



**European Commission  
DG TRADE**

Trade Strategy and Market Access  
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**!! TIME IS RUNNING OUT !!  
URGENT NEED FOR ACTION**

**Only 10 weeks left until go-life of EU Track & Trace, resulting in non-tariff  
trade barriers due to collision with non-European traceability systems  
Sub Group Meeting on 12 March 2019**

Dear Mrs. Commissioner Malmström,  
Ladies and Gentlemen,

Joh. Wilh. von Eicken GmbH is a family-owned company with core competences in the production and marketing of tobacco products. From our production sites in Germany, we supply tobacco products to more than 100 countries worldwide.

We are writing to you in the matter of the upcoming launch of the European Traceability System for Tobacco Products (EU Track & Trace). As it was already pointed out to the Commission resp. to DG SANTE by various member states, political stakeholders and associations, EU Track & Trace threatens non-tariff trade barriers to European manufacturers of tobacco products. In response, Commissioner Andriukaitis stated with letter dated 6 September 2018 that "it remains a top priority to ensure that EU products can continue to be exported without unintended consequences", that the Commission is in direct contact with relevant third countries on this matter and that "Good progress is being made and I remain confident that the new rules will not have a negative effect on EU exports, once they begin to apply in May 2019". Furthermore, you've assured that "The Commission will ... remain alert to the evolution of the trade situation and will continue to work to avoid any unintended consequences on the export of EU tobacco products to third countries". We appreciate very much for this statement.

Although solutions have been worked out with countries such as Australia and the United Arab Emirates, solutions are not yet in sight elsewhere. In this respect, particularly Russia has to be mentioned, which is currently implementing its own traceability system for tobacco products to apply by 1 July 2019. As the Russian codes are not compatible with the European traceability codes (UIDs), this will cause the exclusion of the small and medium-sized European industry from the Russian market, as these companies – other than the big multinational tobacco companies – have no production sites in Russia.

The recent publication of a resolution set by the Russian government on identification labeling system and traceability of tobacco products shows that EU Commission's attempt to persuade Russian government to accept the European traceability codes has failed. This is because said resolution doesn't adopt the European traceability system and codes, but requires a double-coding for import goods: DotCode according to EU requirements and DataMatrix according to the Russian standard. However, double-coding is impossible because the entire European tobacco industry is technically not geared up for it and won't be able to implement double-coding facilities in foreseeable future. In addition, such technical facilities would create additional financial burdens smaller companies like ours won't be able to bear.

Given the tight timeframe, the only feasible solution is that the EU accepts the traceability codes of the export market (in this specific case: Russia) until EU and third country's systems are compatible. In concrete terms, the EU should exclude such tobacco products from EU Track & Trace which are dedicated for export to third countries that are implementing their proper Track & Trace systems not compatible with EU Track & Trace. This way, European manufacturers could use the traceability codes of the third country and, at the same time, would not harm EU requirements. To enable this solution, EU Commission just needs to adapt Commission's Implementing Regulation (EU) 2018/574 dated 15 December 2017. According to our understanding, the Commission is competent to do so even without participation of the EU Parliament and Council. We'd also like to point out that such exemption of export goods for third countries having their proper traceability system with proper traceability codes incompatible with the EU Track & trace would neither harm Directive 2014/40/EU (TPD2) nor the Framework Convention on Tobacco Control (FCTC), because Art. 15 (1) together with Art. 2 (30) and Art. 40 TPD2 only require that tobacco products intended for the sale to consumers within the EU bear a European UID and thus be included in EU Track & Trace. As already now, export goods are under EU-wide control and customs supervision by Excise Movement and Control System (EMCS) until they exceed the EU external border, the traceability of export goods will be ensured even without inclusion in EU Track & Trace. This, as well as the inclusion of export goods in the traceability system of the third country, would also satisfy the requirements of Art. 15 FCTC.

If the EU Commission resp. the responsible DG SANTE is not willing for such a solution of its own, this will impact and annihilate a large number of jobs within the EU and specifically at our production sites in Lübeck/Schleswig-Holstein and Dingelstädt/Thuringia.

In addition, it needs to be taken into account that apart from Australia, Canada, Russia, Saudi Arabia and the United Arab Emirates, other third countries will develop and implement their own traceability systems for tobacco products with divergent technical specifications. The resulting incompatibilities with EU Track & Trace will make it impossible for the European industry to constantly re-adjust, so that European manufacturers will no longer be able to supply the relevant third-country markets from European production sites. In view of this, our proposal mentioned-above is an appropriate general approach for dealing with the recurrent problem of non-tariff trade barriers resulting from incompatible third-country traceability systems.

You may understand that the upcoming export and trade barriers are threatening the existence of smaller tobacco manufacturers like us, as export especially to third countries is an important part of their business. We therefore kindly ask you to urge DG SANTE to reconsider its' current view and to accept the traceability codes of third country traceability systems until compatibility between EU Track & Trace and the relevant third country traceability system is given. Furthermore, we kindly ask for EU Commission's clear statement as to when we can expect suitable solutions enabling us to set up in-house processes accordingly.

Also, we hereby kindly ask you to urge DG SAANTE to put the topic of export and trade barriers resulting from collision of EU Track & Trace with third-country traceability systems on the agenda of the upcoming **Sub Group Meeting on 12 March 2019.**

If you have any questions, please do not hesitate to contact us.

Looking forward to your feedback we remain with best regards

JOH. WILH. VON EICKEN GMBH

