

Tuesday 16 May 2017

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## **Evaluation of external aspects of customs performance and management as a tool to facilitate trade and fight illicit trade**

**European Parliament resolution of 16 May 2017 on the evaluation of external aspects of the customs performance and management as a tool to facilitate trade and fight illicit trade (2016/2075(INI))**

(2018/C 307/04)

*The European Parliament,*

- having regard to the Commission communication of 14 October 2015 entitled ‘Trade for all — Towards a more responsible trade and investment policy’ (COM(2015)0497),
- having regard to DG TAXUD 2016-2020 Strategic Plan and to DG TAXUD 2016 Management Plan of 14 March 2016 (Ares(2016)1266241),
- having regard to the Commission communication of 21 August 2014 entitled ‘EU Strategy and Action Plan for customs risk management: Tackling risks, strengthening supply chain security and facilitating trade’ (COM(2014)0527),
- having regard to the Commission report of 19 July 2016 entitled ‘Progress Report on the implementation of the EU Strategy and Action Plan for customs risk management’ (COM(2016)0476),
- having regard to the Guidelines for Authorised Economic Operators (TAXUD/B2/047/2011),
- having regard to the EU-China Smart and Secure Trade Lanes (SSTL) Pilot project,
- having regard to the Council Resolution on the EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017 <sup>(1)</sup>,
- having regard to the DG TAXUD report on EU customs enforcement of intellectual property rights for 2015,
- having regard to the Strategic Framework for Customs Cooperation between the EU and China,
- having regard to the Action Plan concerning EU-China customs cooperation on intellectual property rights (2014/2017),
- having regard to the Commission communication of 26 February 2014 entitled ‘Action Plan for monitoring the functioning of preferential trade arrangements’ (COM(2014)0105),
- having regard to the Commission communication of 2 February 2016 entitled ‘Action Plan for strengthening the fight against terrorist financing’ (COM(2016)0050),
- having regard to the Commission communication of 21 December 2016 entitled ‘Developing the EU Customs Union and Its Governance’ (COM(2016)0813),
- having regard to its resolution of 9 June 2015 on a strategy for the protection and enforcement of intellectual property rights in third countries <sup>(2)</sup>,
- having regard to the European Court of Auditors’ Special Report No 23/2016: ‘Maritime transport in the EU: in troubled waters — much ineffective and unsustainable investment’,

<sup>(1)</sup> OJ C 80, 19.3.2013, p. 1.

<sup>(2)</sup> OJ C 407, 4.11.2016, p. 18.

Tuesday 16 May 2017

- having regard to the Marrakesh Agreement establishing the World Trade Organisation,
  - having regard to the OECD report of 18 April 2016 entitled ‘Illicit Trade, Converging Criminal Networks’,
  - having regard to Article 21 of the Treaty on European Union (TEU),
  - having regard to Articles 207, 208 and 218 of the Treaty on the Functioning of the European Union (TFEU),
  - having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code<sup>(1)</sup>, and its related Delegated Act (Delegated Regulation (EU) 2015/2446<sup>(2)</sup>), Implementing Act (Implementing Regulation (EU) 2015/2447<sup>(3)</sup>), Transitional Delegated Act (Delegated Regulation (EU) 2016/341<sup>(4)</sup>), and Work programme (Implementing Decision (EU) 2016/578<sup>(5)</sup>),
  - having regard to Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003<sup>(6)</sup>,
  - having regard to the Commission’s proposal for a directive of the European Parliament and of the Council of 13 December 2013 on the Union legal framework for customs infringements and sanctions (COM(2013)0884), and to the opinion of the Committee on International Trade for the Committee on the Internal Market and Consumer Protection on this proposal<sup>(7)</sup>,
  - having regard to Article 24(2) of Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports<sup>(8)</sup>,
  - having regard to the principle of policy coherence for development as stated in the TFEU,
  - having regard to its resolution of 19 January 2017 on tackling the challenges of the Union Customs Code implementation<sup>(9)</sup>,
  - having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade and the opinion of the Committee on Budgetary Control (A8-0162/2017),
- A. whereas the Customs Union is a basic pillar of the European Union, making it one of the largest trading blocs in the world, and whereas a fully functional Custom Union is essential for the credibility which the EU needs to guarantee its strength when negotiating trade agreements;
- B. whereas the implementation of the Union Customs Code is essential for the safeguarding of EU own resources, notably customs duties, and national tax interests;
- C. whereas a fully functional Customs Union is the basis for an effective fight against illicit financial flows and trade-based money laundering;
- D. whereas the implementation of the Union Customs Code (UCC), launched on 1 May 2016, risks being delayed owing to the lack of proper financing of common and functioning IT systems by 31 December 2020;

