is a noticeable trend that both WTO and EU's Court of Justice started to accept 'the statistical value' retrieved from various databases for similar goods to decide the value of imported goods instead of the transaction value (that are usually recorded in the invoices).¹⁰

The statistical valuation method will not replace the transaction value completely but can function as a correct mechanism or a detection mechanism. In my view,

the EU Customs Data Hub provides new opportunities and resources for customs authorities use the statistical valuation method. The new EU customs authorities to be as well as national customs should be brave enough to embrace this new trend.

4. CONCLUSION

EU Customs Reform Package has provided a promising picture: in the short term, VAT and customs duty gaps due to e-commerce can be reduced. In the long term, the data-driven approach can help EU customs authorities and businesses to build a healthy partnership with each other. When data collection is not only for customs authorities' enforcement but also for increasing traders' business insights, it could be a win-win scenario, for the customs authorities and all traders, especially the compliant traders.



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¹https://taxation-customs.ec.europa.eu/customs-4/eu-customs-reform_en (accessed on 20/08/2023)

²European Court Of Auditors, Special Report no 12/2019: E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved, 2019.

³European Commission. 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, 2022; Walsh, T. (2022). Putting More Union in European Customs. *World Customs Journal*, 16(2).

⁴Currently, the EU Customs Union does not have a consistent risk management framework. The criticism, see European Court of Auditors, Special Report: Customs controls: insufficient harmonisation hampers EU financial interests 2021, p.30-37.

⁵Brondolo, J. And Konza, M. (2021). Administering the Value-Added Tax on Imported Digital Services and Low-Value Imported Goods. International Monetary Fund.

⁶Liutkevičius, M., Pappel, K. I., Butt, S. A., & Pappel, I. (2020). Automatization of Cross-Border Customs Declaration: Potential and Challenges: A Case Study of the Estonian Customs Authority. In

Electronic Government: 19th IFIP WG 8.5 International Conference, EGOV 2020. Springer International Publishing.

⁷Toczek, E. (2022). The Use of New Technologies as a Means to Reduce the VAT Gap: The Entrepreneur's Perspective, in Dmoch, W., Kołodziej, B., Mioduszewski, M., & Mudrecki, A. eds. (2022). Harmonisation of VAT in the European Union: Present and Future. Akademia Leona Kozminkiego.

⁸Antov, M. (2023). Challenges to Customs Imposed by the New European Union Value Added Tax Rules on Cross-Border E-Commerce—the Case of Bulgaria. *World Customs Journal*, 17(1).

⁹See Lamensch, M., Merx, M., Lock, J., & Janssen, A. (2021). New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment. *World Tax Journal*, 13(3), 441-479; Leenders, M., & Merx, M. (2022). Platforms, a Convenient Source of Information Under DAC7 and the VAT Directive: A Proposal for More Alignment and Efficiency. *EC Tax Review*, 31(4).

¹⁰Schippers, M., & de Wit, W. (2023). The Use of Statistical Values to Combat Undervaluation in the European Union. *Journal of World Trade*, 57(2).