

Brussels, 14 September 2022

WSC RESPONSE TO THE EUROPEAN COMMISSION CALL FOR EVIDENCE ON THE REFORM OF THE UNION'S CUSTOMS LEGISLATION

The World Shipping Council (WSC) provides a coordinated voice on global regulatory affairs for the liner shipping industry, operating principally containerships, vehicle carriers, and roll-on/roll-off vessels. The Council has offices in Brussels, Washington D.C and Singapore and its members account for approximately 90% of global liner shipping capacity. This includes several of the world's largest lines that are headquartered in the European Union. WSC member companies transport over 40 million TEUs of European export and import cargo each year or roughly two-thirds of the EU's seaborne trade by value. WSC member companies play a pivotal role in European and global logistics. Their operations and investments extend beyond ships to port terminals, warehouses, truck companies and the information technology systems that are critical for EU logistics and supply chains. The WSC is inscribed on the EU Transparency Register under number 32416571968-71.

1. General Remarks:

The WSC is pleased to respond to the European Commission (EC) '*Call for Evidence on the Reform of the Union's Customs Legislation*'. This is a time of significant challenges for the EU's trade and economy, as it recovers from the continuing impacts of the COVID-19 pandemic and endures additional pressures arising from the ongoing war in Ukraine. WSC also recognises the need for the EU's customs framework to take account of market place transformations, the evolution of new digital data submission solutions and the growth of e-commerce: a major driver of the current reform process. Taking the Customs Union to the next level as pledged by President Von der Leyen, should equip the EU to better withstand present and future challenges, while protecting its citizens and harnessing the economic opportunities of the 21st century. To do so Europe will continue to rely on its external trade and maritime commerce. The future Customs Union needs to be better configured for that trade to flourish securely. The completion of a genuine Customs Union characterised by the seamless application of its rules across all EU Member States, the operation by default of common EU IT systems and innovative processes remains a key priority.

A closer tripartite cooperation between the Commission, Member States and the business community is vital to achieve this. Industry and business stakeholders as represented in DG TAXUD's Trade Contact Group (TCG) need to be better integrated into the customs policy design process. However, while general policy goals and areas of concern are elaborated in the consultation document, concrete policy proposals or specific options for achieving these goals are entirely absent or presented without detail. There needs to be consultation with industry about the legislative *means*

of achieving desired policy outcomes not simply the policy end goal. This is where industry expertise and knowledge of their sector can prove most useful to regulators, in the design of measures tailored to achieve the EU's policy objectives. This engagement is currently lacking from the UCC consultation process. We urge the Commission to consult with industry on specific policy measures and potential legislative proposals *before* they are published as draft legislation. The proposed timeline for the EC to adopt draft legislation in Q4 2022 would seemingly preclude the possibility to discuss any proposals in sufficient detail with the TCG. Such an ill-considered short cut, risks negatively affecting the quality of the legislation and its ability to meet EU policy goals. The timetable for UCC reform needs to be reconsidered.

Above all in such an important area as customs – a cornerstone of the European economy - new legislation needs to be more carefully prepared. Due to the absence of policy details in the consultation, WSC will also take the liberty to comment in this response on some of the proposals contained in the Wise Persons Report on the Reform of the EU Customs Union¹, particularly where they correspond to policy goals and objectives identified by the EC in its Call for Evidence.

2. Prioritising the Unfinished Business of UCC Implementation

While looking to the future of the Customs Union, the EU cannot neglect the unfinished business of implementing the UCC. Vast sections of its legal provisions remain unapplied while the necessary national and EU IT systems are not deployed. Despite progress in some areas, the UCC's flagship safety and security system (ICS 2) remains only one third implemented, despite the EC calling its advance cargo risk assessment system 'deficient' in 2012. We certainly do not advocate a rushed implementation but it is vital that the new customs reform agenda consolidates and prioritises the outstanding IT implementations² as per the UCC Work Programme and course corrects where necessary.

