POSITION PAPER

BUSINESSEUROPE

29 July 2020

BusinessEurope's priorities for EU customs policy

KEY MESSAGES

1 The European Commission should have greater regard for how business processes work in its design of customs processes. Customs policy has an important impact on business competitiveness. Effective, business friendly customs processes can facilitate operations and ensure smooth transactions. Many changes in customs policy have already taken place with the introduction of the Union Customs Code (UCC), with more yet to occur with the continued implementation of the UCC.

2 The European Commission should restore the balance between customs obligations and simplifications for business. In its implementation of the UCC, the Commission has thus far focused mainly on the obligations and requirements related to risk control. The simplifications outlined in the UCC should have equal priority in order to ensure that the balance between requirements and benefits for businesses remains in place.

3 The EU's customs policy should further support and facilitate international trade. Through good rules of origin, modern HS codes, combating counterfeit goods, and helping trading partners modernise their customs policy and processes, the EU's customs policy can be an important tool for facilitating trade.

WHAT DOES BUSINESSEUROPE AIM FOR?

1. Further simplifications for Authorised Economic Operators (AEO)
2. The implementation of Self-Assessment
3. The implementation of Centralised Customs Clearance
4. The creation of a 'Single Window' system as a one stop shop for businesses
5. Eliminating the mandatory 6-digit HS code for the entry summary declaration and transit procedure
6. Updating customs valuation rules
7. Negotiating retrospective claims of origin and data confidentiality in origin verification
8. Ensuring that customs policy supports the closest possible EU-UK relationship
9. Modernising certain Harmonised Systems (HS) codes
10. Modernising the EU-Turkey Customs Union
11. Stepping up efforts against counterfeit goods
12. Supporting the implementation of the Trade Facilitation Agreement (TFA)

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The implementation of the Union Customs Code (UCC) in May 2016 was important step forward in creating a modern customs environment for government and business. However, most of the possible innovative solutions were not taken into account during the implementation of the accompanying rules of the UCC, namely the Implementing and the Delegating Act. There is presently a big imbalance between risk controls on one hand and innovative and future oriented solutions on the other hand. The balance between the benefits and requirements for business therefore needs to be restored through the implementation of key benefits for business. This balance has unfortunately been lost due to the delay in implementing the simplifications outlined in the UCC. Authorities should also carefully consider the need and purpose of data requirements they impose on business. The underlying principle should always be to minimise data collection to the necessary minimum.

The delay in the implementation of IT systems from 2020 to 2025 has also resulted in a delay in some of the key benefits in customs processes for governments and businesses alike. For businesses engaged in trade, the digitalisation of customs is essential to simplifying formalities. It is therefore important that the Commission avoids any further delay in IT implementation and shows leadership in implementing customs facilitations.

The COVID-19 pandemic has also made it clear that digitalisation helps in order to maintain the flow of international trade. Digitalised certificates of origin are a case in point in this regard. It is important that the EU works towards a broader acceptance of digital documents by third countries, since progress in this area will be of little use if third countries do not recognise digital solutions in trade documents. Tunisia, for instance, has shown to be unwilling to accept digital forms of certificates.

Below are our key priorities and requests for the next years.

Section 1: Customs and Simplifications

1. Authorised Economic Operators (AEO)

Being an AEO means that the company is trustworthy from a customs perspective, remains subject to random spot checks and has taken all necessary measures to ensure correct customs clearance in line with EU law and regulations. AEO status in theory means that companies benefit from simplified procedures, as they do not require a transaction-based scrutiny which is necessary for non-AEO companies. For example, AEO status is supposed to be a factor of competitiveness, but many simplifications, such as self-assessment and centralised clearance, are not yet implemented. In addition to those simplifications not yet implemented, companies have to invest a lot of administrative and financial resources in order to obtain AEO status while accepting to having their business processes, partners and products checked regularly. For European companies, it is therefore important to begin reflecting on whether the benefits justify the costs. In addition, as AEO status increasingly becomes a basic requirement, even SMEs must obtain the status in order to remain integrated within their supply chains. It is therefore essential to ensure the costs and benefits of becoming an AEO are adequately balanced.

BusinessEurope therefore urges the Commission to move forward with real simplifications for AEO status holders. This would simplify and reduce the workload for

both customs and companies and allow authorities to concentrate scarce resources on companies that represent a higher risk.

Examples of simplifications for AEO that business is looking for are:

a) Self-assessment (see section 2).
b) A waiver for entry summary declarations or pre-departure declarations
c) "General" prior risk analysis and "general" declarations to be based on the products, processes and observation tools of the economic operator.

