

# Union Customs Code (UCC)-Adoption of the Delegated Act (DA) and publication of the final text of the Implementing Act (IA).

| <b>Customs Information Paper 33 (2015)</b> |   |
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| <b>Who should read:</b>                    | All economic operators involved in the import, processing, use, storage or export of goods. |
| <b>What is it about:</b>                   | Current position of the Commission Regulations supplementing the UCC.                       |
| <b>When effective:</b>                     | Immediately.  |
| <b>Extant until/ Expires</b>               | Until further notice.   |

## 1. Introduction

This Customs Information Paper (CIP) is to inform interested parties of the adoption by the Commission of the UCC Delegated Act, the publication of the final text of the Implementing Act, the projected timetable for the publication of the agreed legislation and the major changes from current processes and procedures.

Associated papers: CIP 38(2013) and 62(2013)

## 2. Background

The basic principles of the UCC are to:

- streamline customs legislation and procedures;
- offer greater legal certainty and uniformity to businesses;
- increase clarity for customs officials throughout the EU;
- simplify customs rules and procedures and facilitate more efficient customs transactions in line with modern-day needs;
- complete the shift by Customs to a paperless and fully electronic environment; and,
- reinforce swifter customs procedures for compliant and trustworthy economic operators (Authorised Economic Operators)

On 28 July 2015, the Commission formally adopted the text of the Delegated Act supplementing the UCC. The EU Council and European Parliament (EP) now have a period of two months (commencing on 20 August) to consider the text and decide whether to object. This two-month period may be extended to four months or reduced if both Council and EP agree the text more rapidly.

After the objection period expires and if no objection has been raised on the Delegated Act, the Implementing Act will be put to the Customs Code Committee for a formal vote to adopt.

The final draft of the Implementing Act released by the Commission on 3 July will also be discussed in a final two-day meeting of the Customs Code Committee on 7/8 September.

The approved text of both Acts will be published in the Official Journal shortly after the Implementing Act is adopted at the vote. It is therefore possible that the texts are published in late October/early November 2015.

The UCC and the supplementing Commission Regulations will apply from 1 May 2016. Until then, the Community Customs Code and its implementing provisions continue to apply.

The Annex to this CIP details the major changes appearing in the adopted Delegated Act and the final text of the Implementing Act from earlier versions of the Acts. Copies of the 3 July versions of the Delegated Act and Implementing Act have been previously circulated to JCCC members; the 28 July version of the Delegated Act has also just been circulated.

Should a further revised version of the Implementing Act be released, we will issue an updated version of the relevant part of the Annex if appropriate.

### **3. Contacts.**

If you have any questions regarding this CIP, please contact the  
UCC Negotiations Team [ucc-masp.implementation@hmrc.gsi.gov.uk](mailto:ucc-masp.implementation@hmrc.gsi.gov.uk)

## ANNEX

The following are the major changes contained in the Delegated Act adopted by the Commission on 28 July 2015 and the final text of the Implementing Act issued on 03 July 2015 from previous versions of the Acts.

Where changes have a negative impact, we would encourage economic operators to contact and urge MEPs to consider alternative approaches.

### DELEGATED ACT

#### Article 11 – Conditions for the acceptance of an application

Earlier versions of the text gave recognition to economic operators who approached customs stating that they could no longer comply with the conditions of a previous decision, by removing the period during which a new authorisation could not be granted.

This recognition has now been removed and offers no acknowledgement to economic operators seeking to be voluntarily compliant.

#### Article 24(4) 2nd sub-paragraph – More favourable treatment regarding risk assessment and control (AEO)

The text previously allowed traders granted AEO status the option, on agreement with customs, to have documentary and physical controls of goods carried out at an agreed location (as opposed to just at the port).

Suitability and safety must be taken into account and thus the text should be clear that agreement between the trader and customs authorities is needed.

#### Article 32 and Annex 22-01 – Determining the origin of goods

The Commission intends to introduce the existing guidelines on origin (which are formulated as a series of rules) into the Delegated Act, making them mandatory.

Imposition of binding list rules in this manner would also pre-empt the negotiations in the WTO to seek common list rules to apply in every signatory Country (Harmonisation Work Program).

We consider the disadvantages of the Commission's approach are twofold:

- it provides little flexibility to address changing situations, such as technological development in products and production methods;
- there will be implications for exporters.

#### Article 88 – Exemption from notification of the customs debt

Previous text specified that amounts of customs duty less than €10 should be collected if properly declared but not if identified subsequently and resulting from non-compliance with the rules.

The latest version now provides customs authorities with discretion to collect debts incurred through non-compliance under €10, ensuring the approach taken is the same.

#### Article 114 – Trade with special fiscal territories

Special fiscal territories are those territories that are within the Customs territory of the EU (regardless of their physical location) but outside the fiscal territory (e.g. VAT) – for example the UK Channel Islands.

Import VAT is normally collected by the submission of a customs declaration with a reduced data set, which is allowed by a combination of the VAT Directive and UCC.

Through the new text, however, the Commission have introduced a specific requirement so that Union goods moving from, for example, the Channel Islands to the UK mainland must enter Temporary Storage on arrival in the UK. This risks treating the Channel Islands – and other such territories – like third countries.

#### Article 115 – Approval of a place for the presentation of goods to customs and temporary storage

The current legislation allows goods to be stored under temporary storage at premises approved for customs purposes.

In the UK it has been common practice for customs warehouses to be approved to store goods under temporary storage. This facility is used primarily to store goods following an External Transit movement to the customs warehouse, pending the customs declaration.

