



Brussels, 18 September 2014.

E-COMMERCE

Issues arising from the increase in the e-commerce

(Item VI (a) on the Agenda)

Introduction

1. During the 203rd /204th sessions, after detailed discussions the PTC identified e-commerce as one of its high priority topics to be dealt with in more detail. It was decided to keep this topic on the future PTC agenda and exchange best practices.
2. With the diffusion of user friendly technologies and increasing penetration of internet globally, e-commerce is witnessing exponential growth. According to the WTO, in 1999 approximately 300 million people had internet access globally, nearly 25% of them made online purchase that year and total e-commerce sales were US\$110 billion. It is estimated that by the end of 2014, there will be almost 3 billion people online and 40% of them will participate in e-commerce, taking the global business-to-consumer (B2C) sales to surpass US\$1.5 trillion (domestic and international transactions). Besides B2C, e-commerce horizon has been expanding to swathe 'e-business': business-to business (B2B) as well as 'e-governance': government-to-business (G2B), government-to-consumer (G2C) and government-to-government (G2G).
3. For many years the WCO has been at the forefront in the development of international standards for Customs and also in the promotion of Electronic Data Interchange (EDI) and electronic commerce in the Customs environment. Recognizing the significance of e-commerce, the WCO adopted the Baku Declaration on e-commerce in the year 2001, calling for the acceptance and implementation the Revised Kyoto Convention (RKC) in order to create a modern, transparent, clear, efficient, rapid and simplified e-Customs environment. Following that, the WCO developed an e-commerce strategy for Customs.

4. The WCO Immediate Release Guidelines further support e-commerce and assist both Customs and trade with expediting the clearance of large number of small or negligible value goods across borders that are primarily being carried by express cargo or and express mail service providers.
5. The Standards 3.18, 3.21, 6.9 and 7.1 of the General Annex (GA) to the RKC provide for Customs to apply information and communication technologies (ICT) for Customs operations, including the use of e-commerce technologies. In order to promote, facilitate and regulate efficient use of ICT, the Standard 7.4 of the GA goes on to provide for the establishment of a new or revised national legislation for electronic commerce methods and the right of the Customs to retain information for their own use and, as appropriate, to exchange such information with other Customs administrations and all other legally approved parties by means of electronic commerce techniques. The RKC – ICT Guidelines, which were recently updated, provide details on how Customs can use these technologies to enhance program delivery and plan improvements in their services to clients and trading partners.
6. The ever changing global trading landscape with the rapid growth of e-commerce, necessitates Customs and Post/Express to constantly realign and adapt their processes, to provide reliable, predictable and speedy clearance, while ensuring compliance to various regulatory requirements. This document brings out some of the key issues concerning e-commerce for a discussion and guidance by the PTC. The document endeavors to deal with two set of issues – one concerning e-commerce industry in general such as e-Freight, dematerialization of supporting documents, growing number of faceless traders and *de minimis* while the other being more specific to postal parcels such as electronic exchange of data between Post and Customs and goods return service.

e-Freight and Dematerialization of supporting documents

7. With e-commerce growing over 20% per annum largely through air cargo and mail mode, there is a huge opportunity as well as challenge to move towards a paperless environment. IATA's e-freight initiative is an example, which not only saves cost to industry and Customs and enhances efficiency but also leads to improved accuracy of data leading to better risk analysis and Customs control across the supply chain.
8. The Montreal Convention (1999) provides for the use of electronic Air Waybills (e-AWB) in lieu of paper Air Waybill (AWB). Just over 50% of the members have adopted it, so far. The global e-AWB penetration currently stands at 14.3%, and is limited to certain trade lanes.
9. The WCO Recommendation on Dematerialization of Supporting Documents, 2012 and Compendium on How to Build Single Window Environment, encourage Members to identify supporting documents that are normally required to accompany the cargo and goods declarations and examine the need their of with a view to eliminating them.
10. The 2nd Joint ICAO-WCO Conference on Enhancing Air Cargo Security and Facilitation held in Bahrain from 16 to 17 April 2014 laid emphasis on e-freight and Single Window. There is clearly a need to catalyze the process of dematerialization through collaborative efforts of all actors involved as well as through a seamless interface with Customs systems. Besides sound legal framework, mutual agreements between various

actors in the supply to accept and transmit documents electronically, a robust IT infrastructure and their inter-operability are the some of the key challenges.

