

EU CUSTOMS UNION YESTERDAY, TODAY AND (POSSIBLY) TOMORROW IN E-COMMERCE INTERACTION

COLNÁ ÚNIA EÚ VČERA, DNES A (MOŽNO) ZAJTRA V INTERAKCII E-COMMERCE¹

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ABSTRACT

In the last two decades, in general (from a geopolitical point of view) in the economic-business environment, it was possible to notice a significant shift in trading from "brick-and-mortar stores" to online space. The implementation of e-commerce solutions was accelerated during the COVID-19 pandemic. Within the framework of electronic commerce, however, it is necessary to observe several obligations and rules arising from national legal systems when carrying out individual business transactions, which, however, in such political-economic grouping as the EU represents, are an expression of the existence and operation of Union Law. An important place among them also belongs to Customs Law, which is under great pressure in connection with the growing popularity of online purchases. The aim of this paper is primarily to evaluate the impact of the change in the form of trade on the form of the Customs Union, to identify the fundamental shortcomings of the legislation and to point out further development tendencies in the given area. For this purpose, a hypothesis was established - traditional customs law institutes are able to adapt to new challenges in e-commerce - the truth of which we verified. We will use several methods of scientific research, especially analysis, synthesis and comparative method, when processing the said paper. The contribution is based on the legal status valid and effective as of April 30, 2025.

ABSTRAKT

V posledných dvoch desaťročiach bolo možné vo všeobecnosti (z geopolitického hľadiska) v ekonomicko-obchodnom prostredí zaznamenať výrazný posun obchodovania z „kamenných predajní“ do online priestoru. Implementácia e-commerce riešení bola akcelerovaná v období pandémie ochorenia COVID-19. Aj v rámci elektronického obchodu je však potrebné pri realizácii jednotlivých obchodných transakcií rešpektovať viaceré povinnosti a pravidlá plynúce z vnútroštátnych právnych poriadkov, ktoré sú však v takom politicko-ekonomickom zoskupení, aké predstavuje EÚ, výrazom existencie a pôsobenia únievého práva. Významné miesto medzi nimi patrí aj colnému právu, ktoré je pod veľkým tlakom v súvislosti so zväčšujúcou sa obľubou online nákupov. Cieľom tohto príspevku je predovšetkým zhodnotenie vplyvu zmeny formy obchodovania na podobu colnej únie, identifikovanie zásadných nedostatkov právnej úpravy a poukázať na ďalšie vývojové tendencie v danej oblasti. Za týmto účelom bola stanovená hypotéza – tradičné inštitúty colného práva sú schopné prispôsobiť sa novým výzvam v e-commerce – ktorej pravdivosť sme overovali. Pri spracúvaní uvedeného

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príspevku využijeme viaceré metódy vedeckého skúmania, predovšetkým analýzu, syntézu a komparatívnu metódu. Článok vychádza z právneho stavu platného a účinného k 30. aprílu 2025.

I. INTRODUCTION

„It is time to take the Customs Union to the next level, equipping it with a stronger framework that will allow us to better protect our citizens and our Single Market.“⁴

More than 6 years have passed since the above mentioned idea was put forward. Have any significant changes been made in the sphere of Customs Union policy since then or are these only minor „cosmetic corrections“? With a certain level of scientific generalization and vagueness, we may admit that this statement encompasses one of the hypotheses that was formulated within our scientific research related to this paper. Globalization influences the sphere of the Customs Union in the same way as it is with other aspects of the life of an individual.

Globalization is a characteristic feature of the present period both in economic and informational perspectives. Both aspects of globalization are closely intertwined. The precondition of economic globalization is the informational globalization, it means the creation of global informational environment, and economic globalization, in turn, exerts pressure on informational globalization, or alternatively, on the further development of world-wide informational infrastructure.⁵ Business activities of individuals in this respect are by no means exception to it.

Owing to the influence of globalization, state borders no longer constitute an impediment to trade which is even more amplified within the Member States of the European Union (hereinafter referred to as the „EU“). This arises from the fact that the Member States of the EU created customs area within the so-called Customs Union. Thus, it is not surprising that under the influence of globalization, the number of trading entities conducting business at the supranational level, or at the global level, with the benefits offered by the single internal market has also increased. For example, in 2021 the trade value of the EU represented approximately 4.3 billion euros. In mathematical terms, this corresponds to 14 % of world trade.⁶

Technological innovations of the 21st century in the period of globalization became one of the externalities influencing the activities of entrepreneurs and well as of consumers. Due to this, among other reasons, this period is frequently designated as the industrial (digital) revolution 4.0. The attribute „digital“ refers to the fact that, during the lives of individuals, massive implementation of technological innovations can be witnessed regularly with the aim to facilitate or streamline people's everyday activities.