A specific case in point concerns the UCC National Entry System (NES) which should be implemented by 31 December 2022. In March 2022 WSC alongside 8 other major trade associations wrote to DG TAXUD highlighting the unavailability in most Member States of vital IT specifications for the new IT systems (see annex I). In June the EC acknowledged, that due to lack of progress they were awaiting derogation requests from Member States to postpone implementation. This highly unsatisfactory situation remains unresolved, generating considerable uncertainty for industry. There is a high risk of significant costs for trade if implementation in different Member States proceeds in a disordered and uncoordinated way, with little or no lead time for carriers and other economic operators to implement costly system changes, when NES system specifications finally arrive.

Over the medium to long term the NES case strongly supports the ambition indicated by the Commission in its call for evidence and the Wise Persons Report to move towards EU level deployment of common customs IT systems as the default approach, replacing the mosaic of different Member State implementations and building on the success of the existing Trans-European systems. The status quo, even when not beset by the delays experienced under NES implementation, imposes

¹ Report by the Wise Persons Group on the Reform of the EU Customs Union – Brussels March 2022 – [Link](#)

² In that sense we welcome the statement highlighted in the call for evidence that the new reform must *'...leverage the foundations laid and investments made under the current UCC, and provide for a clear transitional path from the current environment, over a 10-year period (2025-2034)'*.

unnecessary costs on both national administrations and economic operators, particularly those active in more than one Member State. The Customs Union acting currently as 27, generates one off system development costs for each national system as well as recurring costs every time those individual systems are changed or updated. This is wasteful for all concerned.

In the short term to help deal with the breakdown in progress toward implementing the UCC Work Programme, WSC advocates postponing for maritime transport, the mandatory filing of the declarations linked to the NES systems (Arrival Notification, Presentation Notice and Temporary Storage) until the implementation of ICS 2 Release 3 in March 2024. This is the most logical course of action in view of the interdependent nature of the data used in the declarations sent to ICS 2 and the NES systems. Moreover, faced with considerable delays, aligning the NES changes with ICS 2 would allow for the development, proper testing, and implementation of the new message sets and processes within a reasonable timeframe. A number of Member States have already chosen this path. But it requires the coordination and leadership of the European Commission to manage that process efficiently EU wide; a role that is indispensable to take the Customs Union to the next level.

3. Achieving an Appropriate Balance between Customs Controls and Trade Facilitation through Smarter Data Submission

The EC's Interim Evaluation of the UCC recalled that *'The UCC aims for more simplicity and uniformity in the application of customs rules to enhance the competitiveness of European businesses, while better protecting the financial interests of the Union and the Member States...'* These objectives remain more relevant than ever. Unfortunately, members of the Trade Contact Group have long observed that not only has EU customs legislation achieved unprecedented levels of complexity under the UCC, but the balance between trade facilitation and customs controls has shifted decisively towards latter. This balance needs to be redressed, particularly in the aftermath of the COVID-19 pandemic and in view of the pressing need to repair the European economy and restore its growth and competitiveness. This can be achieved especially if data is handled in smarter ways.

WSC welcomes the intention listed in the current consultation of *'Simplifying customs formalities for reliable and trusted traders established in the EU, for example by making more use of commercial information rather than of burdensome administrative requirements.'*³ As ever more data is shared across the supply chain via digital means, customs needs to keep up with such developments and be able to access data from sources beyond an individual declarant. We welcome the Wise Person Report's recommendations that point in this direction and a paradigm shift in the way customs thinks about data and data submission. Maritime carriers have often been customs' data providers of first choice, mainly because of the simplicity or indeed necessity of obtaining information from the economic entity that is physically at the point of entry. Technology has long rendered that approach obsolete.

Carriers are frequently not the best parties to provide the data desired by customs. They are typically best placed to provide the information generated in the normal course of their business as contained in the bill of lading or transport contract. They can provide information reliably about about the consignor and consignee of the goods as they appear on the B/L, but these are not necessarily the buyer or seller. They can provide conveyance related information about the routing of the good, the number of packages and general cargo description, but not precise product information that would

³ It is important to introduce EU customs simplifications for all reliable, trusted and legally complaint traders wherever they are based, not just for those established in the EU.

determine the tariff schedule, or other detailed characteristics of the goods that do not belong in a transport contract. Customs legislation and data gathering processes should seek to obtain such data from the party that generates it, such as the shipper, the importer, the producer or manufacturer. Moreover, technology now means they can.

