Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 952/2013 laying down the Union Customs Code

[COM(2018) 259 final — 2018/0123 (COD)]

(2018/C 367/08)

Rapporteur: **Antonello PEZZINI**

Referral	European Parliament, 28.5.2018
	Council, 29.5.2018
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted at plenary	12/07/2018
Plenary session No	536
Outcome of vote	147/0/2
(for/against/abstentions)	

1. **Conclusions and recommendations**

1.1. The European Economic and Social Committee (EESC) has always maintained that an effective customs union is a prerequisite for the European integration process in order to guarantee the efficient, safe and transparent free movement of goods. It offers maximum protection for consumers and the environment, with better quality jobs, and an effective means of combating fraud and counterfeiting.

1.2. The EESC underscores the importance of ensuring that the regulatory framework is clear, transparent and unequivocal for all operators and stakeholders, both public and private, working within the Customs Union. It should use clear definitions, procedures and terms applicable to all goods entering or leaving the EU customs territory, enabling the Customs Union itself to operate in a manner that is effective and consistent with the implementation of the common commercial policy.

1.3. The EESC therefore supports the proposed regulatory framework, comprising:

— amendments to the technical standards and rules of the Union Customs Code (UCC);

— corrections of technical errors and omissions, aligning the code with the Canada-EU Comprehensive Economic and Trade Agreement (CETA);

— the inclusion of the municipality of Campione d'Italia and the Italian waters of Lake Lugano in the EU customs territory, as requested by the Member State concerned.

1.4. The Committee considers it vital for the Union and those countries with which it has concluded free trade agreements to support this common commitment to enhancing free and fair trade in a vibrant and forward-looking society. The aim is to stimulate economic activity and promote the shared values and ideas that were specifically set out in the Single European Act of 1986 and the Customs Code of 1992, culminating in the UCC of 2013 — values that have also been included as a proposal in the long-term budget for 2021-2027 to promote more efficient tax and customs cooperation in the Union.

1.5. With regard to the inclusion of 'territorial enclaves', the Committee recommends paying particular attention to making the necessary amendments at the same time to Directive 2008/118/EC (Excise duties) and Directive 2006/112/EC (the VAT Directive).

1.6. The EESC would ask the Commission to send it the interim evaluation report on the UCC legal framework to be published in 2021 for the purpose of assessing the adequacy of the amendments to the present regulation and the efficiency of the common electronic systems which should be in place by that time.

2. **Introduction**

2.1. The Customs Union (CU) falls under the exclusive competence of the EU, in accordance with Article 3 of the Treaty on the Functioning of the European Union (TFEU), and the Union Customs Code (UCC) has made it possible to:

— harmonise the previous, disparate rules;

— apply equal treatment;

— impose legitimate sanctions.

2.2. New customs rules entered into force on 1 May 2016 with the aim of simplifying matters for firms operating in Europe and providing better consumer protection. The new Union Customs Code represented a major renewal of EU customs law, in force since 1992.

2.3. The 1986 Single European Act, which came into force in July 1987, ushered in a process which, in three phases — for capital in 1990, goods in 1993 and the single currency in 1999 — gave meaning to the terms of Article 28 TFEU, namely: '[…] the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect'.

2.4. After the code in 1992 and the regulation in 2008, 2013 saw the arrival of the UCC (supplemented by a variety of delegated and implementing regulations), a milestone for the European Customs Union: the UCC is the framework enabling goods worth more than EUR 3 000 billion to enter and leave the EU every year.

2.5. Following the entry into force of the new substantial provisions of Regulation (EU) No 952/2013 laying down the Union Customs Code (UCC) in May 2016, the process of regular consultation with Member States and businesses has made it possible to identify errors and technical anomalies that need to be corrected in order to ensure legal certainty and consistency.

2.6. The EU customs territory does not completely match that of the overall areas making up the geophysical entity of the EU. This means that some areas within various national boundaries are excluded from the EU customs territory, whilst others that are not a part of the geophysical entity of the EU are in practice considered to be an integral part of its customs territory.

2.7. Thus, whilst the Austrian territories of Jungholz and Mittelberg, the Principality of Monaco, the Republic of San Marino, the French overseas departments (ODs) (Martinique, Guadeloupe, French Guiana and Reunion), the Isle of Man and the Canary Islands are part of the EU customs territory, others which are part of the EU's geophysical area are excluded: these include the Faroe Islands, the Island of Heligoland and the territory of Büsingen, Ceuta and Melilla, the French overseas territories (TOMs) (French Polynesia, Wallis and Futuna, New Caledonia, the French Southern and Antarctic Territories and the territorial communities of Mayotte and Saint Pierre and Miquelon) and Livigno. Also hitherto excluded were Campione d'Italia and the Italian waters of Lake Lugano, between Ponte Tresa and Porto Ceresio, territories which Italy has asked to be included.