<sup>(1)</sup> OJ L 269, 10.10.2013, p. 1.

<sup>(2)</sup> OJ L 343, 29.12.2015, p. 1.

<sup>(3)</sup> OJ L 343, 29.12.2015, p. 558.

<sup>(4)</sup> OJ L 69, 15.3.2016, p. 1.

<sup>(5)</sup> OJ L 99, 15.4.2016, p. 6.

<sup>(6)</sup> OJ L 181, 29.6.2013, p. 15.

<sup>(7)</sup> See report A8-0239/2016.

<sup>(8)</sup> OJ L 83, 27.3.2015, p. 16.

<sup>(9)</sup> Texts adopted, P8\_TA(2017)0011.

Tuesday 16 May 2017

- E. whereas the progress report on the implementation of the EU Strategy and Action Plan for customs risk management highlights that insufficient financing to upgrade the existing IT systems and develop the required new systems is a major issue hampering progress, most notably in relation to the new Import Control System; whereas in the absence of additional resources, a number of actions will not be able to be implemented by the end of 2020 as envisaged in the Strategy and Action Plan; whereas a delay would also affect the implementation of commitments to customs-related aspects in the context of the EU Agenda on Security;
- F. whereas the current fragmentation of customs control policies between the Member States must not lead to a situation resulting in additional administrative and time burdens or distortion of internal trade flows;
- G. whereas the proposed directive for a Union legal framework for customs infringements and sanctions does not make a clear distinction between criminal and administrative sanctions within Member States in full respect of subsidiarity; whereas this may encourage fraudulent economic operators to make strategic choices when importing from third countries, causing distortions in tax collection and a negative environmental impact, thus proving to be an ineffective deterrent to illegal trade activities;
- H. whereas complex customs rules and procedures, as well as different criteria and sanctions applied by authorities, can overburden small and medium-sized enterprises (SMEs), placing considerable strain on their limited resources and affecting their trade itinerary;
- I. whereas effective customs cooperation between the Member States' customs administrations, authorised economic operators, police forces and judicial authorities, as well as other relevant actors with third countries and at multilateral level, plays a vital role, given the significant trade volumes, and is a cornerstone in the fight against illicit trade, terrorism, organised crime, money laundering, wildlife trafficking, tax evasion, drugs and tobacco trafficking and falsified medicines, as well as in the protection of intellectual property rights (IPRs) in the EU, implementation of and respect for due diligence procedures for products in the global value chain, as indicated in the Commission's 'Trade for all' strategy, and the tracking and possible elimination of interconnections between fraudulent actors involved in illicit trade activities in the international supply chain;
- J. whereas the EU has concluded customs cooperation and mutual administrative assistance agreements with South Korea, Canada, the US, India, China and Japan;
- K. whereas certain trade partners continue to ship the bulk of the illegal or counterfeited products entering the Union; whereas Malaysia accounts for only some EUR 2,5 million worth of such exports, while China and Hong Kong are responsible for over EUR 300 million and EUR 100 million respectively; whereas Belarus in 2015 alone caused a fiscal loss to the EU of EUR 1 billion, exporting products that totally circumvented VAT rules and health regulations;
- L. whereas according to the most recent Commission report on the enforcement of IPRs by EU customs authorities, the volume of counterfeit goods seized by those authorities increased by 15 % between 2014 and 2015; whereas more than 40 million products suspected of infringing IPRs, to a total value of almost EUR 650 million, have been seized at the Union's external borders;
- M. whereas international free trade zones, together with those third countries that are most frequently the sources of illicit trade, represent potential background areas for a continued proliferation of trade in illegal products in the EU, leading to more intensive border controls and therefore being likely to require further specific analysis;
- N. whereas trade in counterfeit goods may contribute to the financing of criminal organisations active in terrorism, drug trafficking, firearms, money laundering and human trafficking;

Tuesday 16 May 2017

- O. whereas combating counterfeiting is vital to protecting IPRs in Europe, safeguarding know-how and encouraging innovation;
- P. whereas the role played by customs in the security area is particularly relevant in preventing terrorist organisations from moving their funds and in disrupting their sources of revenue, as recognised in the Commission Action Plan for strengthening the fight against terrorist financing;
- Q. whereas customs services play an important role, in the context of the global trading environment, in coping with the damage done by illicit trade to the formal economy, while also aiding in better comprehending and tackling that same illicit trade;
- R. whereas networks of illicit activities have a detrimental impact on Member State economies in terms of growth, jobs, foreign investment, integrity of markets, competition, trade and loss of customs income, the latter loss being borne in the end by the European taxpayer;
- S. whereas illicit trade is a primary concern for business and poses a significant threat with growing global risks, in terms of transparency, integrity and financial value, mirroring the use of global trade schemes and supply chains;
- T. whereas counterfeiting, the illegal arms trade and drug trafficking generate large sums for transnational organised crime by means of illicit economic and business channels;
- U. whereas the increasing incidence of smuggling, trafficking and other forms of illegal and illicit trade not only have an impact on Member States' collection of customs duties and on the EU budget, but are also strongly associated with organised international crime, threats to consumers and negative effects on the functioning of the single market, which undermine the level playing field for all competing companies, particularly SMEs;
- V. whereas protecting IPRs is key to both protecting and fostering the EU economy, as well as to growth and jobs;
1. Calls on the Commission to work closely with the Member States to ensure a coordinated, uniform and efficient implementation of the new system set by the UCC, discouraging divergent practices among the Member States after the transition period through a common basic guideline for all European customs; calls on the Commission, in this regard, to develop benchmark analysis and information on customs operations and enforcement procedures in the Member States;
  2. Highlights that there is no system in place for identifying and monitoring differences in how customs authorities treat economic operators; calls on the Commission to require Member States to provide specific information on the type and number of customs checks at individual core port level;
  3. Invites the Commission to continue cooperation with the Member States and relevant trade stakeholders to address existing gaps in the control systems, develop further customs simplifications and reduce administrative burdens for legitimate traders focussing on the objective of simpler, safer trade, while ensuring at the same time appropriate, effective, efficient and harmonised controls at EU borders and the necessary support to relevant authorities; points out that effective customs controls must guarantee for the EU security, consumer safety, respect of environmental requirements and health regulations and of economic interests, with a particular effort regarding IPR protection and the fight against illicit trade, terrorism, money laundering, wildlife trafficking, tax evasion, drug and tobacco trafficking and falsified medicines, as well as combating all forms of unfair competition that European firms which comply with EU standards may face;
  4. Emphasises the importance of completing the work of harmonising controls at all points of entry into the Customs Union, in particular on the basis of existing instruments;