Data platform approaches, block chain solutions and other commercial and digital innovations can enable customs to connect with and obtain the data they need from the parties that are the source of that data. Utilising these tools will provide customs much greater data visibility, potentially directly from businesses' commercial supply chain management systems or commercial platforms in an automated way. This will improve data quality and data accuracy. It will increase the traceability and assurance of the origin of the goods crossing the border, in turn allowing for better targeted and automated risk assessment. Several EU Member States are already running pilot projects to trial some of these new approaches. We would strongly encourage the Commission to engage closely with them and facilitate their uptake, by establishing the necessary legal frameworks or systems as appropriate at EU level.

Delivering those changes should also enable customs to remove obsolete data requirements aimed at declarants like carriers, which can now be better obtained elsewhere. Customs must resist the urge to double up the sources of the same information and thus double the administrative burden. The use of modern data gathering techniques should become an opportunity to rationalise and remove data requirements not duplicate them. Doing so would demonstrate that there is a genuine commitment to simplifying customs processes, within an appropriate balance between controls and trade facilitation.

Further development and implementation of Single Trade Window approaches will also help reduce administrative burden by maximising the re-use of data and enabling the once only submission of data toward EU authorities. We welcome the EC's stated intention to increase the data sharing between customs and non-customs authorities and between different Member States to address weak links. Better coordination between authorities is a pre-requisite both for trade facilitation and better controls. We welcome the so called EU Customs Single Window legal initiative that is geared towards simplifying non-customs formalities related to the import of goods, stemming from veterinary, sanitary, phytosanitary, agricultural, fisheries and environmental legislation. These are genuine improvements. However, it does not equate to an 'EU Customs Single Window' as customs entry formalities (e.g. NES systems described above) are entirely out of its scope. In the absence of a genuine EU Customs Single Window, the WSC calls on DG TAXUD to ensure that the EU Maritime Single Window is properly and seamlessly integrated into the customs domain and enables carriers to use it to undertake all those customs processes listed in the annex of Regulation 2019/1239.

It is also vital for Europe's integration within the global economy that the EU Single Trade Window approach is developed in such a way that it allows for it to be interoperable with other countries' and territories' systems and for data to be exchanged between these systems. Sweden, New Zealand, Canada and Singapore are just some of the countries developing new, technologically advanced and outward looking trade windows. We would urge the EU to join the front runners.

4. Establishing a Genuine Customs Union Acting as One

Economic operators need to be able to interact with a single Customs Union and not a mosaic of 27 differently functioning parts. WSC strongly welcomes the signal from the Commission that it is time to take the Customs Union to the next level and to begin properly acting as one. Economic operators should be able to fulfil the same customs formalities in the same way, irrespective of the Member State in which they are carried out.

As indicated in the call for evidence document the need for the Customs Union to act more as one concerns customs processes. But it also concerns data. The purpose of UCC Annex B is to provide a common data set for all UCC applications, declarations and notifications. In concept this is a major step forward, allowing maritime carriers and any other economic operators to fulfil the same UCC customs formalities with same data throughout the EU. This has always been highlighted as one of the chief benefits of the UCC, substantially reducing the costs of economic operators. It is greatly disappointing to observe Member States progressively erode that benefit by adding national data requirements on top of Annex B. Initially Member States justified this on grounds that their national IT systems, generated additional, functional data requirements. Increasingly however, Member States have asserted the right to add substantive data requirements as well. This is a profound setback to the notion of a single Customs Union based on a common legal framework and common data requirements. It should be addressed during the upcoming customs reform process by reasserting the principle that no data beyond the relevant column of annex B, should be required by any EU Member State to fulfil a given UCC customs formality. This would be an important indication of the EU acting as one within a single Customs Union. Until then the trade facilitations latent within the UCC will not be delivered.