2.8. Negotiations for an EU-Canada Comprehensive Economic and Trade Agreement (CETA) were concluded in September 2014, in Council Decision (EU) 2017/37 of 28 October 2016. The agreement, which entered into force on 21 September 2017, abolished 99 % of customs duties and many other barriers which up until now have represented a burden for traders.

2.9. CETA — on which the EESC was able to express its views on several occasions ([1]) — contains a number of aspects that are of major interest for customs, given that Article 1.4. of the agreement establishes between Canada and the European Union a free trade area, in keeping with Article XXIV of GATT (1994) ([2]) and Article V of GATS ([3]). In any event, CETA does not affect other rights and obligations between the contracting parties under the WTO agreement, and nor does it affect the other agreements to which they are respectively party ([4]).

([1]) OJ C 48, 15.2.2011, p. 87; OJ C 332, 8.10.2015, p. 45; OJ C 227, 28.6.2018, p. 27.
([2]) *General Agreement on Tariffs and Trade*.
([3]) *General Agreement on Trade in Services*.
([4]) See Article 1.5 CETA.

2.10. Unless otherwise specified ([5]), the free trade area applies:

— for Canada: to its land territory, air space, internal waters and territorial sea; its exclusive economic zone, as determined by Canadian domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 ('UNCLOS' ([6])); and its continental shelf, as determined by Canadian domestic law, consistent with Part VI of UNCLOS;

— for the European Union: to the territories in which the TEU (Treaty on European Union) and the TFEU are applied and under the conditions laid down in those Treaties and also, as regards the provisions concerning the tariff treatment of goods, to the areas of the European Union customs territory not included in the above territories.

2.10.1. Together with CETA, the EU and Canada signed a joint interpretative instrument ([7]) which will have legal force and which clearly and unambiguously outlines the content of the agreement between Canada and the European Union in a number of CETA articles, such as those concerning the new investment court system, the right to regulate, public services and environmental and labour protection.

2.10.2. The regular consultation process with the Member States and firms has identified some errors and technical anomalies that need to be corrected in order to guarantee legal certainty and coherence. This is the backdrop to the Commission proposals, including the alignment of the UCC with an international agreement which had not entered into force at the time of adopting the code and the request for inclusion of part of its territory by Italy.

3. **The Commission's proposals**

3.1. The Commission proposes to amend the Union Customs Code with a view to:

— correcting the technical errors and omissions, including the alignment of the UCC with the provisions of international agreements that were not in force at the time of its adoption, such as the Canada-EU Comprehensive Economic and Trade Agreement (CETA);

— modifying the definition of the EU customs territory to include the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano;

— providing specifications and additions regarding decisions and procedural time-limits on binding tariff information (BTI), entry summary declarations, declarations for temporary storage, exit summary declarations or a re-export notifications and exemptions from import duties, under the outward processing procedure.

4. **General comments**

4.1. The EESC fully shares the Commission's aim of making technical changes to the Union Customs Code (UCC) to ensure that the code complies with the objectives of improving the competitiveness of European enterprises, but also of better protecting the financial and economic interests of the Union, providing better quality jobs and ensuring the security of EU consumers.

4.2. The Committee notes the importance attached by CETA to trade and sustainable development, and the commitments undertaken in this respect by the contracting parties, under the joint interpretative instrument, to strengthen these measures. It also notes the positive approach of the new model adopted for settling investment disputes.

4.3. The Committee therefore welcomes the aim of aligning EU regulatory norms with the agreements signed with Canada in the following areas:

— binding tariff information;

— temporary storage;

— entry summary declarations and particulars to be included in the event of failure to submit pre-arrival information concerning non-Union goods;

([5]) See Article 1.3 CETA.

([6]) *United Nations Convention on the Law of the Sea*.

([7]) Approved by the Council at the time of signing the agreement on 28 October 2016, it provides a binding interpretation of CETA pursuant to Article 31 of the Vienna Convention on the Law of Treaties: http://data.consilium.europa.eu/doc/document/ST-13541-2016-INIT/en/pdf.

— invalidation of a temporary storage declaration;

— total relief from import duties in some cases;

— exact terms of the invalidation, in cases where there is a temporary storage declaration, of the exit summary declaration or re-export notification.

4.4. The Committee is in favour of agreeing to the request by the Italian government to include, from 1 January 2019, the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the EU customs territory.

4.5. The Committee would recommend that, in parallel to this process of inclusion, the necessary amendments be made to Directive 2008/118/EC (Excise duties) and Directive 2006/112/EC (VAT Directive), to be applicable from the same date of 1 January 2019.

4.6. The EESC would ask the Commission to send it the interim evaluation report, to be published in 2021, on the efficiency, coherence and correctness of the UCC legal framework, as amended by the current legislative proposals.

Brussels, 12 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER