

Union Customs Code - Update

The Union Customs Code (Parliament and Council Regulation 952/2013 – the UCC) is due to take effect from 1 May 2016 (subject to transitional periods in some areas), however the necessary subsidiary legislation has not yet been finalised. Here we provide an update on the progress of the legislation and some still-contentious aspects of the UCC.

Under the UCC there are two sets of subsidiary legislation:

- The Delegated Act (DA) will enter into force automatically after adoption by the Commission unless the Parliament or the Council objects
- The Implementing Act (IA) must be voted for by the Parliament.

The DA was adopted by the Commission in late July and will therefore become law in late October or, at the latest, in January 2016. The legal text will be published at latest in February but possibly as early as mid-November. The Implementing Act (IA) will be debated and voted by Parliament in early November. Publication of the IA will be synchronised with that of the DA.

There is also a “Transitional” Delegated Act (TDA), mainly concerned with system unification issues, which is likely to be published by the end of 2015. The current word is that new data elements for customs entries introduced by the UCC will not be required to be completed by declarants until the systems are in place to handle the data – this will require reworking of official informatics systems in multiple countries so will take some time (at least a year and possibly longer). This is something that persons responsible for customs declarations will need to keep an eye on.

It seems unlikely that entry into force of the UCC will be delayed after 1 May 2016. This will not happen unless there is a major issue with adoption of the DA or IA which, at this point, seems unlikely. The Commission originally intended a longer lead-in time but appears now to be firmly committed to May as the date.

Authorisations and transitional period (mid-2019):

- Authorisations for IP Drawback and PCC will be expired on 30 April 2016
- Other authorisations, if “time limited” (e.g. IP Suspension), may continue to operate as granted to the end of the transitional period. Therefore, applicants for

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- customs authorisation in the next 8 months should apply for the longest possible period they can justify
- “Open-ended” authorisations (e.g. customs warehouse) will continue to operate as granted up to the end of the transitional period, at which point they must operate under the UCC rules
 - It appears that some HMRC officers may have granted authorisations specifically limited with termination on 30 April 2016, however this is considered incorrect and we understand that these authorisations should be extended for a reasonable period (e.g. to mid-2019) if the applicant requests it
 - “Operate as granted” means that the old Modernised Customs Code (MCC) rules will apply, however, if there is a “significant change” to the authorisation, from 1 May, the authorisation must be re-assessed under UCC rules. It is unclear what “significant change” means but at present HMRC consider that addition of a new tariff code to an authorisation (i.e. Inward Processing) will be regarded as a significant change
 - There may still be benefit for some clients applying for authorisation in the next six months as their applications will be assessed under current rules. After that, we expect delays to mean that new applications will (eventually) be assessed under the UCC rules.

AEO:

- AEO certification is not an “authorisation”, hence not subject to the transitional arrangements (Title 9), however, existing AEO certification holders will be re-assessed by HMRC within the ongoing review cycle. This means an AEO holder who obtains certification early next year (under MCC) may have up to 3 years before being re-assessed under the UCC
- The additional benefits available to holders of authorisations under the UCC (e.g. customs warehouse and Inward Processing) will not be extended to existing authorisation holders unless they re-apply under the UCC rules
- Applicants for AEO can apply now and be assessed under MCC rules.

Guarantees:

- As we know, all UCC authorisations will require a guarantee, unless the applicant has AEOC approval or meets the AEOC criteria. We can see no clear advantage in meeting the AEOC criteria (which will have to be assessed by HMRC without obtaining certification) – nevertheless it is possible to do so, if it meets your

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commercial need. This seems to be as far as the Commission was willing to go as regards guarantees. HMRC currently say they will not disadvantage persons who seek to meet the criteria without wanting the certificate, e.g. by prioritising applicants for full certification over those who merely wish to meet the criteria.

- “Meeting the criteria” will also mean being subject to regular re-assessment by HMRC.
- The current form of the guarantee for UK is not decided and not clear whether persons other than banks will be able to offer them.
- AEOC certified persons will be able to reduce their duty deferment guarantee by up to 70% (This reduction is not available to those who simply meet the criteria but don't have the certificate)
- Clearance agents may be able to provide guarantees or undertakings for occasional importers (less than 3 consignments/month)
- Simplified Import VAT Accounting (SIVA) rules will be aligned with the UCC rules. This requires UK legislation as it falls within the competence of the UK exclusively. HMRC advise that there will be a transitional period for current SIVA holders
- HMRC's guidance on guarantees and undertakings is expected to be published by 1 January.

Retail sales in customs warehouse:

- Will be permitted under the UCC
- However, it seems that the retail sale price cannot be used as the basis of customs value, instead, the last prior sale price should be used. This is an issue clients considering an application to make retail sales in customs warehouses, as their systems and personnel must correctly identify the customs value.

Binding Tariff Information (BTI):

- A single BTI may cover multiple items, provided that HMRC are provided with all relevant documentation such as specifications and photographs. For example, different sizes (e.g. length) and/or alloy composition. This is helpful to clients who have many very similar goods that are likely to fall under the same classification.
- Under the UCC, BTIs are binding on both the authorities (as currently) AND the holder. This will apply, as from 1 May, to existing BTIs as well.

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- It will be a requirement that the holder must quote the BTI reference³ in Box 37 of the SAD. Declarants will need to be sure that the BTI reference is entered when and only when it applies to the goods. This maybe a headache if some very similar goods are not subject to a BTI which is held by the importer.

Way forward

If you believe that your company is likely to be affected by the new legislation, for example changes to the customs regimes and AEO certification rules, 4 Eyes Ltd will be delighted to discuss these matters with you.

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