The final text only allows this valuable facilitation to continue if the premises are also authorised for Temporary Storage and on condition that the goods must be declared to a customs procedure within 24 hours. This is an unnecessary burden on both trade and customs authorities; the time limit appears particularly unreasonable given that the time allowed elsewhere in the legislation for similar circumstances varies between 3 and 12 days.

#### Article 150 – Conditions for granting authorisations for entry in the declarant's records (EIDR)

We consider that EIDR (in combination with Self-Assessment) is the major simplification/facilitation within the UCC. We are disappointed that the principles of EIDR have been eroded to such an extent that it will be almost impossible to operate as originally intended.

For example, Article 150(4) (b) has been inserted and seeks to limit the uses of EIDR at export or re-export to cases where the office of export and the office of exit are the same unless specifically agreed between the offices of exit and export.

This is a serious backward step, placing unnecessary additional requirements upon customs authorities and providing further uncertainty for traders.

### Article 167(1) (s) – Cases in which the economic conditions are deemed to be fulfilled for inward processing

The text previously provided a significant increase in the value of imports that an economic operator could import for processing and re-export before it was considered that goods may have a detrimental impact upon EU producers of similar goods and an 'economic test' was required. Effectively this meant an increase in value terms from €150,000 to as much as €5 Million for agricultural goods and €9.9 Million for other goods.

The Commission have now reverted to the current, much lower, levels.

### Article 245 – Waiver from the obligation to lodge a pre-departure declaration

The text previously allowed a waiver of the requirement to lodge a pre-departure declaration for items with a value of less than €22. We are disappointed to see that this waiver has been removed as it will result in an additional 1.3 million declarations per annum in the UK alone, at a cost to UK trade of approximately €67 million.

### Article 252 – Validity of decisions on binding information already in force on 1 May 2016

The administrative transitional arrangements permit decisions on binding information made prior to 1 May 2016 to continue through to their date of expiry – but the decision becomes binding on the holder of the decision.

### Annex B – Requirement for the 6-digit HS code to be included on the Entry Summary Declaration

Annex B introduces a requirement for the provision of the 6-digit level HS code. This will improve the quality of information provided to Customs and help ensure the quality of risk analysis and thus the safety and security of EU citizens.

## **IMPLEMENTING ACT**

### Article 5 – Availability of electronic systems

Article 8(1)(b) of the UCC is explicit that an Implementing Act is necessary to lay down "the procedural rules on the exchange and storage of data ...." in cases where electronic systems are not used – explicitly including business continuity, as it refers to Article 6(3)(a) UCC which covers that scenario.

The insertion of "...as well as for business continuity" into Article 5(1) of the draft text of the Implementing Act seems to be inadequate. Without specific legislation, customs authorities would be unable to accept paper declarations effectively bringing trade to a standstill for the downtime of the system.

## Article 55 and Annex 21-01 – Data requirements on the surveillance of goods

Surveillance data is used by the Commission to monitor the volume of imports and exports to/from particular countries for the purpose of, for example, preferential tariff measures. Such data is provided on a transactional basis – currently this is around 12 data items.

During the negotiations in the Customs Code Committee, the Commission attempted to increase the level of data to 54 items – virtually the whole declaration. The final draft proposes 40 items.

HMRC remains concerned that gathering such transaction data from customs declarations impact on the only remaining major step forward in the legislation – Self Assessment – and will continue to seek for this impact to be lessened.

## Article 192 – Movement of goods in temporary storage

The previously agreed version of the text introduced the ability for traders to move goods under Temporary Storage (TS) between approved sites simply by recording an entry in their (approved) records.

This simplification mirrors the existing rules for Special Procedures (for example, customs warehousing) which have been in use since 2001 and work well.

However, this version introduces a new – and in the UK's view unnecessary and unhelpful – concept of prior notification of the movement to customs authorities. This (electronic) notification would require both Customs Authorities and trade to build IT systems when the messages are not only unnecessary but, given there is no requirement to wait for permission to move the goods, their actual purpose remains unclear.

## Article 219, 225(b) and 227 – Supplementary declaration

These Articles introduce a new – unnecessary - provision requiring that Customs authorities have direct access to the electronic records of trader authorised for Self-Assessment, Centralised Clearance or entry in their records (EIDR) – so that declarations can be uploaded.

This is a backward step and puts a massive administrative burden on trade – requiring development of IT links to the customs central processing system. Instead it should be sufficient for customs to be able to access the traders systems as part of an audit at the trader's premises to ensure effective control of the procedure by customs administrations – as previously drafted.

## Article 341 – Transitional Provision on transaction value (earlier sales)

The UK is pleased to see that the previous agreement allowing economic operators the opportunity to use a lower valuation for the calculation of duties has been retained. We are also pleased to note that a condition for a binding contract to be in place has been removed, as this was an issue for trade.

## **Necessary additional provision:**

### Special procedures - authorisation with retroactive effect

Authorisations with retroactive effect have been available within most Special Procedures since 2001. Where specific conditions can be met, it allows an economic operator to obtain an authorisation for operations already carried out prior to submitting an application. This allows simple mistakes such as not renewing an authorisation to be rectified without the loss of duty relief.

It had been agreed in negotiations that a provision was needed to explicitly allow retroactive authorisations issued after 1 May 2016 to be granted for periods prior to that date. This agreed text does not appear in the final versions, leaving it unclear whether retroactive authorisations issued after 1 May 2016 are limited to starting on 1 May 2016 or if they can be further backdated.

Issued on the 20 August 2015 by Customs Directorate, HMRC.

For general HMRC queries speak to the VAT, Excise and Customs Helpline on Telephone: 0300 200 3700.

Your Charter explains what you can expect from us and what we expect from you.  
For more information go to: [Your Charter](#)