In the era of constant digitalization and continual development of all aspects affecting the operation of markets, the implementation of e-commerce solutions has become increasingly

⁴ LEYENOVÁ, U. Colná reforma: posunutie colnej únie na ďalšiu úroveň. In: *Oznámenie Komisie Európskemu parlamentu, Rade a Európskemu hospodárskemu a sociálnemu výboru. (EN: Customs reform: taking the Customs Union to the next level. In: Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee).* (Brusel: COM (2023) 257 final. 2024. [online]. [cit. 2024-07-07]. Accessible at: <https://data.consilium.europa.eu/doc/document/ST-9622-2023-INIT/sk/pdf>.

⁵ GÁLA, L. – POUR, J. – TOMAN, P. *Podniková informatika*. 1. vyd. Praha: Grada, 2006. p. 484.

⁶ *Customs reform: taking the Customs Union to the next level. In: Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, COM (2023) 257 final, p.1.*

popular.⁷ The development in this field in the recent period has experienced exponential growth.⁸ A significant proportion of enterprises opt to offer a part of their portfolio via electronic commerce to their clients, businesses or end customers in order to simplify purchasing and to increase the overall volume of sales of goods and services.⁹

Such facts encourage legislative drafters at the EU level to reflect on the form of the Customs Union, its position, relevance and other related issues in the digital era, in the era of e-commerce.¹⁰

Having reviewed a relevant volume of literature in this field, it can be concluded that its portfolio is constituted by a significant number of publication outputs devoted to issues of Customs Law, including the regulation of the Customs Union of the EU. Several authors concentrated on Customs Law, such as Drwiłło (1991), Viner (2014), Poniewierka (2015), Gwardzińska et. al. (2017), Lyons (2018) and also Oktaba (2019). The state of customs law within the EU in a broader context is mapped by the author Fabio (2020). Another group of researchers tackled selected (specific) issues in the area of Customs Law.¹¹ Domestic literature is – we must admit – much more modest.¹² The majority of publications focusing on issues of Customs Law, or specifically on the Customs Union of the EU, are to a certain degree outdated and fail to follow new trends and initiatives in this research area. It can be said that a niche in research has been identified which may broaden the horizons of future research.

The aim of the present paper is to evaluate the impact of the change in the form of trading on the form of the Customs Union, to identify the fundamental shortcomings in legislation, and to pinpoint the forthcoming development trends in this field. For this purpose, a hypothesis was established - traditional customs law institutes are able to adapt to new challenges in e-commerce - the truth of which we verified

Our mixed methods research predominantly employed the method of analysis, synthesis and the comparative method. Having analysed the current legal framework and the planned initiatives within the EU, we arrived at concrete conclusions and proposals *de lege ferenda* so that the aims declared by the EU legislative drafters were attained and not just manifested towards the outside. The comparative method also furthered the formulation of these conclusions, it was used to examine the form of measures of today, yesterday and of those still in the form of legislative proposals. These methods were applied in combination. The contribution is based on the legal status valid and effective as of April 30, 2025.

⁷ Digitalization is also reflected in the fact that central banks of states develop their own digital currencies following the pattern of crypto-assets which may open new avenues of research in this area in the future. For details, see: e.g. NIEBORAK, T. Central Bank Digital Currency as a New Form of Money. In: *Białystok Legal Studies*, vol. 29, no. 1, p. 189-203. [online]. [cit. 2024-08-15]. Accessible at: https://bsp.uwb.edu.pl/wp-content/uploads/2024/05/189_Book-BSP-2024-29-1.pdf.

⁸ In this context, the authors Morini, Pieri, Chaudhary and Hintsa (2024) state that cross border e-commerce, data quality and taxation pose challenges for customs administrations worldwide.

⁹ Authors Perepolkin, Havrylenko and Mazur (2022) have focused on the formation and development of international customs law. However, e-commerce will be one of the realities that will need to be considered in the coming period.

¹⁰ Some authors began to address the legal aspects of e-commerce as early as 2005 (Edwards), but it is important to note that e-commerce, as well as its legal framework, has undergone some development. For more information, see also: VOLODYMYRIVNA, M. I.: Legal regulation of e-commerce in the European Union, In: *Journal of Civil law*, 2021, issue 41, pp. 61-65. ISSN 2413-1261.

¹¹ For example, the author Goodwin (2017) investigated the issue of Brexit and its impact on the area of customs. Furthermore, the form and importance of customs duties in the 21st century was discussed by e.g. Gordhan (2007). The co-authored research of Hintsa, Männistö, Urციული and Granqvist (2012) concentrated on e-customs, current framework (at the time when study was conducted) of Swiss trans-border trading with an outline of possible future development. Currently, there is an increasing number of publications on the impact of the war in Ukraine on customs and customs law. These issues have been addressed, for example, by Kovalchuk (2024) and co-authors Taran, Tarasenko and Cherniavskyi (2023).