2. Self-Assessment

When the UCC was introduced, BusinessEurope expected innovative solutions for self-assessment, doing away with the transaction-based processing that unfortunately still exists today. The single clearance orientated controls must be turned into system and process oriented controls. At present, self-assessment is not a reality and we would like the European Commission to work on concrete solutions to apply the UCC and introduce this simplification.

Achieving self-assessment and simplifying import declarations

In the strongest form of simplification, goods would be labelled with an identification number upon arrival in the EU. The owner of an authorisation for self-assessment would merely need to indicate that it is certified to self-assess the imported good. Once this has been verified by Customs, the goods would be automatically released. Instead of making an import declaration at the time of import, the entry should be registered in the operating records of the company. The company should then be able to periodically file customs declarations periodically as a means of simplification.

Instead of filing a separate import declaration for each shipment received, the company, which is AEO-certified or otherwise authorised to make use of simplifications, could, through self-assessment, compile a summary declaration and duty payment for a fixed period of time (such as once per month). In principle, the method would be the same as for Value Added Tax (VAT). Periodic customs declarations ought to be submitted with data summarised to the greatest extent possible.

Such simplification would reduce the administrative burden on the companies involved and the faster clearance at the border would alleviate the pressure on customs staff and infrastructure. However, there may still be the need for physical checks of imported goods for safety, sanitary or veterinary purposes.

The goal of self-assessment is to move away from transaction-based declarations and checks to a process-oriented approach.

The benefits of self-assessment would be as follows:

a) In case a company would change its process in a way that involves a change of the customs procedure, no administrative changes would be necessary. At present this would imply, among other things, a change of the customs declaration.
b) It would reduce the workload for all parties involved. It would decrease the number of messages and reduce (IT) costs for all.
c) Authorised Economic Operators (AEO) have already undergone checks of their business processes in order to obtain this status. It would therefore make little sense to subject every transaction of a trustworthy operator to further checks in the name of risk control. By using a process-oriented approach as opposed to a transaction-oriented approach, the freed capacity could be used for high risk cases.

3. Centralised Customs Clearance

Centralized customs clearance at import/export is one of the most important simplifications for European business. This would allow Authorised Economic Operators (AEO) to file customs declarations at their headquarters instead of the location of import/export, which simplifies procedures for companies with multiple points of entry/dispatch in the EU and harmonizes customs company system while allowing to focus on customs risk management.

Although the UCC has entered into force in May 2016, important steps to implement centralised clearance have not yet been taken. A delay in implementing simplifications outlined in the UCC significantly alters the balance of customs benefits and obligations for business. This also holds true for the postponed deadline for the implementation of IT procedures in Art. 272 of the UCC from 2020 to 2025. Following the UCC's entry into force, customs authorities are in principle no longer willing to use the 'old' possibility of cross-country authorisations such as a 'Single Authorisation for Simplified Procedure' (SASP). The argument is that this is no longer possible in view of the new regulations.

When the Commission proposed delaying the deadline for implementation of the IT procedures, BusinessEurope emphasised in a letter to DG TAXUD in March 2018 that this should not have a negative impact on business regarding centralised clearance at import. The reality, however, is that Member States refer to Art. 20 of the Transitional Delegated Act (TDA) and argue that the approval of SASP authorisations would lead to a disproportionate workload for customs given the absence of IT systems. While Art. 20 of the TDA indeed provides Member States with the discretion to make this judgement, the consequence is that the delay in implementing the IT measures means business has effectively lost the possibility to make use of cross-country authorisations until the IT systems are implemented.

BusinessEurope has a strong interest in the implementation of centralised clearance, which is a decisive instrument for a modern Single European Market. Filing customs declarations at the headquarters of a company while the goods are located elsewhere is a must for the future. In order to fully implement centralised clearance, there are also other areas in which centralised solutions are required. It would not be possible to use centralised clearance without the possibility of taking a centralised approach in areas such as:

- Import VAT
- Statistics
- Excise duties
- Prohibitions and restrictions
- ECS (export control system) / ICS

We require solutions particularly in the area of Import VAT and statistics because these two areas touch on all products. In order to realise this, the Commission should support business by introducing guidelines or regulations, or to define the processes which must be used in these areas to ensure a centralised process.