As highlighted above WSC also supports the increasing deployment of common EU level IT systems for all UCC formalities. The deployment today of the national customs IT systems each with their own nationally or locally developed trade interface, generates considerable costs for economic operators as explained above.

In its consultation document the Commission suggests that an extra EU layer is required to oversee this process of getting the Customs Union to act more as one. The tasks of such a layer would include: *'EU-wide risk management, information technology management, training of customs officers, financing of customs equipment, supporting simplifications and services for trade...'* Many of these tasks are necessary and should be pursued at EU level but WSC would have concerns if such an EU layer amounted to an EU Customs Agency as proposed in the Wise Persons Report. If such a body lacked the tools and mandate to implement a genuinely harmonised Customs Union, it could become a source of complexity and competence related disputes between itself the EC and Member States. Taking the Customs Union to the next level of bureaucracy, would not be to anyone's interest. A better focus on deploying common IT systems may require some reorganisation of roles within the EC but absent a clear rationale, WSC really questions whether it would require a separate customs agency. Nonetheless a seamless experience for the same customs processes EU wide is essential. We hope that sufficient human and financial resources will be dedicated to this task and used efficiently.

5. Strengthening Common Risk Management, leveraging partnerships with trusted traders and reinforcing advance cargo information

WSC has long supported well designed, effective and voluntary trusted trader programmes. These are important means to help strengthen supply chains while rewarding economic operators with additional benefits, commensurate with investments that go beyond satisfying minimum legal requirements. Conversely, legally compliant economic operators should not be penalised for not

joining voluntary trusted trader programmes. In our view these programmes are misused when treated as a means for introducing de facto minimum trading requirements through other means.

The EC's consultation documents gives no details about how it would revise the current EU Authorised Economic Operator (AEO) scheme in order to improve supply chain security. These are exactly the details that the Commission needs to properly consult the TCG on before draft legislation is published. The practical benefits of the EU AEO scheme for business and industry stakeholders have been limited thus far, while the obligations and associated liabilities have only increased. This is not a formula for incentivising growth in the AEO programme.

We also see proposals at the WCO, by countries and organisations including the EU seeking to broaden the scope of AEO programmes to include non-customs and non-security related standards including on sustainability. We understand the rationale here but in so far as carriers are held liable for such standards it must be only to an extent that is consistent with their business model and role in the supply chain. WSC therefore welcomes a potential reform of the EU AEO scheme but it will be vital to ensure that any changes:

- introduce concrete and incentivising benefits for programme members, commensurate with their investments that would not be available outside of the programme;
- do not make participation a de facto minimum requirement additional legal compliance, for the ability to trade normally in the EU;
- only make AEO members accountable for supply chain practices in accordance with their business model and their role in the supply chain;

We appreciate that the purpose of AEO programmes is to raise standards across supply chains but doing so without an appropriate balance between responsibilities and benefits, or an appreciation of supply chain roles and influence, will cause such programmes to fail or at best limit their impact.

Concerning other measures reinforcing advance cargo information we would again seek more information about what the Commission would propose. In our opinion it is crucial that the EU completes the implementation of ICS 2 as planned. Any changes to the system and its requirements need to be analysed carefully together with trade. In particular any new data elements should be rigorously analysed with a cost benefit calculation to assess whether the costs to industry in obtaining and submitting it are commensurate to the practical benefits and purposes it can be put to by customs.

6. Integrating the Green Agenda in the Customs Agenda

Both the European Commission and the Wise Persons Report notes that customs has an important role to play in helping the EU deliver the Green Deal agenda. As with other non-customs EU legislation WSC can understand the role that Customs may be asked to administer, to ensure the sustainability of the products imported into the EU from third countries. However, just as with all other areas of the call for evidence much more information is required about the Commission's Green Customs agenda and what specific measures that practically entails. To the extent that Customs is required to enforce relevant existing or future sustainability legislation, it will be critical that there is an effective and integrated coordination between customs and the other authorities responsible for the legislation. This should ensure that compliance obligations are not duplicated and that administrative burdens are minimised, both for economic operators and customs. We would be pleased to engage more closely with the Commission on the Green Customs agenda but additional details are a pre-requisite.

7. Conclusions

Once again WSC would like to thank the Commission for providing the opportunity to comment on its upcoming programme of customs reform. In this response WSC has highlighted the need to look to the future of the customs union while prioritising the unfinished business of implementing the UCC and further harmonising the implementation of controls, IT systems and data requirements. WSC has long been one of the strongest advocates for strengthening the role, resources and competences of the European Commission in order for it to be able to take on the task of completing the Customs Union. That will only be accomplished successfully however, if the EC decides to engage more closely with its industry partners to draw on their expertise in how supply chains operate and how legislation needs to be configured so that policy goals can be met. Currently however, there is an almost total lack of concrete policy measures that have been shared with industry for consultation. In such an important area of legislation and at a time of profound economic pressures and shocks, this needs to be rectified and the timetable for rushing out draft legislation by December, amended to allow considered feedback from industry on detailed draft proposals.

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Mr Gerassimos Thomas
Director-General
DG TAXUD
European Commission
Rue Joseph II 79
1049 Brussels

Brussels, 16 March 2022

Subject: Joint trade letter on the UCC Work Programme – 2021 Annual progress report

Dear Mr Thomas,

The members of the undersigned trade associations have serious concerns regarding the high number of electronic systems which need to be implemented/upgraded by the end of 2022, and at the same time, the lack of finalized technical specifications available for traders.

With less than 10 months before the end-of-year implementation deadline for Member States' entry and import systems, our findings suggest that traders have not been provided with technical specifications in approximately 60% of EU countries for the development of National Import Systems (NIS), Arrival Notifications (AN), Presentation Notification (PN) and Temporary Storage Declarations (TSD). The late availability of the final version of the specifications is placing a significant burden on traders who, unless action is taken by the European Commission, are left with limited time to properly develop, test and implement these systems through no fault of their own. Economic operators need a sufficient period of time to carry out the various systems implementations in an adequate manner to ensure full compliance and business continuity.

As we have communicated many times in the past, operators require at least 18 months from the availability of the final technical specifications to ensure a smooth implementation, in particular for complex systems such as for import. With the recent lessons learned from the implementation of the VAT e-commerce package, there is an urgent need to take action and avoid repeating the same mistakes.

The implementation timelines introduced by the UCC WP (Commission Implementing Decision (EU) 2019/2151 of 13 December 2019) do not take into account the impact of Brexit and the VAT e-commerce package implementation on both authorities and trade. In addition, the review of the common data requirements of Annex B to the UCC Delegated and Implementing Acts, as well as the challenges brought by the Covid-19 pandemic slowed down several authorities with finalizing their technical specifications. We therefore believe that an immediate review of the timelines is necessary.

Recommendation

The undersigned trade associations are not in favor of any unnecessary delay to the implementation of the above-mentioned systems.

- In Member States where the technical specifications are available today, the implementation of these systems should proceed as planned.
- For those Member States where the technical specifications are not available today, however, we propose to extend the deployment window for trade by 18 months from the day they become available in full.

For maritime transport, the situation is slightly different due to the implementation schedule of ICS2. We recommend that the new data requirements for Arrival Notifications, Presentation Notices and Temporary Storage

declarations do not become mandatory until the implementation of ICS2 release 3 in March 2024, due to the highly interdependent nature of the new data requirements.

Such measures, which may require legal amendments to the UCC deployment deadlines, would allow traders who are operational in the EU27 to roll-out the required systems in an appropriately sequenced way and avoid a rushed implementation across multiple countries in the final weeks and months of this year. Considering testing, implementation and training, keeping the current legal deadlines would place unacceptable pressure on traders and on customs authorities, even more so if they coincide with peak volumes close to the holidays.

To mitigate the risk due to delay in technical specification, we request immediate availability of high level but definitive information from member states on the intended system enhancements and new requirements as a part of National Import System upgrade, to be published on their website. In addition to this, trade requires an up to date and accurate national planning overview available on the DG TAXUD website with direct links to the available technical specifications in the Member States.

We are looking forward to discussing this topic at your earliest convenience.

Best regards,



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