Faceless traders (seller/buyer)

11. E-commerce is witnessing enormous increase in the number of individual transactions and new faceless traders, posing threats to revenue and to the security of the supply chain. The ease of online direct sale/purchases has thrown up many emerging challenges like sale of drugs, counterfeited and pirated goods and paedophilia as well as smuggling of restricted/prohibited goods and high-value dutiable items through this channel. The Yemen courier incident in 2010 has drawn increased focus on postal/express supply chain security. The challenge is how to deal with this new class of sellers and buyers who are joining the international e-commerce chain on daily basis.
12. The concept of trusted trader/known shippers like Authorized Economic Operator (AEO) as well as Regulated Agent (RA)/Known Consignor (KC) do not apply to this category of faceless-traders. Little can be said about their ability to comply with various Customs, civil aviation, security and financial requirements and internal procedures to ensure that packages only contain those items described on the documents. This class of traders may pose a risk to the supply chain.
13. Data quality (accuracy and completeness of data) is another key issue for risk management, security controls, admissibility checks and other decisions to be taken by border control authorities. Many customers sending international items are occasional shippers and are often not fully conversant with the requirements of data quality. Missing, illegible, incomplete or otherwise incorrect information in a declaration may affect Customs risk analysis, efficient processing, clearance and release of goods.
14. Co-operation between Customs and the postal/express cargo service providers is of particular importance. For instance, besides seamless exchange of information, postal/express service staffs are usually well placed to bring suspicious postal articles to the attention of Customs.
15. In this regards, the WCO has developed the 'Postal/Express Consignments' Risk Indicators and Manual', which has been incorporated in the Volume 2 of the WCO Customs Risk Management Compendium.

De minimis

16. The Transitional Standard 4.13 of the GA to the RKC requires contracting parties to specify in their national legislation a minimum value and/or a minimum amount of duties and taxes below which no duties and taxes will be collected. This said, the provisions on the methods of calculation and ideal threshold are a matter of national competence.
17. The *de minimis* threshold could either be based on minimum value or minimum duty and taxes. Minimum duty based *de minimis* creates a variable threshold depending upon the goods and the rate of duty they attract. Some countries have specified thresholds based on value, whereas some others have specified it on the basis of duties and taxes. Additionally, some administrations have different thresholds for Customs duties and domestic taxes such as VAT or GST. Some other administrations even have different thresholds for personal gifts, which are normally higher than that of other goods. There are

also several exceptions to the *de minimis* rule such as books, tobacco and alcohol products. As a result, there are a wide range of models and thresholds for the *de minimis* around the world.

18. With the rapid increase in low-value consignments, postal and express industry often argue that higher *de minimis* levels would promote cross border e-commerce, increase trade and stimulate economic growth and employment. Costs of processing low value consignments both to Governments and businesses could possibly be greater than the overall revenue collected from these consignments.
19. From a Customs' perspective, the increase in the import of low-value consignments below *de minimis* can have an adverse impact on revenue collection. While, in the past, intermediaries have imported goods in large quantities, e-commerce now enables goods to be ordered directly from the manufacturer/retailer, resulting in smaller consignments which potentially could fall below existing *de minimis* rules. Some Customs administrations are witnessing the growing misuse of *de minimis* facility by way of splitting consignments to keep the value of an individual shipment below the specified threshold for tax avoidance purposes.
20. Large volumes of small parcels are also becoming vulnerable for trade in restricted/prohibited goods, undeclared dutiable goods as well as smuggling of narcotics, counterfeited/pirated goods and contraband items. While discussing draft revised Immediate Release Guidelines, the PTC at its 201st/202nd Sessions also recognized that low value consignments, including postal and express mail items, were increasingly being exploited for illicit trade, as exemplified by the seizures made, during the most recent enforcement operations, of illegal drugs and fake medicines sent via these channels.
21. While a higher threshold may be facilitative to e-commerce, its abuse could have an adverse impact on domestic sales of similar or identical products, where consumption taxes (VAT/GST) are applicable without such *de minimis* rules. It could present a wide distortionary impact on the domestic manufacturers and retailers, especially SMEs, jobs and general economy, besides avoidance/evasion of duties and taxes.
22. Considering these vulnerabilities, some Customs administrations are considering to reduce or even remove the threshold for duty and taxation. For example, recently a Member modified and prescribed for a specific/flat duty rate of \$42 USD per package to be applied for consignments below 4 kg weight and \$400 USD value (subject to a limitation of 5 shipments and upto an aggregate value of \$1200 in year).
23. There is no apparently ideal *de minimis* which can be made universally applicable. Each administration must take into account its domestic economy while determining the right level of the thresholds limits, by adopting a balanced approach towards facilitating a large number of bonafide small consignments, while being mindful of their processing costs (both to Customs and consumers), the compliance burden and delivery times. This process needs to be a dynamic one, allowing for regular reviews reflecting new circumstances and opportunities.

Electronic exchange of data between Post and Customs

24. The WCO's Strategic Plan 2013/2014 to 2015/2016 lists out 'Promoting electronic pre-advice on postal items based on WCO-UPU Customs/Post EDI messages' as one of

the important tactical activity under the strategic activity - 'Manage and promote Information Technology'. 'Increasing postal integrity and security and facilitating customs processes as well as stimulating the use of information and communication technologies to improve access and performance' are some of the key goals of the Postal Strategy adopted by the UPU Congress in 2012 at Doha.