Once centralised clearance is implemented successfully, it would bring about the following benefits:

a) The customs office responsible for dealing with the company headquarters is familiar with the products, processes and contact persons of the company, which leads to efficiency gains and is a big advantage for both customs and the company.
b) It would create a single point of contact in case of problems or misunderstandings, which would minimise the workload for both parties. In the absence of centralised clearance, authorisations across different Member States would lead to a complex situation in which the company would have to communicate with several customs authorities.
c) It would decrease the workload for both customs and companies in case of audits.
d) The use of simplifications for special procedures are only possible if the declaration is filed to one customs office (such as the special database in case of Inward Processing Relief (IPR) or Outward Processing Relief (OPR)).
e) It would minimise the number of VAT registrations across EU Member States.
f) Companies would only need to make use of one type of IT system for customs. At present companies face different IT systems across Member States.
g) It was/is very difficult for companies to obtain a SASP. Negotiations sometimes took years without a satisfactory result for all parties involved. Centralised clearance should change this.
h) Customs processes would be simplified significantly. There would be only one process as opposed to several different ones when customs declarations must be filed to different customs offices.
i) The company's customs activity is centralised, which allows Company Processing optimisation and reduces costs and bureaucracy.

BusinessEurope strongly advocates for the implementation of centralised clearance at the earliest possible opportunity. It is an important simplification for business that would produce efficiency gains for both customs and business. We therefore urge the Commission and Member States to work together to implement it as soon as possible and to avoid further delays.

4. Single Window

The European Union should move forward on the creation of a 'Single Window' system – a one-stop shop for controls at which companies can lodge all documents necessary to clear their goods for entry into the EU. Instead of filing different paperwork with various authorities, companies would submit all relevant documents at this central contact point who would forward them to other government agencies in order to obtain the necessary approval for companies to clear their products. A Single Window would significantly reduce companies' workload and is one important step in achieving centralised customs clearance.

At present there is a growing tendency towards centralised data collection by European authorities. This often goes beyond the data required for customs clearance to include logistics data. Business supports the idea of harmonising data, though given that additional requirements create additional compliance costs, authorities should carefully consider the need and purpose of data requirements they impose on business. The underlying principle should always be to minimise data collection to the necessary minimum.

In the light of the Covid-19 crisis, many import and export authorisations have been submitted, approved, exchanged and controlled by transmitting Word or PDF files via Email. This was utilised by authorities that deliver authorisations, administrations and agencies that control them, importers and exporters freight forwarders and customs agents. This simple digitalisation of import and export authorisations might not be sustainable in the long term. However, when it is necessary to use those means of exchange, it has shown to work.

As for the general framework for the Single Window, the regulation should allow for electronic exchanges of relevant data (as mentioned above). In addition, the Single Window implementing agenda shared with the Trade Contact Group should be reviewed and its implementation accelerated.

5. Harmonised Systems (HS) code in the entry summary declaration and the transit procedure

The European Commission is currently planning to make the 6-digit HS code mandatory for the entry summary declaration as well as the transit procedure. BusinessEurope objects to both changes for several reasons.

a) In relation to the entry summary declaration:
   - The application of four digits should remain enough for risk-analysis requirements.
   - BusinessEurope understands the intention to make it easier to match and compare data using commodity codes. Nevertheless, developments in IT means that the goods description is easier to process and that the HS code is therefore not essential in this procedure.
   - In many cases, especially where collective codes (covering a big range of different products) are used – the HS code is not really helpful in determining risk, and a 6-digit level would involve considerable extra work for all parties involved.

- In some sectors, the goods-related risk of products is negligible. Here the numbers of data sets to be submitted would considerably increase workload and costs, with an equal rise in the volume of declarations
- Often, even specialists disagree on the correct HS code to be used. An incorrect HS code would therefore also be of little help to assist in risk analysis.

The transit procedure was originally introduced as a simplification for trustworthy businesses to avoid lengthy and cumbersome customs procedures each time goods cross a border. Its importance is reflected in multiple international agreements, such as the WTO's Agreement on Trade Facilitation (TFA). Transit is particularly relevant to the Union, where a single customs territory is combined with a multiplicity of fiscal territories.

b) In relation to the transit procedure:
   - The HS code is often not available to the shipping agent responsible for the transit procedure for several reasons.[1] This would lead to time delays that can particularly affect 'just-in-time' deliveries, and thereby affect production.
   - It would incur greater costs without significant added value. Transit declarations could contain more than 100 items that could in principle be covered by a product description. Introducing 6-digit HS codes would generate many additional declarations.
   - Introducing a mandatory 6-digit HS code for transit movements would require huge systematic and operational changes for our members in addition to staff increases and an increase in transit times.

6. Valuation

6.1 Licences.

Starting with the UCC and its accompanying regulation (IA and DA) it was not clearly regulated that licence fees should only be considered in relation to imports. This should be clarified by amending the legal regulations of the IA dealing with this topic.

