

15 May 2015

## Customs Priority Issues for TTIP

### KEY MESSAGES

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- 1** An ambitious customs chapter in TTIP is an important step toward creating a truly transatlantic marketplace. As trade in goods covers 61% of transatlantic trade, any effort to improve customs procedures will have a strong impact on bilateral trade.
- 2** Core elements of an ambitious customs chapter include the creation of a single window on both sides of the Atlantic, simplifying requirements for customs declarations, the joint development of trusted trader programmes, and the elimination of additional fees for customs procedures.
- 3** In order to ensure that the benefits of streamlining customs procedures will last, BUSINESSEUROPE believes the EU and US should foster regulatory cooperation in the area of customs and trade facilitation to prevent aligned customs procedures from diverging over time.

### WHAT DOES BUSINESSEUROPE AIM FOR?

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#### SUMMARY

The EU and the US should work to streamline transatlantic customs policy at an ambitious level. This can be achieved by providing a framework of a single window i.e. one government agency at the border for the submission and discussion of all regulatory documents and requirements for whatever purpose; joint development of trusted trader programmes; enabling electronic pre-arrival clearance to allow goods to be released immediately upon arrival; implementing innovative solutions like “self-assessment”; and setting clear standards or guarantees for release time in order to reduce unnecessary delays and increase the predictability of supply; and establish simple and modern rules of origin. Efforts to modernise transatlantic customs should be geared towards facilitating import and export processes for small businesses and individual consumers both in the EU and the US. Customs penalties, however, should continue to be regulated at member state level while the Directive on the Union legal framework for customs infringements and sanctions is not adopted.



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## **BUSINESSEUROPE Priority Issues for Customs in TTIP**

### **BACKGROUND**

The potential benefits of concluding the Transatlantic Trade and Investment Partnership (TTIP) are substantial by any measure. In 2014 the transatlantic economy accounted for over 50% of world GDP. Transatlantic trade in goods in 2013 amounted to €484 billion, while total trade (including services) reached €789 billion, double the level of 2000.<sup>1</sup> Given that trade in goods covers 61% of the bilateral trade relationship, any effort to further align this trade block will have a strong impact on bilateral trade.

Several studies show that addressing Non-Tariff Measures (NTMs), such as improving customs procedures, are the largest source of potential trade liberalisation gains. A report by Ecorys shows that in the long run, the additional gains over Ecorys' baseline scenario from addressing NTMs could amount to €117 billion for the EU26 and €41 billion for the United States.<sup>2</sup> Improving customs procedures is an important step toward achieving those gains.

In this paper BUSINESSEUROPE conveys its priorities for the chapter on Customs Administration and Trade Facilitation in TTIP, and presents recommendations to advance the objective of creating a more integrated transatlantic marketplace.

***Our position on Rules of Origin is not included in this paper.  
BUSINESSEUROPE will draft a separate position paper on this subject.***

### **1. SINGLE WINDOW AND ONE STOP SHOP FOR EACH PARTY**

BUSINESSEUROPE encourages the creation of a single window for the submission of, and communication about, regulatory documents on both sides of the Atlantic as an essential element of an innovative and future-oriented customs process. In practice this would mean a single window for the US and one for the EU. This would spare companies significant administrative costs and would render customs procedures more efficient.

<sup>1</sup> DG Trade: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/> [ Accessed 2 February 2015].

<sup>2</sup> Figures are based on the full liberalisation of actionable NTMs. Ecorys: <http://www.ecorys.com/sites/default/files/files/EU-US%20HLWG%20Ecorys%20Final%20report.pdf> [Accessed 2 February 2015].



The US has taken steps towards the creation of a single window for document submission through the implementation and expansion of the Automated Commercial Environment (ACE). By October 2016, ACE will become mandatory for all electronic filings. Eventually, the ACE is to become the single window for electronic communication with US authorities as regards import and export procedures. BUSINESSEUROPE encourages this process and calls upon the EU to take similar steps so long as new systems do not create an additional burden on exporters. The European ANNA Maritime Single Window is a great initiative to this effect.

## **2. CO-OPERATION ON THE DEVELOPMENT OF INTERNATIONAL RULES AND STANDARDS**

Tackling differences in customs regulation will benefit businesses of all sizes but in particular SMEs. Simplification and harmonisation of customs procedures will mean less administrative costs for companies and imply they will be able to dedicate human resources to tasks that are critical for their business model.

In order to ensure that the benefits of aligning customs procedures through TTIP will last, it is important that EU and U.S. regulators commit to cooperating in the future to avoid diverging customs procedures from re-emerging and the benefits of aligning customs procedures to be lost. BUSINESSEUROPE therefore believes the EU and US should foster regulatory cooperation in the area of customs and trade facilitation.<sup>3</sup>

## **3. JOINT DEVELOPMENT OF TRUSTED TRADER PROGRAMMES**

There must be a balance between mitigating risk on the one hand, and real trade facilitation for trustworthy economic operators on the other. The EU and the US should therefore use TTIP as a framework within which to consolidate achievements made by the Transatlantic Economic Council (TEC) concerning EU and US customs security schemes. The mutual recognition of the EU Authorised Economic Operator (for both AEO Customs and AEO Security and Safety) programme and the US Customs-Trade Partnership against Terrorism (C-TPAT) is a positive example of regulatory cooperation. Nevertheless, the two systems still have a significantly different focus and priorities, reducing the tangible benefits to licensed companies.