¹² In the conditions of the Slovak Republic and in the Czech Republic, the issue of Customs Law was researched by e.g. Brodesser et. al. (1982), Slovinský et. al. (1985), Balko, Králík et. al. (2010), Čakoci (2008), Šimonová (2010), Šramková (2011), Mrkývka (2015) and others. We can also mention several authors of recent papers, including e.g. Bérešová (2017), Prosman and Výsocký (2018), Stojáková and Popovič (2018) and the most recent also Daudrikh and Szakács (2022).

II. E-COMMERCE AS THE FACTOR INFLUENCING THE STRUCTURE OF THE CUSTOMS UNION IN THE EU

E-commerce sphere can be approached from different points of view and there is no common agreement on what this term exactly designates. For the purposes of this paper, we can start our discussion about e-commerce along the line that it primarily denotes the exchange of information over an electronic medium directed towards trading or support of trade.¹³ E-commerce covers all trading activities and services using electronic instruments involving data transfer directly connected with the realization of trade, whereas, in case the purchase concerns software or other information, these may also be transferred to the end consumer over electronic means.¹⁴

As has already been mentioned, e-commerce is closely interconnected with the digital market. It comprises combined innovative information and communication technologies. E-commerce is generally considered to include the sale of physical and virtual products online, but it may also comprise any type of commercial transactions via electronic devices. It also encompasses transactions that ensure the generation of incomes in companies, as well as transactions that support the production of incomes.

E-commerce is constituted by a wide range of financial and other applications, including, for example, the dissemination and exchange of digital data, electronic stock exchange activities, electronic transfer of funds, commercial auctions, electronic auctions, direct sale to consumers and related services, etc. All these factors have a significant impact on the structure of Customs Law and the Customs Union of the EU.

In respect thereof, one can also mention the year 2020 marked by the pandemic of highly contagious disease COVID – 19 which rapidly contributed to the process of digitalization and implementation of modern technologies into our everyday lives.¹⁵ Buying and selling of products and services transferred to online environment. The borders between individual states have become gradually blurred, not only in the European, but we can also say, in the world-wide perspective. During this period, e-commerce dramatically increased and this state of affairs continued to persist in the post-covid era as well. The prospects for the future indicate that comfort, which goes hand in hand with distance buying, will play a pivotal role in the development in this sphere.

The above-mentioned developments have brought with them a growing number of speculative activities intending to use or even abuse the imperfections of tax systems, including the deficiencies in the current regulation of the Customs Union. Within the Member States of the EU, legislation in this sphere is significantly determined by the activities of law-making institutions of this international integration network. Due to this, the most important issues of Customs Law, of the related tax-law legislation (in particular, of the area of indirect taxation), are regulated at the Union level for the benefit of ensuring common and coordinated procedure of the Member States of the EU.

Rapid growth of e-commerce was a contributing factor which finally forced the EU to take action in the area of Customs Law; and for the future, the EU is expected to respond effectively

¹³ DVOŘÁK, J. *Elektronický obchod: studijní text pro kombinované studium*. Brno: Vysoké učení technické v Brně, Fakulta podnikatelská, 2004. s. 51.

¹⁴ SUCHÁNEK, P. *E-commerce: elektronické podnikání a koncepce elektronického obchodování*. Praha: Ekopress, 2012. p. 70.

¹⁵ The impact of the COVID-19 pandemic on tax legislation in Poland, the Czech Republic and the Slovak Republic was analysed by the authors Gajewski and Olczyk, or the authors Radvan and Svobodová. For details see also: GAJEWSKI, D. – OLCZYK, A. Changes in Polish Tax Law in response to the COVID-19 pandemic against the comparative legislative changes in the Czech Republic and Slovakia. In: *STUDIA IURIDICA Cassoviensia*, vol. 12, no. 1, 2024. pp. 87-98., RADVAN, M. – SVOBODOVÁ, T. Reformy daňového práva v (ne)souvislosti s COVID 19. In: *STUDIA IURIDICA Cassoviensia*, vol. 9, no. 2, 2021. pp. 69-84.

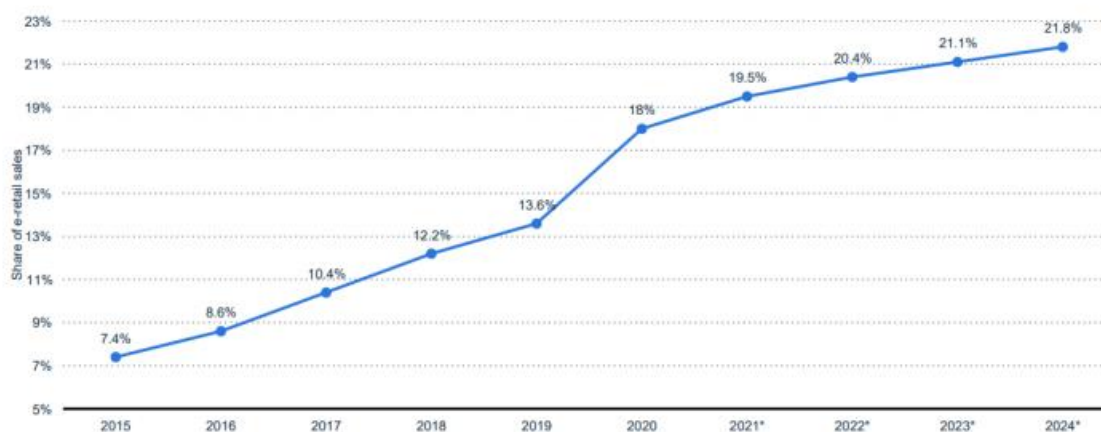
and to take necessary measures in this respect. As will be shown later, this course of procedure is inevitable. The following sections shall highlight and identify the current problematic aspects of the Customs Union of the EU in consideration of the growth in the e-commerce sphere.

III. CUSTOMS UNION OF EU, GROWTH OF E-COMMERCE AND IDENTIFICATION OF EXISTING PROBLEMS

The membership in the European Union comes along with many advantages of which the business entities (ranging from the state to natural persons or juridical persons) can be less or more aware. One such advantage is undoubtedly the frequently mentioned Customs Union of the EU which came into existence in 1968. This „project“ has been in operation for more than 56 years. It is a certain form of international economic integration.¹⁶ The Customs Union of the EU facilitates trading between entities of the EU, harmonizes the rates of customs duties applied to goods originating from third countries (countries outside the EU), contributes to the protection against illegal trading with animals, etc. The mission of the Customs Union of the EU is relatively widely formulated, and its accomplishment requires the involvement of customs authorities of all Member States. Cooperation of customs authorities, declared in the article 33 of the Treaty on the Functioning of the EU, aspires to ensure joint action of the Customs Union of the EU towards the outside with the ultimate aim to put the article 28 of the Treaty on the Functioning of the European Union into effect.

It is interesting that, half a century after the creation of the Customs Union of the EU, it has undergone many changes that are far from complete. As has already been suggested, there are several factors that remarkably influence the shape of the Customs Union of the EU, including the instant introduction of digitalization and rapid growth of e-commerce sphere. This was also underpinned by the measures of individual Member States of the EU in their attempt to prevent the spread of the pandemic and other health risks. The above mentioned can also be inferred from the figure below.

Figure 1: E-commerce Share of Total Global Retail Sales 2015-2024



Source: International Trade Administration: Impact of COVID Pandemic on e-Commerce. 2024. [online]. Accessible at: <https://www.trade.gov/impact-covid-pandemic-ecommerce>

¹⁶ EURACTIV Slovensko: *Európska Únia - Colná únia*. 2019. [online]. [2024-08-01]. Accessible at: <https://www.europskaunia.sk/colna-unia>.

Figure 1 above presents the share of e-commerce total global retail sales during the period from 2015 to 2024. The monitored period reflects the status before the pandemic and also during the post-covid period. The graph curve documents that the share of e-commerce retail sales was steadily progressive from 2015, whilst a sharp rise was detected during the period of 2019-2020. This concerns the period when the governments introduced their anti-pandemic measures all around the world. The graph also shows that the growth curve indicating the share of e-commerce retail sales around the world has in the course of time become more stable, however, it keeps constantly rising.

The trend of the post-covid period continues to persist and, for the time being, the future prediction is that the share of e-commerce is expected to increase further.¹⁷ The pandemic period had a significant impact on the customers' behaviour and the shift from „brick-and-mortar stores“ to online environment accelerated. Under these circumstances, businessmen were forced to adjust to new conditions and processes undergoing in economy. In its own way, entrepreneurial adaptation was rather beneficial which was also manifested in the increase in sales, not only of digital giants.¹⁸ For this reason as well, the present time of our society can be labelled as „e-commerce era“.

As noted before, the increase in sales in online environment is interconnected with multiple problems of the Customs Union of the EU which must be settled in the near future. These problematic issues will be discussed here separately in **two categories**, namely:

1. **organizational-administrative problems** – the Customs Union of the EU currently comprises 27 Member States¹⁹ that have created a specific structure of institutions participating in customs duties collection, including VAT upon import. The EU does not interfere with these organizational structures and it relinquishes the regulation of these issues for the Member States respecting their traditions, history, etc. Under current circumstances, the system of customs authorities is exposed to an enormous administrative burden, which is caused by the increase in responsibilities, complexity of the tasks as well as by the increase in the number of consignments with low value.²⁰ This trend was also evident during the pandemic. Apart from that, we can note that the mechanisms of administrative cooperation between the authorities within this system are not exploited to the required standard. What it means is the failure to benefit from the concluded mutual agreements on administrative assistance with the exchange of information with countries located outside the territorial framework of the EU. Major shortcomings are also evident with regard to failure to take advantage of the existing mechanisms of administrative cooperation within the EU what prevents the effective response to challenges connected with e-commerce. The EU faces new challenges on its path to seek relatively more refined solutions to balance the trend of decreasing

¹⁷ Current trends indicate that growth is expected to be steady unless any unexpected phenomena occur in economy, which, similarly as the COVID-19 pandemic, could influence in either positive or negative sense the share of e-commerce total global retail sales.

¹⁸ Domestically, several cases were identified where this period had a positive impact on companies' sales and their profitability as well. However, this situation on the market appears a bit distorted because different forms of subsidies were provided to entrepreneurs or households. Many of those measures were of universal and untargeted application. For this reason, the market became a fertile ground for various disinformation campaigns, which according to many economists, could lead to higher levels of inflation (and related increase in prices) across the countries of the EU and also outside the EU.

¹⁹ After the so-called Brexit, business transactions between the territories of the United Kingdom of Great Britain and Northern Ireland, on one side, and the Member States of the EU, on the other side, are regulated by the provisions enshrined in the „Post-Brexit Agreement“.

²⁰ Supervision exercised by the customs authorities across the borders of the Customs Union of the EU is practically uninterrupted during the whole year. Its administrative complexity may be demonstrated by the fact that in 2021 customs authorities processed 691.5 million import custom declarations, 17.5 million transits and 486.3 million export customs declarations [Customs Union of the EU – unique in the world (europa.eu)].

administrative requirements on businessmen on the one hand, and the interest to eliminate speculative activities in this sphere which, as was already mentioned has enormously increased, on the other hand.

- 2. Problems of legal application** – apart from organizational-administrative problems, the Customs Union of the EU also tackles problems of legal application nature. Since many legal concepts arise from the customs-law legislation, our attention will narrow down to just one of them. In this context, we must bring to the attention especially the concept of customs control as the immanent component of customs supervision.²¹ One of the fundamental problems of this customs-law concept is its insufficient harmonization across the countries integrated in the Customs Union of the EU. This results in variance in procedures of customs authorities in similar situations.²² Reservations can be voiced about the cooperation between respective authorities. Thus, it is inevitable to improve the cooperation between the customs authorities and tax authorities, especially, in consideration of the fact that customs authorities ensure proper application of VAT and excise duties imposed on imported goods. The above mentioned measures would help to achieve a balance between controls, remove the discrepancies in rules, significantly contribute to fight against frauds with the aim to ensure proper collection of customs duties and taxes at borders and this way protect the financial interests of the EU and of the individual Member States.

In our opinion, these problems cause that EU, or its Member States, are deprived of relatively high budgetary revenues.²³ The issue of collection of customs duties and VAT related to e-commerce are the challenges which the EU will be forced to settle in the near future. What follows is the account of certain activities that have already been carried out in this sphere, furthermore, we shall also comment on the planned reform of the EU in connection with the Customs Union of the EU, which is commonly referred to as the „most significant“, namely the plan to introduce more effective system of collection of customs duties.²⁴

Given the above facts, our hypothesis - traditional customs law institutes are able to adapt to new challenges in e-commerce - was not verified. In the following text, we will therefore take a closer look at the future of the customs union in the e-commerce era and other development trends that may contribute to the adaptation of traditional customs institutes to new phenomena in the economy.

IV. FUTURE OF THE EU CUSTOMS UNION IN E-COMMERCE ERA AND FURTHER DEVELOPMENT TRENDS

As a consequence of implementation of e-commerce solutions, international trade has undergone noteworthy changes. We maintain that the present period has probably instigated the biggest challenges related to e-commerce that will put the reactions and efficiency of the Customs Union of the EU to the test. The above mentioned problems of the Customs Union triggered several initiatives that aim to tackle some of them. In the following section, our goal

²¹ Veenstra and Heijimann (2023) have addressed in their publications both the future of customs, but also the question of new challenges in the surveillance of the international movement of goods in the context of recent legislative initiatives.

²² Moreover, it also significantly influences legal certainty of EU citizens and their legitimate expectations since they must cope with various procedures of authorities across the EU countries.

²³ The Commission estimates that the loophole on revenues from customs duties is circa 1 billion euro every year. For details, see: Communication of the Commission to the European Parliament, Council and the European Economic and Social Committee – Customs Reform: Taking the Customs Union to the next level, COM (2023) 257 final, p. 9.

²⁴ Commission, EU Customs Reform. 17.05.2023. [online]. Accessible at: https://taxation-customs.ec.europa.eu/customs-4/eu-customs-reform_en.

is to pinpoint selected activities in the sphere of e-commerce that have already been accomplished and discuss those which are planned or are in the form of legislative proposals.

The first systematic step of the EU in this respect was the „*VAT e-commerce package*“, which was adopted by the Council of the EU on 5 December 2017,²⁵ as a response to the rapid growth of electronic commerce. This initiative aimed to facilitate the VAT collection in such cases where consumers purchase products and services online.²⁶ This reform did not abolish the exemption from customs duties for goods not exceeding the value of 150 euro, however, it did introduce the obligation to file electronic customs declaration, which eventually in 2022 led to 1 billion of other customs declarations. These were added to standard customs declarations, their number has almost doubled – from 376.8 million in 2019 to 691.5 million in 2021.²⁷

Maintaining the exemption from customs duties for goods not exceeding the value of 150 euro gave rise to systematic abuse of this threshold through undervaluing and splitting of consignments. It is striking that about 65 % of e-commerce consignments are undervalued²⁸ with a view to avoid customs duties, while studies suggest that 66 % of products purchased online do not meet EU safety requirements.²⁹ We can see that such speculative activities not only endanger the fiscal interests of the EU but they also pose a threat to life and health of individuals since they fail to satisfy the prescribed safety requirements.

After all, different regimes for VAT and customs duties for goods in e-commerce cause that the system is very complicated for the parties involved. Customs authorities currently lack the means to duly enforce the rules of international trade in the sphere of cross-border electronic commerce. For this reason, there was an urgent need to create a customs regime tailor-made to e-commerce. The present-day Customs Law in the EU is rigid and fails to reflect on all complexities connected with e-commerce.

Changes in customs clearance for consignments of goods originating from outside the EU were introduced to practice as of 1 July 2021.³⁰ These activities are subsumed under the whole-European project „*Project of e-commerce*“. From this moment, new rules for e-commerce are applied in all Member States of the EU. They aimed to create fair conditions on the market and to remove any barriers to competition between the sellers/suppliers from the EU and third countries, which was rather problematic in the original legislation, as mentioned before. The project of e-commerce ushered in (among other things) such measures, which for the purposes of this paper, can be classified according to their nature as follows:

- 1. tax measures** – within the e-commerce project, VAT exemption was put in place for consignments not exceeding the value of 22 euro. Customs duty exemption remained for consignments with goods with value (in case of more goods, their aggregate value) not exceeding the amount of 150 euro. The obliged entity always pays VAT during import irrespective of the value of the goods in the consignment.

²⁵ Council Directive (EU) 2017/2455 of 5 December 2017 amending the Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of service and distance sales of goods.

²⁶ Council of the European Union. Press release: VAT on electronic commerce: New rules adopted. 05.12.2017. [online]. [cit. 2024-08-16]. Accessible at: <https://www.consilium.europa.eu/sk/press/press-releases/2017/12/05/vat-on-electronic-commerce-new-rules-adopted/>.

²⁷ Communication of the Commission to the European Parliament, Council and the European Economic and Social Committee – Customs Reform: Taking the Customs Union to the next level. COM (2023) 257 final, p. 1.

²⁸ For details, see: Copenhagen Economics 2016. *E-commerce imports into Europe: VAT and Customs treatment (Dovoz do Európy v rámci elektronického obchodu: režim DPH a colný režim)*. 2023. [online]. [2024-07-27]. Accessible at: <https://copenhageneconomics.com/publication/e-commerce-imports-into-europe-vat-and-customs-treatment/>.

²⁹ BEUC - The European Consumer Organisation. *Is it safe to shop on online marketplaces?* 2021. [online]. [cit. 2024-07-20]. Accessible at: https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-004_is_it_safe_to_shop_on_online_marketplaces.pdf.

³⁰ The Financial administration of the Slovak Republic. *E-commerce*. 2021. [online]. [cit. 2024-08-01]. Accessible at: <https://www.financnasprava.sk/sk/podnikatelia/clo-obchodny-tovar/ecommerce>.

2. **customs measures** – in the customs sphere, new measures were put into use which focused on the simplification of customs clearance procedure on goods, since in accordance with the newly implemented rules, such consignments require electronic customs declaration with electronic signature. In terms of content, customs declarations are noticeably less complicated and contain less data in comparison with the „standard“ customs declaration. As has already been mentioned, it is important to find a certain balance to ensure that such measures do not result in any customs duty evasions.

Despite the fact that the above described measures can be considered an important step forward to eliminate speculative activities and to simplify the procedure before the customs authorities, these instruments have proved to be insufficient in practice. Tax and customs measures in their complexity fail to address all challenges which are closely linked to e-commerce. For this reason, new practices would be desirable to further facilitate the current regime and to harmonize them with rules in the sphere of VAT for e-commerce.

Regardless of the fact that the Customs Reform of 2013, which introduced the Union Customs Code,³¹ created a paperless, integrated and fully electronic environment for the Customs, it is indispensable to take the Customs Union to the next level³² and to face the challenges resulting from e-commerce³³ The EU institutions are fully aware of the demand for a sweeping reform of the Customs Union. On 17 May 2023, the Commission put forward the most comprehensive reform of the Customs Union of the EU.³⁴ Only practice will show, whether the proposed reform is really comprehensive or not. Considering the fact that the flexibility of legislative drafters is in many cases rather problematic, we are inclined to believe that the pace of development and progress in this sphere will prove to the contrary and will require further changes. Regardless of these circumstances, the proposed reform is understood to be grounded on three fundamental principles subsumed under concrete measures:

1. **Effective Customs Union** – originates from the partial aim of the reform of the Customs Union of the EU to introduce a more effective and efficient framework of cooperation based on new partnership between the customs authorities of the EU and enterprises with a view to lower the costs connected with the observance of customs legislation using simplified and modern practices.
2. **Geopolitical Customs Union** – the Customs Union should be better prepared to protect the financial interests of the EU and of its Member States, as well as the interests and values in the area of security, protection of health, economy or environment, to coordinate trade restrictions and to form international customs cooperation by pooling competences and expertise at the central level. With the intention to achieve this ambition, the reform attempts to introduce two key instruments:
 - The EU Customs Authority: the main function of the EU Customs Authority is to pool expertise and competences which are currently scattered throughout the EU with the aim to lead, coordinate and support national customs authorities in the EU. The EU Customs Authority will facilitate the supervision over the supply chains, and the customs authorities at the EU level and at the national levels during controls of goods at the external borders of the EU will act as a whole.

³¹ Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

³² Communication of the Commission to the European Parliament, Council and the European Economic and Social Committee – Customs Reform: Taking the Customs Union to the next level. [COM (2020) 581 final].

³³ Resolution on the 30th anniversary of the single market of 18 January 2023: celebrating achievements and looking towards future developments [2022/3015(RSP)].

³⁴ The Reform consists of several legislative proposals amending and supplementing those existing in the sphere of customs and tax.

- EU Customs Data Hub: the EU Customs Data Hub will collect, process, connect and store all relevant data. Furthermore, it will also evaluate the risk at the EU level that will ensure better protection of external borders of the EU. The creation of the EU Customs Data Hub is a key factor and fundamental precondition that will simplify procedures and lower the costs for the observance of customs legislation for businesses and customs authorities. Customs authorities will access information via direct connection to the EU Customs Data Hub instead of multiple national systems.

3. Agile and eternal Customs Union – among other things, the reform seeks to ensure the flexibility of the Customs Union of the EU to adapt to changes in supply chains, be it with regards to green or digital transformation. In this respect, the reform should introduce tailor-made customs regime for electronic commerce capable of lowering the costs for the observance of customs legislation related to electronic commerce processing and safeguard full transparency for the consumers. Transparency will in turn simplify the procedure of administrative formalities and eliminate useless bureaucracy.

Several additional remarks on planned measures in connection with the forthcoming reform of the Customs Union of the EU will be brought to the fore. As a general rule, customs authorities lack the resources to ensure the enforcement of rules of international trade with regards to cross-border electronic commerce. For this reason, digital platforms should be viewed as the so-called „putative importers“ (instead of consumers) who would take responsibility for all customs formalities and payments.³⁵

In addition to this, the revised Uniform Customs Code³⁶ established a simplified method of calculation of applicable import customs duties on goods with low value regarding distance selling to customers.

It is expected that this simplified calculation method in combination with the use of the EU Customs Data Hub (see above) shall compensate the eventual increased administrative costs for the e-commerce regime. The method is constituted by a four-tier system of groups with corresponding tariffs of customs duty ad valorem³⁷ at the level of 5 % (e.g. for toys and household items), 8 % (e.g. for products made of silk and glassware), 12 % (e.g. for cutlery and electrical machines and devices) and 17 % (e.g. for footwear).³⁸

Rules will thus become more comprehensible, and applied similarly as it is with international partners, for instance in Canada. The EU anticipates that these measures will bridge the gap in customs duties as described above. Since customs authorities will have access to relevant information concerning all sales, new rules will significantly facilitate their work to ensure compliance with production requirements. In the event customs authorities encounter any problem related to a consignment, they will easily detect whether it is an isolated case or a systemic error. Furthermore, the customs authorities shall also play a vital role in the enforcement of new rules related to responsibility as stipulated in the Digital Services Act.³⁹

Last but not least, new rules should also delimitate the allocation of responsibility in the process of import to attain higher transparency in e-commerce. Consumers will receive transparent

³⁵ Platforms will be responsible for ensuring that distance sellers are affiliated with producer responsibility organizations related to goods which require extended responsibility of producers to guarantee equal conditions as pertain to other sellers.

³⁶ Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

³⁷ Customs duty levied as a percentage of the value of imported goods or services, not based on their weight or number of items.

³⁸ The author Grainger (2024) deals with customs tariffs and the use of assistive technologies that can contribute to customs clearance.

³⁹ Regulation of the European Parliament and of the Council (EU) 2022/2065 of 19 October 2022 on Single Market for Digital Services and amending the Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) (OJ EU L 277, 27.10.2022, pp. 1 – 102).

information on overall costs on their online purchase which will be paid en bloc, as is the case with VAT. Moreover, greater certainty will be provided that the products they purchase are harmless to them and to the environment, which will, in turn, stimulate the producers to sustainable production.

The reform will be gradually implemented during the following 10 to 15 years. This will safeguard the consolidation of the reform of 2016 prior to any benefits of the new module begin to materialize and without any distortions to customs operations. A major challenge for the future will also be the implementation of AI into customs processes.⁴⁰

As the debates with regards to the final contours of the EU Customs Union reform are still pending, it is difficult to predict the date when all above mentioned measures are implemented in practice. In conclusion, we express our concerns that the adopted measures will not fully reflect the trends of the period when they become applicable.

V. CONCLUSION

Even after half a century after its creation, the Customs Union of the EU remains a crucial factor of European integration. It serves as a pillar of the single market and of its regulatory framework oriented towards green and digital transformation. Recent dramatic changes in geopolitics and world economy have transformed global trade and intensified the need to modernize the Customs Union of the EU and its regulatory framework, including its framework of management. Due to this, vigorous discussions are ongoing on how to reform the current shape of the Customs Union of the EU.

One of the most pressing problems of the present day in this sphere seems to be issue of e-commerce and its related aspects. Especially e-commerce and the changes brought by it in the structure of trade fetched in new challenges in the sphere of customs duties. Owing to this, we set our aim out in the introductory part of this paper - to evaluate the impact of the change in the form of trade on the form of the Customs Union, to identify the fundamental shortcomings in the legislation and to outline the forthcoming development tendencies in this area and the hypothesis - traditional customs law institutes are able to adapt to new challenges in e-commerce - the truth of which we verified.

The implementation of e-commerce solutions in the business environment undoubtedly influences the essence of Customs Law. This is evidenced by several initiatives taken by EU legislators which seek to respond to some challenges arising from the e-commerce sphere. The development of Customs-law regulation in this regard is far from complete and gradually progresses.

For the time being, customs authorities are as yet unprepared to deal with the increased volume of goods and customs declarations and the implementation of customs controls appears to be inefficient. Despite the changes introduced in the package of measures with regards to VAT for electronic commerce applicable as of 1 July 2021, which were intended to combat VAT frauds and are an indispensable part of the abuse of VAT exemption at import, certain problems and undervaluing still endure, especially with regards to splitting of consignments with the view to evade import duty payment. These facts led us to the conclusion that our hypothesis was not confirmed, because traditional customs institutes cannot address all the challenges brought about by the booming e-commerce

That is why it is high time to adopt an adequate reflection at the EU level. The Customs Union Reform presented by the Commission in May 2023 is grounded on the introduction of

⁴⁰ CAO, Q., & ZHENG, X. Application of Artificial Intelligence Technology in the Supervision of Customs Clearance Machine Inspection. *World Customs Journal*, 2024, vol. 18, no. 2, pp. 51–76. <https://doi.org/10.55596/001c.122754>.

various strategic measures (especially the EU Customs Authority and the EU Customs Data Centre) that represent a milestone in the development of this international economic integration. Many refer to this proposed reform as the most ambitious and complex attempt to prepare the Customs Union for the forthcoming decades, to strengthen the status of custom authorities of the EU to better serve the EU, its citizens and businesses and this way create a genuine union of EU customs authorities that would act as a whole.

All the above analysed measures can, in our opinion, significantly contribute to more effective system of customs duty collection, however, the question of applicability of these rules in relation to the authorities of third countries whose cooperation is crucial, remains unresolved. What matters most is the assistance and cooperation across the states, the territories of which create the territorial framework of the Customs Union of the European Union. In the event this would not suffice, as the case is now, no significant improvement can be expected for the time to come.

This paper attempted to outline several problematic issues related to electronic commerce and address new challenges and offer solutions with the perspective for the future that the Customs Union would provide for unanimous and unproblematic application of the principle of movement of goods in a safe and transparent manner.

KLÚČOVÉ SLOVÁ

clo, colné právo, colná únia, Európska únia, e-commerce

KEY WORDS

customs, customs law, customs union, European Union, e-commerce

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