6.2 "National sale" (Art. 128 IA)

In relation with the implementation of the UCC and its accompanying regulations like IA and DA it was stipulated that the customs value of imported goods is to be based on the sale occurring immediately before the goods were brought into the EU customs territory.

The substantial part of business activity these days is based on back-to-back ordering. A literal application of the new wording in Art. 128 IA would mean that EU importers are obliged to use their resell price for customs valuation purposes where goods have been 'pre-sold' prior to their physical entry into the EU customs territory. According to the

[1] For example, classification takes place in a "process-related" way only when the goods arrive at the company because the expense is otherwise not feasible. Second, in case of some delivery terms (e.g. DAP, CPT, DDP), the importer does not have any knowledge of the upcoming import and therefore does not have any influence on making arrangements to make sure the HS code is available in time. Third, the number of different companies leads to a 'broken chain' of information flow and exchange problems.

European Court of Justice (C-116/12, legal consideration 45) the term 'sale' must be interpreted broadly. Advisory Opinion 1.1 of the World Customs Organisation also states that a sale must be interpreted in the wider sense to enable the use of the transaction value method. In our view this leads to the potential risk that an order must be regarded as a sale, especially if cancellation is not possible.

The use of this resale price for customs valuation will result in significantly higher import duties. We point out that this in turn will lead to increased prices for a broad range of goods imported into the Union. This will either lead to higher prices for customers in the Union or to lower margins for trade in the Union.

In addition, some goods are traded numerous times before they actually are released for free circulation. The prices for these goods may differ substantially and importers do not always have access to all transactions that took place before the goods have physically entered the territory of the European Union. Importers thus run the risk of declaring incorrect values.

We therefore request that the wording of Art 128 UCC implementing will be adjusted in such a way that an importer may use his purchase price to determine the customs value.

6.3. First sale rule

The cancellation of the first sale rule (the possibility of using the price of the first transaction in case of a supply chain), had a negative impact on European businesses. The consequence is that it leads to a higher customs value of the product at the time of importation into the EU, and, accordingly, to a higher duty base on which tariffs are applied. This negatively impacts the competitiveness of European companies.

The de facto 'last sale rule' that is now in place makes it difficult, as identifying the last sale is more complicated. This is made even more difficult by complex supply chains in which not all parties know one another.

A return to the first sale rule would solve these problems, and simultaneously address the issue of the national sale (point 6.2., above).

6.4 Servicification

Due to the ongoing servicification of manufacturing, services make up for an increased share of the value-added of manufacturing products. More specifically, services can be embodied into goods, forming part of the value of the good before it is sold. More broadly, they may also be supplied in connection with goods as embedded services (e.g. after-sale or customer care services). Current trade rules are not well-suited for the increasing services-intensity of manufactured goods: Under the current trade regime, once a service is incorporated in or linked to a good and becomes part of the good's value, it ceases to exist as a service and is hence subject to the trade regime applicable to goods in international transactions. As a result, the service may be subject to import duties. As most of the services concerned by this are high-value added and intrinsically linked to technology (e.g. R&D, architectural and engineering services, design), this penalises trade in the high-value added goods.

The European Commission should start reflecting on this topic. One possible way in which the value of services could be excluded from the value of the final product would be to accommodate for its exclusion in the EU's customs valuation rules. This could mean that if software was created in the Union, it could be excluded from the value of the product. Other countries could take similar steps to exclude the value of their services in exports to the European Union. In any case, an in-depth impact study would be needed.

Section 2. Trade and Customs

7. Rules of Origin in EU FTAs

7.1 Retrospective claim of preference

Future EU FTAs should strive to explicitly ensure a clause on retrospective claim of preferential duty after importation (e.g. like in the EU-Korean FTA). This will help to increase operational flexibility to businesses and ensure an increased utilisation of preferences FTAs have to offer from day one of the implementation.

7.2 Origin Verification

Under EU FTAs, origin verification is conducted by the exporting customs authority and the conclusion of this investigation is subsequently communicated to the importing customs authority. The EU has recently adopted a new approach to origin verification in its FTAs with Japan, which will also serve as a model for future FTAs. Under the new model, the importing authority will determine whether products meet origin requirements, based either on the importer's knowledge, or through a statement of origin issued by the exporter.

The new model constitutes a major change in origin verification, as the responsibility for determining origin has shifted from the exporting authority to the importing authority. BusinessEurope is concerned about this new approach, which remains even after an exchange of letters with DG TAXUD as well as several meetings. Our concerns relate to the following issues:

- Absence of limits on data exchange

BusinessEurope appreciates the Commission's attempt to limit the type of data that may be requested in an origin investigation.[2] Nevertheless, even the type of data that has been listed as the maximum type of information an importing authority may request includes several data elements that are considered highly confidential by exporters. As such, companies in question would not be willing to share this information either with an importing trade partner or with their respective customs authority. This includes, for example, details of the production process, and the quantity and value of the raw

[2] An overview of the maximum type of data that may be requested of traders can be found in paragraph 2 of Article 21, Chapter 3 of the EU-Japan EPA.

materials used. These items relate to a company's manufacturing process and constitutes the intellectual property of economic operators.

Besides the commercial sensitivity of some of the data elements listed, we are also concerned that the text of the EU-Japan Economic Partnership Agreement (EPA) allows for an open-ended list of data that can be requested from traders. In Articles 3.21.5 (related to verification of origin based on importers' knowledge) and Article 3.22.2 (regarding data exchange in administrative procedures), the EPA allows importing authorities to request additional data where it deems it appropriate. The ability to request further "specific documentation and information" could allow for intrusive and/or superfluous requests. We appreciate the Commission's view that in practice it might be possible to avoid "excessive demands" being made on exporters but at the same time it is hard to see how this can be guaranteed.

- Protecting confidential data from arbitrary trade practices

Although it has been clarified in the text of the EU-Japan EPA that exporters are not required to provide confidential business information either to the importer or the importing Party, we are concerned that a *de facto* obligation exists to share data within the verification process in order to avoid the denial of preferential treatment, higher import duties, and the concomitant loss in competitiveness.

Importers will try to mitigate risk but the extent to which this can be done will likely depend on the balance of market power between the two traders. Large importers will try to include terms of sale with the exporter that require the latter to provide any and all data which importing authorities need to confirm eligibility for tariff preferences or to assume liability for duties paid by the importer due to lack of supporting evidence. Exporters who are reliant on the business provided for by their importing partner might de facto be obliged to share information that they would otherwise treat as confidential. The implications are reversed where the balance of market power tilts towards the exporter. Here the importer could be obliged to either forgo preferential treatment for the goods they are importing or to assume a risk in proportion to the size of the tariff due, possibly as well as any related penalties.

Besides the complications which this system creates in the relationship between the importer and the exporter, we are also highly concerned that some governments will pressurize local importers to get information that they would not obtain through contacts with the exporting customs authority. This risk is even more prevalent when it comes to state-owned enterprises.

- Arbitrary denial of preference

The guidance on origin verification issued for economic operators in the agreement with Japan states that preferential tariff treatment may not be denied only because the importer would not have the information required to prove origin from the exporter. However, it is our understanding that in respect of imports made with a statement of origin, that recourse by the importing customs authority to the administrative cooperation procedure, where an initial verification has been inconclusive in definitively confirming the origin of the goods, is only optional. Therefore, in the absence of any obligation on

the part of the importing authority to establish administrative cooperation procedures with the exporting authority, in effect, the denial of preferences can still happen in an arbitrary manner.

Key requests:

BusinessEurope strongly believes that the transfer of commercially sensitive information should stop at the border in case of a statement of origin issued by the exporter. The EU and its preferential trade partners should consider each other as trustful trading partners. Only the result of an origin investigation by the exporting customs authority should be transmitted to the customs authority of the importing party in order to limit the type of data being transferred, protect confidential business information, prevent the arbitrary denial of preference, and to preserve the commercial relationship between the exporter and the importer.

We would propose that the clarifications and assurances made in the context of the EU-Japan EPA are included in any EU trade agreement in which these provisions are included.[3] In case doubt about proper origin persists, an administrative process should be triggered in which exporting and importing authorities resolve the issue in a way that does not lead to a transfer of commercially sensitive information from the exporting party to the importing party.

Furthermore, the new origin model also requests companies to note an "origin criteria" for each delivered item. This information is extremely difficult to manage in companies' IT systems. This point should be removed from the EU's origin model and not be used again in future agreements.

8. EU-UK relations

The United Kingdom's departure from the EU challenges complex supply chains and close-knit partnerships that European and British companies were able to establish over the past decades thanks to the European Single Market and the free-trade agreements (FTAs) concluded by the EU with the rest of the world. Keeping the EU-UK future economic relationship as close as possible whilst preserving the integrity of the Single Market and a level playing field is thus a central concern of the European business community.[4]

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[3] "Where, in accordance with the second sentence of Article 3.16(3) of the EPA, the customs authority of Japan requests from an importer who claims preferential tariff treatment for a product under the EPA to provide an explanation that the product satisfies the requirements of Chapter 3 (Rules of Origin and Origin Procedures) of the EPA, the importer is not obliged to provide that explanation which is not available to the importer. The absence of such explanation will not lead to denial of the preferential tariff treatment under the EU-Japan EPA." European Commission, *EU-Japan Economic and Partnership Agreement (EPA), Rules of Origin and Origin Procedures, Information to EU exporters making out Statements on Origin*, 1 August 2019.

[4] See BusinessEurope's paper (2018) on *Brexit: The Customs Implications and Solutions* for a detailed overview of our customs related concerns and how these would best be addressed. See also BusinessEurope's position paper (2020) on *The Future EU-UK Relationship* for a detailed overview of our overall requests regarding the future relationship.

Whilst future trade between the EU and the UK must remain tariff and quota-free, the possible re-introduction of costly and time-consuming border formalities is a major concern for companies. An EU-UK agreement should therefore foster dialogue between regulators within a framework of permanent cooperation to facilitate customs procedures and promote regulatory alignment in goods trade. We would also welcome some sort of cooperation in the field of custom security between the EU and the UK. A possible solution could be a bilateral agreement between the UK and the EU, that facilitates the participation of the UK in the European customs security area. Switzerland for example has such a bilateral agreement on customs facilitation and security with the EU since 2009. It prevents the application to Switzerland of EU security measures that apply to third countries, such as the obligation to notify imports in advance. At the same time, it is important that a Data Adequacy decision is reached in parallel in order to facilitate the exchange of personal data and customs data between the EU and the UK.

Regarding customs declarations, self-assessment and simplification have the potential to reduce disruptions of trade between the EU and the UK. However, simplified customs procedures need to be developed for all businesses to ensure that enterprises can comply with the new customs obligations arising after the transition period ends. This is necessary in order to prevent supply chain disruptions, particularly for SMEs and those that have never traded outside the EU before. Particularly, customs authorities should adopt a process-oriented approach to customs clearance as opposed to a transaction-based approach. Moreover, pre-clearance of goods should be explored to reduce customs controls and to avoid queues at the border. In the EU Union Customs Code, possibilities for simplified customs procedures already exist for authorised economic operators (AEOs). However, these have not been fully implemented and the vast majority of companies trading between the EU and the UK do not hold this status and would have great difficulties obtaining it. BusinessEurope is in favour of a mutual recognition of AEO authorisations between the EU and the UK so that companies that have already obtained their AEO authorisations benefit from less customs controls in the UK and the EU. In this context it should be recalled that most border checks are not linked to customs but to Single Market rules.

Regarding rules of origin, simplifications in the area of preferential origin are required in order to minimise the workload for all parties. The rules should allow companies on both sides to benefit from preferential EU-UK trade. In order to maintain existing supply chains with neighbourhood countries, the UK should join the Pan-Euromed Convention. Bilateral cumulation between the EU and the UK would also help preserve supply chains. At the same time, these rules also need to make sure that companies from third countries do not divert their trade through the EU or the UK to the other's market. One of the most important simplifications is the so-called approved exporter. It allows a company to issue the proof of preferential origin directly whilst the company ensures that it fulfils the rules of preferential origin. Customs authorities only conduct spot checks in case of postponed audits. If the EU27 and the UK negotiate an FTA, the number of required authorisations for approved exporters will increase significantly. It is therefore key that the authorisations be issued on time. Moreover, the future FTA between the UK and the EU should include an origin verification system that is strictly based on the judgement of the customs authority of the exporting country – unlike the EU-Japan EPA where it is based on the importing country – in order not to complicate the relationship between the importer and the exporter.

Another example where the EU and the UK can minimise the burden of increased customs declarations relates to low-value consignment relief. This is the threshold under which low-value consignments can enter the EU and UK without taxes and duties being payable. It should be maintained for low-value consignments indefinitely after Brexit. This simplified customs process will avoid adding hundreds of millions of additional annual declarations into the EU's and the UK's IT systems, with knock-on effects on the wider economy. To maintain the ease of trade with developing countries, the UK should seek to stay within the EU Registered Exporter System (REX), since it is a vital device to boost trade with developing countries whilst reducing the potential of administrative duplication for businesses operating in the UK and the EU. To avoid that inspections for sanitary, phytosanitary, food safety or security purposes have to be conducted twice (e.g. for Irish goods that transit the UK before entering the EU or vice versa), the UK should implement its stated desire to remain in the EU Common and Union Transit System, and thereby maintain its access to the EU's new computerised transit system. Nevertheless, the administrative and economic burden of the scheme would need to be reduced. IT systems can also contribute to make the customs and administrative procedures more efficient and less complex and time consuming for companies. In this regard, the EU should speed up the development of a 'single window' as a one-stop-shop for companies to lodge all their customs-related paperwork while the UK should develop its own 'single window' system. Finally, the UK should maintain the harmonised customs classification based on the Integrated Tariff of the European Union (TARIC code) to avoid additional costs and resources due to product classification. In this context, the data required to lodge a customs simplification from both sides should be made as simple as possible.

