

International Trademark Association

Comments on the Reform of the Union Customs Legislation: feedback to Commission adoption

6 November 2023

The International Trademark Association (INTA) would like to thank the European Commission for the opportunity to provide comments on the reform of the Union Customs legislation.

INTA is a global association of brand owners and professionals dedicated to supporting trademarks and complementary intellectual property (IP) to foster consumer trust, economic growth, and innovation, and committed to building a better society through brands. Members include nearly 6,500 organizations, representing more than 34,350 individuals (trademark owners, professionals, and academics) from 185 countries, who benefit from the Association's global trademark resources, policy development, education and training, and international network.

INTA commends the initiative of the Commission to revise the Union Customs Code (UCC) to strengthen the legal framework for customs and make it suitable to address the challenges that have emerged in recent years for various stakeholders.

To further develop the proposal, INTA would like to draw the attention to some specific aspects that our members have identified as set out below:

- **Lead times:** Article 265 provides for parts of the proposal to apply from 2028, in particular for so-called "deemed importers" (see Article 265(2)(c)). The ambitious timetable should be supported, so as to give all market participants the opportunity to participate as early as possible in a digitalised and faster customs system. However, it should be borne in mind that a longer lead time may be necessary. To avoid misguided investments, implementation measures will only be made once the final regulations are in place.

This is particularly true for deemed importers. The abolition of the €150 limit will result in a significant increase in the number of products to be inspected and will overburden customs offices without sufficient preparation time. Further, even though the Import One Stop Shop (IOSS) system has already been in operation for two years, there are still significant problems with the system, which suggest that a timely extension to duty collection will not be possible or would lead to a significant slowdown in trade.

- **Information Sharing:** Effective data sharing necessitates full interoperability of the various databases which collect information critical to the operation of customs enforcement, and to the collaboration between customs and other national enforcement authorities. The IP Enforcement Portal has already been developed and deployed to ease information sharing between stakeholders in a secure system and connectivity to the EU Data Hub could further strengthen its role in enabling rights holders to protect their products against counterfeiting.

Online intermediaries, in particular online marketplaces, also play an important role in the fight against counterfeits and unsafe products, including preventing their entry into the EU. They can, and do, contribute significantly by collecting and sharing relevant data and information with customs authorities to protect European consumers. To ensure that these contributions can be carried out in a more targeted and efficient way, clear and detailed guidelines for all intermediaries (including online, transport and logistics and payment processors) are needed, in particular to ensure that data collection captures the necessary information and appropriately addresses the challenges that the

reform proposals are aimed at. In this context, it is also necessary to ensure that the rules on data sharing are effectively enforceable and extend to intermediaries and other stakeholders outside the EU, so as to establish a level playing field.

- **Data security, minimisation, and harmonisation:** INTA continues to support a framework for data **harmonisation** and the re-use of data provided by economic operators in complying with the various formalities required by customs and non-customs authorities for the movement of goods across borders. INTA has long been in favour of initiatives that reduce the burden on both economic operators/right holders and customs authorities.

The objectives of the **EU Data Hub to standardise processes**, make them more efficient and simplify customs clearance for all parties involved are strongly supported. The EU Data Hub would facilitate the collection of information from different actors, its processing for EU customs risk management and exchange with other competent Authorities. However, some principles of data efficiency must be respected. Only data that are strictly necessary for the implementation of customs measures should be collected and processed. The reduced amount of data will simplify and speed up data processes and ensure an overall reliable flow of data. The critical data elements are, in particular: The unique consignment reference, the IOSS number and further security data. Data should be accessible through an access point set up and maintained by stakeholders. The EU Data Hub must ensure that the interoperability of the platform and the required accesses are compatible with other existing systems in the Member States so as to minimise time and costs for the authorities, stakeholders and economic operators involved. We therefore support the underlying approach of Recital 20.

Data security is of particular importance for preventing data leaks and misuse of data of importance to the EU and its economic operators. To ensure the future viability and competitiveness of the European market, we therefore support the repeatedly proposed data security guarantee (see Recital 18).

- **Trust & Check Trader Status:** Achieving the status of "Trust & Check Trader" will have a significant beneficial impact on economic operators. However, the requirements set out in Article 25(3) for obtaining this status are too high. SMEs may not be able to overcome the hurdles or will be able to do so only with considerable effort. The financial and operational burdens, and in particular the requirement for real-time access to data under Article 25(3)(f), is not realistically manageable for SMEs, which will thus be unfairly disadvantaged by having to conduct standard customs processes.

- **Importer and Compliance controls:** With the enhanced EU customs risk management objectives from the EU Data Hub, we would welcome clarification as to which organisation will be responsible for operator due diligence and how, and to what level it will be conducted to determine non-compliant importers and exporters. INTA would appreciate more clarifications on what actions EU customs may take if an importer or exporter is not registered within the EU and goods are claimed to be in transit but are actually unloaded within the EU.

In order to create additional deterrents against counterfeits, IPR-infringing and non-compliant goods products, INTA would welcome the inclusion of a failure to comply with the conditions for placing goods on the market in the EU as per Article 88(3)(d) *"the goods comply with the relevant other legislation applied by the customs authorities"* in the list of Union customs infringements in Article 252.

- **Determination of risk:** In Recital 13 of the UCC Proposal, it is stated that: *"The persons responsible for the goods entering and exiting the customs territory of the Union are liable for any risks posed by the goods to the safety, security, health, life, environment, or consumers."* INTA would appreciate clarifications on whether this would be a strict liability regime so that counterfeiters are not able to evade penalty or sanction by claiming that they had no knowledge as to the unsafe or hazardous nature of the goods.

- **Enhanced cooperation:** Tackling harmful behaviour and products is a responsibility that is shared also by online and offline intermediaries in the cross-border sale of goods. To bundle and channel all necessary measures and resources, the European Commission should clearly set out the legal standards and responsibilities. In particular, practicable demarcations and compatibility with the Digital Service Act and its provisions must be clearly established.

Customs controls and enforcement in e-commerce should be risk-based. To prepare businesses for such controls and to optimise processes, the conditions and criteria for their application should be accompanied by clear and publicly available guidelines and enforcement policies should be essentially based on cooperation.

- **Responsibility:** In recent years, the EU, under the auspices of the European Commission, has created a legal framework to regulate responsibility for products entering the EU via third countries in e-commerce. Within that framework, the concept of a “responsible person” for the marketing of products in the EU market, assigns a clear division of liabilities and obligations between economic operators and intermediaries, e.g. in the General Product Safety Regulation and under Art 30 of the Digital Services Act.

This approach should also be reflected in the proposal so as to ensure the creation of a harmonised and consistent legal framework.

- **Capacity building:** INTA remains at the disposition of the EU Customs Authority to assist in relation to the capacity building tasks set out in article 208.3.

- **Customs Governance:** INTA has noted that, unfortunately, our initial suggestion to create an IPR Coordinator has not been reflected in the draft. Once again, we would like to stress out that the creation of such a body at national level in the EU, Member States could facilitate coordination and information sharing among themselves as well as with the private sector especially when relating to intelligence about counterfeit and trademark infringing goods and criminal networks behind the sale of such goods.

- **Cost of Destruction of Counterfeit Goods:** INTA would appreciate more clarifications on the responsibility of the destruction of goods as well as on who shall bear the costs for destruction, and of related and ancillary costs, in cases of counterfeit, IPR-infringing and non-compliant goods products. Article 76(1) states that “The costs of destruction shall be borne by the importer or the exporter”. However, Regulation 608/2013 currently provided for EU Member States to have the power to consider brand owners to be responsible for destruction and ancillary costs. INTA is of the view that the UCC shall provide more clarification on how to regulate the issue. To ensure that Article 76(1) is consistent with Regulation 608/2013, we would recommend that the term “holder of the goods” be added to the list of possible entities that will bear the cost of destruction under the UCC.

- **Method of Destruction of Counterfeit Goods:** INTA would appreciate more clarification on the process of destruction in cases of counterfeit goods. Article 76(4) states that “The Commission shall specify, by means of implementing acts, the procedure for the destruction of goods”. While Regulation 608/2013 refers to recycling as one meaning of “destruction”, INTA is of the view that destruction of counterfeit goods resulting from the UCC reform should align with the UN's Sustainable Development Goals and any potential changes in legislation following the proposed EU Waste Framework Directive, if adopted.

The above recommendations are based on INTA's initial suggestions submitted to your Call for Evidence on September 14, 2022, and which can be also consulted on INTA's website here: [Comments on the Reform of the Union Customs Legislation](#).

INTA thanks the European Commission for its consideration of this submission and remains available to discuss these recommendations in further detail. INTA also looks forward to supporting the European Commission and DG TAXUD in this process to reform the Union Customs legislation.

We welcome the opportunity to provide further comments to support this important topic as it develops. Please contact Tat-Tienne Louembe Chief Representative Officer, Europe and IGOs (tlouembe@inta.org) and Alastair Gray, Director of Anticounterfeiting (agray@inta.org).

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Sanz de Acedo', with a stylized flourish at the end.

Etienne Sanz de Acedo
INTA Chief Executive Officer