Trusted trader programmes should include a broad range of trade facilitation measures such as rapid release time; low documentation and data requirements; permission to provide required documentation post-release; low rates of physical inspections and examinations; deferred or account-based payment of duties, taxes, fees and charges;

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<sup>3</sup> Cf. BUSINESSEUROPE position paper on advancing regulatory cooperation in the TTIP from 28 November 2013.



use of comprehensive guarantees or reduced guarantees; a single customs declaration for all imports or exports in a given period; and clearance of goods at the premises of the authorised operator or another place authorised by customs. These trade facilitation measures should be applied for both AEO Customs and AEO Security and Safety.

In general, both sides should provide more simplification for trustworthy companies. The ultimate goal should be that shipments from an AEO to a C-TPAT via an authorised transporter do not require border checks. This will only be possible with full transparency throughout the supply chain.

In combination with § 2, as customs compliance is mainly regulatory compliance, being a trusted trader should be enough to demonstrate that companies are compliant with all customs regulations.

#### **4. SIMPLIFY REQUIREMENTS FOR CUSTOMS DECLARATIONS, INCLUDING DATA AND DOCUMENTATION REQUIREMENTS**

BUSINESSEUROPE encourages the use of a harmonised data set for processing customs, aligned with international standards such as the WCO data model not exceeding established practices and simplification levels. Given that companies build up their supply chains differently, they should also be allowed to choose between normal procedures, simplified procedures and pre-arrival customs clearance.

##### *Simplified procedures*

Simplifications such as local customs clearance, centralised customs clearance, and self-assessment are a must for the future and are in line with innovative customs solutions. In order to reduce the administrative burden for companies, it should be possible to release goods by entering the data into the accounting system of the company (local customs clearance).

Additionally, companies should be able to file customs declarations at the preferred location for their company (centralised customs clearance) even if the goods are located elsewhere. It is also very important that requirements in relation to other legal areas like VAT, statistics, etc. can be fulfilled centrally.

Goods should also be released at the border when companies inform customs authorities that the declarant owns an authorisation for self-assessment. In this case, companies should not be required to provide any further data to customs. Imported goods would then be declared via a simple collective declaration on a monthly or periodical basis. The collective declaration at the end of the period should only include a sum of the goods imported divided in the different customs procedures like inward



processing, customs warehousing etc. The authorisation would be issued on a processed based audit prior to the first import or export. By doing so, the concept of self-assessment can turn the single clearance oriented control into system and process oriented controls. Another big advantage would be that customs procedures would not limit importers in how they treat their goods.

#### Pre-arrival customs clearance

Various companies have organised their supply chains in a way that provides them the necessary data for customs clearance prior to the arrival of their goods. These companies should be allowed to opt for pre-arrival customs clearance and the release of goods prior to or upon their arrival, based on a risk analysis conducted by customs authorities while the goods are in transit. In order to have a streamlined customs procedure, TTIP should lead to a harmonised and minimal data set for entry summary declarations (pre-arrival) and exit summary declarations (pre-departure).

#### Expedited shipments

Expedited delivery services have become increasingly important as a means of ensuring the continued global competitiveness of companies on both sides of the Atlantic, including sales, logistics and storage, production, and customer support functions. Such services enable companies of all sizes to minimize their inventory costs through the provision of rapid and secure delivery services. Furthermore, they are a critical aid to sectors such as pharmaceuticals, financial and business services, which are highly dependent on the rapid movement and delivery of time-sensitive, high-value products. An explicit reference to expedited shipments within TTIP will reaffirm both parties' commitment to enabling and facilitating such services.

### **5. PRINCIPLE OF “MY EXPORT IS YOUR IMPORT” AND RELATED DATA HARMONIZATION ALIGNMENT AND COMMUNICATION TECHNOLOGIES**

Accepting an export declaration of one side as an import declaration on the other side is a great idea, but experience shows that this would be difficult in practice. Reasons include:

- Different interpretations of classification by customs authorities in the exporting and importing country would make daily use more complex as a solution would be required in case of diverging views.
- The “weight” of the information is also different. In case of export, for example, the value is not very important, though it is the essential criterion in case of import.
- The exporter is not always the supplier, and in some sectors he rarely is. This means some important data for customs clearance cannot be the same



(especially value). For security reasons, other data are not the same either (supplier; purchaser).

**Example of deviating classification:**

In the US, the coffee machine's jug is considered being part of the coffee machine, having only an affiliated function. Therefore it is classified under chapter 85 "electrical machinery and equipment and parts thereof" (position 851690). In the EU it is classified under chapter 70 "glass and glassware" (position 701349), as the jug is acknowledged having also a separate and "own" function as a jug.

Harmonised data and mutual recognition agreements are therefore of utmost importance to make "my export is your import" work. This could be achieved through the following changes:

- Harmonising data worldwide using, for example, the WCO data-model.
- Limiting data to required minimum and consider foreseeing alleviations for trusted traders (authorized economic operators).
- Harmonising the application of the harmonized system of customs tariffs. Contracting parties should commit to cooperate to find fast and non-bureaucratic solutions in deviating classification practices. In cases of deviating classification for example, the classification granting the lower tariff should be applied.

## 6. REDUCING EXPORT CONTROL MEASURES

When it comes to compliance, export control measures are becoming more and more complex. Some say they are even more complex than customs rules and procedures. Understandably, there is more focus on safety and security at present, but the requirements imposed on business should be proportionate and effective. In particular, the strict export control rules imposed by the US result in high administrative burdens on trade. The US export control measures act extraterritorially and apply to all companies that in any way have a link with the US. Multinationals have dedicated departments to deal with this matter, but for small and medium sized enterprises these rules are too complex to comply with them fully. These rigorous and complex regulations are very costly for business. Companies often have to spend over 40,000 euros or more annually to comply and the total cost for safety and security measures add up to almost 11% of total trade costs.<sup>4</sup> Business would rather see that governments make use of security measures that are already taken by businesses internally, motivated by the nature of their goods.

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<sup>4</sup> James E. Anderson and Eric van Wincoop, (2004) "Trade Costs", *Journal of Economic Literature*, Vol. 42, No. 3, pp. 691-751.



## **7. *DE MINIMIS* REQUIREMENTS AND CUSTOMS DECLARATIONS**

BUSINESSEUROPE strongly favours and expects the removal of all duties from the time of the agreement's entry into force. In case of a transitional period, it is important to increase the *de minimis* levels for the collection of customs duties on both sides to a commercially reasonable economic threshold. The *de minimis* should be fixed at level that does not hinder trade namely by preventing companies particularly SMEs from entering the market and exploring its potential. A level between €700 and €1000 subject to revision according to consumer price index/inflation rate should be feasible. This should be accompanied by a simplification of customs declarations for low value consignments.

## **8. PENALTIES SHOULD REMAIN REGULATED AT MEMBER STATE LEVEL**

In the EU, while many customs regulations are harmonised at EU level, their implementation continues to be enforced by member state authorities. Penalties are part of national regulation and are handled differently in different member states. If common penalty regulations were introduced under TTIP, this would include a very big risk that this would lead to a lowest common denominator outcome (i.e. the worst of the existing national regulations). As long as the Directive on the Union legal framework for customs infringements and sanctions is not adopted, the idea of harmonising customs sanctions could also create problems of compatibility with national legislation. The responsibility for regulating penalties should therefore remain at member state level.

## **9. CUSTOMS DECISIONS INCLUDING ADVANCE RULINGS (E.G. ON VALUATION AND CLASSIFICATION)**

The first sale rule ought to be applicable while customs duties are still in place. Applying the last sale rule as well as including royalties and licence fees as the basis for customs duties will have a significant impact in the amount of duty paid on imported goods.

There are differences in the way the US and the EU classify goods. This means, among other costs, that EU companies need to have a customs broker in the US to assist them in all relevant administrative procedures including goods classification. Harmonisation should be the preferred option and would avoid extra costs for companies.



## **10. ADDITIONAL FEES SHOULD BE ELIMINATED**

The main purpose of a free trade agreement is to eliminate all barriers and costs that render the transfer of goods and services more difficult and expensive. Although customs duties are the main and best known barrier that a preferential agreement aims at eliminating, there are sometimes other additional costs related to customs procedures that can also hinder trade flows. In the case of the US there are a number of fees sometimes targeting a specific sector (e.g. Cotton fee applied to all imported goods that contain this fibre). The minimum Merchandise Processing Fee (MPF) is \$25 per customs declaration and the maximum fee is \$485, without a yearly maximum. Through TTIP we should aim at eliminating these additional fees and harmonising the EU and US systems.

## **11. FACILITATING TRANSATLANTIC E-COMMERCE**

The rapid evolution of e-commerce has driven major change in business-to-consumer (B2C) trading patterns over recent years. In the spirit of defining new benchmarks for trade agreements, the TTIP should lay the foundations for a more seamless flow of goods back and forth between businesses and consumers from the EU to US and vice versa. Customers in Europe currently face restrictions when purchasing goods from the US online. In the case of product returns, these restrictions can in some cases be financially prohibitive. For example, a European consumer wishing to return a product bought online from the US is unable to recuperate the customs duties and other taxes paid upon purchase of the product. Measures to enable reimbursement of customs duties and other taxes in the case of product returns would have a significant positive impact on transatlantic B2C trade lanes.

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