If the transition period would end without an agreement on the future EU-UK relationship, companies will face enormous disruptions in the form of tariff and non-tariff measures. Trading on WTO terms would lead to significant customs duties in many product areas whereas a sudden rupture with the Single Market could even grind trade to a halt. It is therefore important that the transition period serves as an adequate bridge between the United Kingdom's departure from the EU and the agreement on the future EU-UK relationship.

Furthermore, it is essential for business that the implementation of the Revised Protocol on Ireland and Northern Ireland within the Withdrawal Agreement ensures several objectives. A frictionless border between Ireland and Northern Ireland, full respect of the integrity of the Single Market and a level playing field and facilitates Northern Irish trade with the rest of the UK. Overall, we expect a proper and effective implementation of the withdrawal agreement by ensuring that all the conditions are in place, including physical infrastructure, trained staff and the necessary IT systems. It is also very important to clarify VAT rules for trade with Northern Ireland. Businesses should be made aware of the changes well ahead of time in order to prepare.

9. Modernisation of the WCO's Harmonised System (HS) codes

For decades the World Customs Organization's (WCO) Harmonized System (HS) provided a unified and simple way for classifying goods, thereby facilitating international trade. However, due to the rise of global value chains and digitalisation, manufacturers

of electronics, robots and digital technology increasingly find it difficult to classify their products. Consequently, European companies – particularly SMEs – face high compliance cost and risk of customs debt if authorities find that an incorrect HS code has been used for classification of imports. Problems arise mostly due to procedural challenges in the HS system as well as peculiarities in certain jurisdictions, such as with the slow pace of updates and the uneven implementation by certain customs authorities. It should be our first and foremost aim to strive for stability and predictability in the system especially in current times that are characterized by increasing uncertainties in the trade environment. The focus should be on how the existing system could be improved, rather than replaced.

The coming years constitute a window of opportunity since the Policy Commission of World Customs Organization (WCO) initiated a process for strategic review of the HS system. A first step was taken at the WCO conference on the future of the HS system in May 2019. The outcome of the conference includes recommendations for the Policy Commission to review the HS system. The recommendations point out that special attention should be paid to chapters covering technological, chemical and pharmaceutical products as well as those chapters featuring products with high services components. The strategic review of the HS system provides momentum for the EU to reform the system in an evolutionary way through negotiations with our trading partners as well as via the WCO.

Key requests:

BusinessEurope encourages the European Commission to:

- Maintain the existing structure of HS as many trade agreements, rulings etc. rely on the current version of HS.
- Pursue narrow, iterative updates to the HS to ensure the legal text covers new and advanced products.
- Shorten the review cycle of the HS from 5 to 3 years to keep the system better at pace with the technological development.
- Focus on uniform interpretation of classification across all jurisdictions rather than try to change the classifications themselves. In that regard, HS classification decisions of the WCO Harmonized System Committee should be given a more prominent role. Differences in interpretation between different national customs offices should be solved promptly.
- Provide the private sector with the opportunity to present their views in the WCO Harmonized System Committee to ensure more precise classification decisions.
- Ensure that the “precedence provision” in Chapter 85 note 9(b) is maintained.
- Create practical solutions for “parts and accessories”. There is a tendency to classify these goods following the material of these goods and not their function. This leads to an additional workload and costs for all included parties.

10. Modernisation of the Customs Union with Turkey

The EU and Turkey are important trading partners with interconnected value chains and investments. Priority should be given to the modernisation of the Customs Union Agreement while ensuring that Turkey maintains the process of alignment with EU legislation in key areas. An upgraded Customs Union needs to address existing barriers to trade and investment, define standards and regulations and establish an effective, depoliticised, dispute settlement mechanism. In the meantime, the European Commission should also address the current trade and investment concerns, including barriers in customs procedures.

Over the past year, businesses have faced a growing number of customs issues in trade with Turkey. For instance, Turkish customs authorities started to ask certificates of origin for every item shipped into Turkey, as a way to address perceived asymmetries in the structure of the EU-Turkey Customs Union Agreement, which do not allow Turkey to benefit from the increased number of FTAs signed by the EU with third countries that do not have a similar agreement with Turkey. European companies also were asked for preferential supplier declarations which has led to general confusion as well as additional administrative effort. In addition, due to the ongoing trade tensions all over the world, Turkey has introduced certain new duties such as additional customs duties or additional financial obligations. However, because the EU and Turkey are members of a Customs Union, EU goods are exempt from these duties, provided that the origin of goods is proven at the time of importation.

Key requests:

Business requires simplifications when shipping goods into Turkey that are in free circulation within the EU customs union. The requirement by Turkish customs to provide certificates of origin when goods originate from third countries is rather difficult, because companies would have to contact their supplier and ask for one. Based on this certificate, companies would then be able to create another certificate of origin in the EU. This is very time consuming and creates a large workload for companies wishing to ship goods into Turkey.

In this regard, Turkey and the EU should find a proper way to ensure that simplified declarations or alternative proof by the EU exporters will be accepted to prove the goods are of EU origin and ATR. Moreover, developing a system within the scope of Customs Union that makes use of technology and enables that origin certification between EU and Turkey is carried out in a facilitating manner would be beneficial for both the EU and Turkey. Overall, modernising of the Customs Union remains a priority for European business.

11. Counterfeit goods

According to a recent study undertaken by the OECD and the European Union Intellectual Property Office (EUIPO), international trade in counterfeit and pirated

products in 2013 represented up to 2.5% of world trade, or 338 billion euro. This was even higher in the EU context: covering 5% of imports or as much as 85 billion euro.[5]

The study also shows that trade routes in counterfeit and pirated goods are becoming increasingly complex. The share of small shipments, mostly by postal and by express services, containing counterfeits or pirated goods, keeps growing. This is due to shrinking costs of such modes of transport and the increasing importance of e-commerce in international trade. For traffickers, small shipments are also a way to avoid detection and minimise the risk of sanctions. This, in turn, raises the costs of checks and seizures for customs and presents additional challenges to enforcement authorities. Overall, however, more than 80% of the seizures of counterfeit and pirated goods come from China.[6]

Key requests:

Against the backdrop of the study mentioned above, BusinessEurope urges the European Commission to step up its efforts, including stepping up efforts with China in the fight against counterfeit goods.

12. Implementation of the WTO Trade Facilitation Agreement (TFA)

Following the ratification and entry into force of the TFA, the efforts of the WTO and its members should now focus on ensuring the effective and ambitious implementation of the agreement. This also means close monitoring of the commitments made by WTO members. In the area of customs, European businesses experience problems in third countries in the implementation of Article 10 § 2.3. The article states the following:

> *2.3. A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.*

Despite this article, this document is requested by a growing number of WTO members such as Albania, Ghana, Kazakhstan, and Russia.

This article was created in order to avoid the inclusion of information of the value of goods. This is because the exporter of the goods is not always the supplier of the goods. For instance, the manufacturer in the account of the trader may export the goods, whereas the value of the goods for import purpose must come from invoice of the trader.

All other data of the export declarations are contained in the import clearance document and are not as such confidential or harmful for the security of the sales.

[5] Mapping the economic impact of trade in counterfeit and pirated goods – 2016 https://euipo.europa.eu/tunnelweb/secure/webdav/guest/document_library/observatory/documents/Mapping_the_Economic_Impact_study/Mapping_the_Economic_Impact_en.pdf

[6] http://trade.ec.europa.eu/doclib/docs/2018/march/tradoc_156634.pdf

Some other members bypass the strict application of this article by asking exporters to put this value information in other documents than export clearance one: India (a signatory of the TFA) has just requested adding the mention of value of goods on maritime manifest for both export and imports. Bangladesh has requested value of goods to be put on transport documents used for air and sea shipments for imports purpose, which is in force since 1st of August 2019.

These regulations are not literally against the TFA article mentioned above, but are clearly in opposition to its spirit. It is also opposed to the 1995 WTO "Decision regarding cases where Customs Administrations have reasons to doubt the truth or accuracy of the declared value".[7]

Key requests:

1) The EU should request that the WTO issue guidance in order to avoid the obligation to indicate the value of the goods or the invoice number used for export in any document for trade. This includes some ICC certificates of origin or preferential certificates of origin that contain this information (Latin America countries, ASEAN, …).
2) The European Commission should contact their partners in above mentioned countries to ask them to withdraw these regulations and should treat this kind of regulations as non-tariff barriers.

[7] World Trade Organization, Article 17, *Customs Valuation Agreement*, available at: https://www.wto.org/english/res_e/publications_e/ai17_e/cusval_art17_oth.pdf