**Tuesday 16 May 2017**

5. Calls on the Commission to pursue greater collaboration with the private sector in identifying fraudulent operators; stresses the importance of involving private stakeholders in the fight against illegal trade, including in wildlife and wildlife products;
6. Recalls that the opportunity provided by the UCC and its rules on interconnected IT systems and electronic exchanges should be used to access data on reliable and legal trade and make it available through channels other than customs declarations, for example through international mutual exchange programmes such as the AEO (Authorised Economic Operator) programme or the Smart and Secure Trade Lanes (SSTL) project, with the aim of facilitating exchanges;
7. Recalls that the development of the required IT systems needs sufficient financing and calls on the Commission and the Member States to ensure the availability of resources for the necessary IT systems in order to meet the objectives of the EU Strategy and Action Plan for customs risk management;
8. Calls on the Commission to push for wider utilisation of the AEO programme; stresses the importance of promoting its benefits for trade whilst preserving stringent rules of compliance, as well as its robustness, reliability and compliance with third countries' customs rules in trade agreement negotiations;
9. Asks the Commission to coordinate and cooperate with customs, border agencies on the ground and stakeholders within the EU, as well as with its trade partners, in the area of data sharing, in particular as regards recognition of custom controls, trusted trade partners and mitigation strategies for dismantling illicit trade networks; calls on the Commission to improve and step up cooperation among its DGs on customs matters and, where necessary, to promote improved coordination between customs and law enforcement authorities, in particular regarding organised crime, security and the fight against terrorism, at both national and EU level;
10. Invites the Commission to present a communication on 'Best practices for custom controls and the enforcement of trade rules', in the interim period, in order to provide a framework of reference for the competent control bodies in the Member States, highlight best practices and results, establish a set of key performance indicators, and analyse trade flows in counterfeit goods at border points;
11. Urges the Commission to continue working on the implementation of the EU Strategy and Action Plan for customs risk management, notably in the areas of availability of data, access to and exchange of information for customs risk management purposes, and the strengthening of capacities;
12. Calls on the Commission to periodically report to the responsible committees of the European Parliament on the monitoring and evaluation of the implementation of the EU Strategy and Action Plan for customs risk management;
13. Urges the Commission to investigate the different practices for customs controls in the EU and their impact on trade diversion, focusing in particular on EU customs at external borders;
14. Notes that today divergent customs procedures, in particular regarding customs clearance, inspections, sanctions and controls, are resulting in fragmentation, additional administrative burdens, delays, variations in tax collection among Member States, market distortion and negative environmental impact; stresses that these divergent customs procedures may often favour access to some ports to the detriment of others with illegitimate operators importing counterfeit or undervalued goods, resulting in goods being delivered to their final destination via an unusual route and clearance being sought in a Member State other than the one importing the goods, either to reduce the likelihood of being subject to controls or to complicate any potential recovery procedure; asks the Commission, therefore, to analyse this 'forum shopping' problem and to assess its impact on trade, tax revenues, climate effects and customs duties;
15. Reminds the Member States and the Commission of the importance of ensuring the timely availability of sufficient resources for the necessary IT systems in order that the objectives of the EU Strategy and Action Plan for customs risk management can be met while ensuring the interoperability of systems to the benefit of customs authorities, legitimate traders and, ultimately, consumers and promoting jobs and economic growth in the EU;

Tuesday 16 May 2017

16. Insists on the need to advance from the current 'less paper' customs environment to one that is 'paper-free';

17. Requests the Commission to work closely with the Member States, the OECD and the World Customs Organisation (WCO) in reducing the existing gaps in the customs control systems by ensuring that illicit trade, counterfeiting and fraud are tackled using more systematically coordinated risk-based controls based on harmonised criteria for inspections, best practices and common procedures and working methods, in terms of both operating hours, economic and human resources and interoperable IT systems, with timely and appropriate support being provided by other competent authorities; recalls, in this regard, the importance of ensuring powers of inquiry for all EU customs and border agencies, and of guaranteeing appropriate training for their operators;

18. Calls on Member State customs authorities to proactively use electronic data sharing facilities in order to cooperate with law enforcement agencies in the identification of anomalies in trade value mispricing and thus combat illicit financial flows and trade-based money laundering;