25. SAFE Framework of Standards (SAFE FoS) recognizes the value of advance electronic information for risk analysis to secure and facilitate trade supply chain (Standard 1). Paragraph 6.2 of the SAFE FoS clearly encourages the application of information and communication technologies (ICT) for Customs operations, including use of e-commerce technologies. The SAFE FoS further provides for submission of advance information (cargo/goods) 24 hours before loading in case of containerized cargo and 4 hours prior to arrival (long haul) and 'wheels up' (short haul) in case of air cargo, whereas the situation in postal shipment is that Customs get an opportunity to access the information about the goods, only when it is physically presented and opened.
26. CN22/CN23 being on paper basis, is not sufficient for Customs to evaluate risks in advance or even after they are presented due to increasing volumes and thrust on speedy clearance of such parcels. Electronic information is easier to process and more reliable. It reduces costs and delays all along the supply chain. Since goods cannot travel faster than the information that controls them, speeding up the electronic exchange of information helps Customs in better pre-arrival risk analysis and makes trade more competitive and efficient. Besides, electronic data exchange between Posts and Customs will facilitate tracking and tracing. The whole approach is to shift focus from inspection of the goods to relevant information prior to the arrival of the goods.
27. The WCO and the UPU have collaborated to jointly develop electronic messages to permit the pre-advice and possible pre-clearance of postal items, which are compliant with WCO Data Model. The WCO Data Model version 3.4 also contains an Information Package explaining how the WCO-UPU Customs Message uses the Data Model. The UPU has recently created a legal basis for the provision of advance electronic data, by amending Article 9 of the UPU Convention, which came into effect from 1 January 2014.
28. The UPU's Postal Technology Centre has developed an electronic Customs Declaration System (CDS) on the basis of the Joint WCO/UPU Customs-Post EDI message. It enables customers to enter data about an item online, and enables the Posts to give Customs advance data about a postal item. It also enables a customs administration to inform a Post about the action to be taken with respect to any given item. However, a lot needs to be done to improve the interface between Posts and Customs in implementing electronic data exchange. There is also a need for sound legal and technological safeguards for data privacy and security, to make the exchange of information process efficient and sustainable.
29. To further strengthen security of the air cargo supply chain, Customs is moving from 'pre-arrival' to 'pre-loading' advance cargo information (ACI). Some ongoing Pilots on 'Pre-loading' ACI for security risk analysis are also engaging postal operators. In this context, the WCO Technical Expert group on Air Cargo Security (TEGACS) has developed text for submission of Pre-loading data for air cargo security by various entities in the air cargo supply chain including 'Postal Operators', for inclusion in the SAFE 2015 review.

30. In line with the suggestion put forward at the June 2013 Council Sessions, a virtual Working Group of the interested WCO and UPU members under the WCO-UPU Contact Committee has been set up to examine the existing interfaces and forms of exchange of information between Customs and posts, including experiences in using the UPU Customs Declaration System (CDS) which was developed on the basis of the Joint WCO/UPU Customs-Post EDI message. The Working Group is developing a set of recommendations/guidelines/good practices, with the aim of raising awareness of the existing solutions on this matter and involving more Customs administrations into the process.

Undelivered/unclaimed goods – Goods return service

31. At the 33rd Meeting of the WCO-UPU Contact Committee, it was informed that the Postal participants in Joint WCO/UPU Customs Workshop held in Johannesburg in August 2012, raised the issue that undelivered or unclaimed postal items were seized/forfeited by Customs administrations in some countries in accordance with their respective national legislation. There could be bonafide situations where the goods covered under the parcel are found not to conform to sample or specification or shipped without the consent of the consignee. It was informed by the UPU that, for parcels, the senders' instructions in case of non-delivery were on the CP 71 dispatch note and the CP 72, which may include options to return to sender, redirect, or treat as abandoned.
32. There is another related issue with the returned shipments which is the refund of duties and taxes. The Article 20 of the UPU Convention stipulates that designated operators shall undertake to seek from the competent authorities in their countries cancellation of the fees (including customs duty) in the case of a parcel - returned to sender; redirected to a third country; abandoned by the sender; and lost in their service or destroyed because of total damage of the contents.
33. Broad principles for repayment of duties and taxes have been laid down in Standards 4.18 to 4.24 of the general Annex of the RKC. The guidelines to the Specific Annex J.2 of the RKC at para 5.2 provides that if a dutiable item was not delivered abroad because the addressee refuses it or for some other reason, the office of destination returns the item alongwith all accompanying documents, to the postal Customs clearance centre which requests reimbursement of the duty paid to Customs in advance. Para 9.2 of the Guidelines further provides that postal service will normally request that Customs to cancel or repay duties and taxes on items returned to origin, destroyed because of total damage to the contents or redirected to a third country and for postal parcels abandoned by the sender
34. Growing volumes in small packets and parcels, calls for consideration of streamlined functions like return in bonafide cases and duty cancellation/refunds on such items to reduce administrative burden and costs.
35. A coordinated approach between Customs and Post may be desirable proposition on the issue. The recently launched WCO-UPU Guidelines for developing MoU between Customs and Post at national level could provide useful reference in developing the MoU. Such MoUs encourage a greater co-operative effort between the two agencies. Collation and assessment of working experiences and practices of Member Customs administrations in this area including working arrangements with Posts, would be useful.

Action Requested

36. The PTC delegates are invited to:
- discuss and provide strategic guidance on the above issues; and
 - share their working experiences and best practices.
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