19. Calls on the Commission to ensure that the progressive implementation of the UCC brings additional value to economic operators, establishing a level playing field throughout the Union, while at the same time ensuring that increased simplification of customs procedures does not create gaps in the customs risk management and control systems that could hinder the effective fight against illicit trade; regards it as essential that EU customs law should be harmonised, and calls on the Commission and the Member States to carry out regular monitoring of EU rules and their uniform application by the competent authorities, facilitating international trade as well as curbing illegal transnational activities;

20. Urges the Commission to work further with the Member States on sharing best practices on customs procedures and VAT, cooperating with different competent authorities and, where appropriate, aligning policies as regards customs and VAT, with a view to ensuring synergies, including in finding and applying legal and practical solutions to challenges and opportunities relating to small consignments, e-commerce and simplification;

21. Calls on the Commission, in light of Article 23 of the WTO Trade Facilitation Agreement calling for a Trade Facilitation Body, to consider transferring responsibilities of customs authorities from the national to the EU level as regards ensuring harmonised treatment along the EU points of entry, monitoring the performance and activities of customs administrations, and collecting and processing customs data;

22. Invites the Commission, furthermore, to better develop an accurate cost-benefit analysis of the implications of harmonisation of the enforcement of criminal sanctions in place in the Member States to combat illicit trade activities and, if necessary, to present a proposal containing harmonised rules, always respecting subsidiarity, concerning the definition of those sanctions and offences in cases of transnational crime;

23. Urges the Commission and the Member States to do more to develop and support joint training opportunities for customs agents in the Member States; emphasises that the harmonisation of training for customs agents in Europe will contribute to the effective implementation of the Union Customs Code;

24. Requests the Commission to enhance cooperation with international trade stakeholders and trade representatives with a view to addressing all challenges stemming from the implementation of the UCC, including different and divergent national rules, reporting methods and means and the concerns of SMEs involved in trade with third countries;

25. Recalls that certain fraudulent firms based in third countries are using e-commerce to offer counterfeit goods to European consumers, and that some goods may be billed under the minimum price level to avoid being checked by authorities or may be entering taking advantages of differences in invoicing arrangements, customs rules and penalties; asks the Commission to further investigate these problems and to reflect on how best to address risk related to e-commerce and to work closely with all concerned actors, including transport and courier companies, in order to support Member States in curbing this practice without creating barriers to the growth of e-commerce or hindering legitimate trade;

**Tuesday 16 May 2017**

26. Urges the Commission to ensure, jointly with Member States, that the EU implements to a maximum extent the WTO's Trade Facilitation Agreement (TFA) and continues to promote its implementation by the other WTO members for the benefit of the EU exporters, including by contributing to the efforts of developing countries, in order to enhance trade facilitation worldwide;

27. Invites the Commission to reinforce international cooperation to further develop the implementation of the EU Strategy and Action Plan for customs risk management of the supply chain;

28. Invites the Commission to reinforce its cooperation in customs matters with its main trading partners and their customs authorities, as well as to engage in a dialogue with the main originating countries of counterfeit goods, with a view to collaborating in the fight against illicit financial flows, money laundering, trade-based corruption, tax fraud and tax evasion, organised crime and terrorism, all of which undermine the health and safety of consumers, posing risks to society and the market while harming economies, and to further facilitate bilateral trade beyond strict TFA commitments; points out that this can be achieved by including subjects of trade facilitation such as standardised rules on methods, transparency, integrity and accountability of customs procedures, and the inclusion of anti-fraud and anti-counterfeiting chapters in all negotiations for free trade agreements (FTAs), or through specific customs agreements;

29. Invites the Commission to continue and deepen customs cooperation in the field of IPRs with third countries and free trade zones that are most frequently the source of illicit trade; in this regard, believes it is necessary to foster both administrative cooperation between customs authorities at international level and the development of partnerships with private businesses, in order to counter customs violations and circumvention of tax obligations;

30. Invites the Commission to strengthen cooperation with the European Union Intellectual Property Office (EUIPO) and, in particular, the European Observatory on Infringements of Intellectual Property Rights, in order to support initiatives on IPR enforcement such as facilitation procedures for rightholders through electronic exchange of data, which would also benefit SMEs, and to make the fight against counterfeiting and fraud one of its priorities in the WTO, involving the OECD and the WCO in its work on the matter; therefore stresses that the current Regulation on Customs Enforcement of Intellectual Property Rights plays an important role in the fight against counterfeiting (trademark infringements), piracy (copyright infringements) and smuggling of sensitive products, as well as in the areas of geographical indications, marking of origin and illegal trade; believes it vital that the above Regulation, along with the directive on the enforcement of intellectual property rights, is duly implemented throughout the Union and that necessary enforcement by customs authorities is conducted in a way that does not prevent legitimate traders from operating in good faith;

31. Requests the Commission to coordinate in a better way the defence of geographical indication on agri-food products, within the Commission itself and also with the EUIPO, as a genuine value added on external markets; reminds the Commission of the importance of developing an equally ambitious policy on non agri-food geographical indications; points out that the introduction of a system for the protection of non-agricultural products by means of geographical indications which is coherent, simple, transparent and does not impose an administrative and financial burden represents an opportunity for SMEs and would strengthen the EU's position in international trade negotiations;

32. Notes that customs services are facing new kinds of challenges, related both to new ways of trading and to the security and protection of goods under import procedures or in international transit with a destination in Europe;

33. Notes that the efficiency of customs procedures is crucial not only for trade facilitation, but also for effective and expedient law enforcement with regard to the counterfeiting and smuggling of excisable goods entering the EU; considers that customs services are at the crossroads between the secured movement of goods protecting consumers within the EU and the implementation of the provisions of trade agreements;

34. Is of the opinion that the quality and performance of customs controls on the transit of goods, particularly for shipment and transport operations at ports and borders, is of the first importance and must be improved; regrets that there is currently a factual gap in terms of type of controls within the Union that favours some access routes, in particular ports, to the detriment of others, where the checks carried out are more stringent; considers it necessary to ensure that there are homogeneous and standardised control techniques among Member States for filtering at ports and borders, by promoting modern, technologically advanced and risk management-based control strategies;

Tuesday 16 May 2017

35. Considers that Member States should concentrate customs controls, and, to the extent possible, other relevant border controls, on high-risk consignments that are selected on a random basis using common selectivity criteria, including those relating to the nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, regulatory compliance record of traders, and means of transport;
  36. Supports all efforts to promote integrity in international trade with the move towards achieving fully electronic EU customs procedures by 2020, as foreseen in the new Union Customs Code, which will enhance the transparency of the control sampling of goods and containers;
  37. Feels that better coordination is needed between the European Anti-Fraud Office (OLAF), customs authorities and market surveillance authorities in order not only to combat counterfeiting, but also to curb the trade in illegal products that infringe intellectual property laws in the EU;
  38. Stresses OLAF's role in investigating the evasion of import duties (including conventional, anti-dumping and countervailing duties) on all types of commodities and goods, especially where involving false declarations of origin (in both preferential and non-preferential regimes) and undervaluation and wrong description of goods; calls on OLAF to play a more active role in the coordination of related investigations by national customs services of EU Member States and other partners both inside and outside the EU;
  39. Points out that regular Joint Customs Operations play a vital role in safeguarding EU public finances, by identifying where the risks lie on specific trade routes and protecting the citizens and legitimate businesses by preventing illegal products from entering the EU; calls on OLAF to step up its support for the customs authorities of EU Member States as well as some third countries in carrying out more joint customs operations, by means of its technical infrastructure, IT and communications tools, strategic analysis and administrative and financial support, in order to improve the effectiveness of customs services in conducting targeted checks at European level;
  40. Believes that the Commission should better monitor, on a standardised risk basis, countries benefiting from preferential treatment, notably in order to verify the implementation of rules of origin and cumulation; considers, in this context, that the checking of the originating status of imported products and the adequacy of the documents granting preferential treatment is a key component of control strategies and traceability;
  41. Instructs its President to forward this resolution to the Council and the Commission.
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