
The Union Customs Code (UCC)

Attorney Michael Lux

Former EU Commission Head of Unit „Customs Procedures“

Michael.Lux@customs-law.expert

www.customs-law.expert

1. Objectives of the UCC
2. The main changes
3. The transitional rules
4. Preparations for the transition to the new rules

Part 1 – Objectives of the UCC

1. Objectives of the UCC

- **Replace** the current Customs Code and the – not yet applicable – Modernized Customs Code
- Adjust the Customs Code to the **Lisbon Treaty**, in particular with regard to the new provisions on delegated and implementing acts, and by using the new terms (e.g. “Union” instead of “Community” goods)
- **Streamline** and **modernize** customs procedures and processes for which IT systems should be the normal tool
- Create throughout the EU **harmonized IT processes** by combining legislation with an IT work programme with the aim of achieving the full use of IT and harmonized processes by the end of 2020
- Provide until the end of 2020 for **transitional measures**, allowing for paper-based processes where no IT systems are available, and for pilot projects with simplifications

2. Title I: General provisions – definitions, decisions

- New **definitions** (Art. 5), inter alia for permanent establishment
- Establishing rules for the **exchange** and **storage** of **data** (Art. 6, transitional measures in Art. 278)
- Customs **representation** (Art. 18, 19): Member States may no longer restrict direct or indirect representation to customs agents established in that Member State
- **Decisions** (Art. 22, 23): new process with deadlines for acceptance of application and granting of decision; monitoring and suspension; obligation to inform customs about factors which may influence the continuation or content of the decision
- **Binding tariff** and **origin information** (Art. 33 – 35): valid for three years, also the holder is bound, extension to customs value possible (but not implemented); the Commission may suspend the issuing of BTI and BOI in case of divergent decisions by Member States

2. Title I: General provisions – AEO (1)

- **New criteria** (Art. 39):
 - no serious or repeated infringement of taxation rules
 - no record of serious criminal offences relating to the economic activity
 - professional qualifications
- **New benefits:**
 - customs representation in Member States with restrictions for customs agents (Art. 18 (3))
 - deferred payment with reduced guarantee (Art. 95 (3))
 - moving goods to another Member State under temporary storage (Art. 148 (5) (b))
 - centralised clearance with another Member State (Art. 179)
 - entry in the records with notification waiver (Art. 182)
 - self-assessment (Art. 185)

2. Title I: General provisions – AEO (2)

- **AEO** (customs simplification) the following conditions are deemed to be fulfilled:
 - to be granted a comprehensive guarantee (Art. 95 (1), (2))
 - proper conduct of temporary storage (Art. 148 (2) (b))
 - proper conduct of special procedures (Art. 211 (3) (b))
 - appropriate records for special procedures (Art. 214 (2))
 - proper conduct in using equivalent goods (Art. 223 (2))
- Possibility of recognizing AEO status granted outside the EU even without international agreement (Art. 38 (7))

2. Title I: General provisions – sanctions, fees

- List of administrative **sanctions** (Art. 42); see also proposal for a Directive on the harmonization of sanctions (COM (2013) 884, 13.12.2013)
- List of **fees** that may be charged by customs (Art. 52) – already in force

2. Title II: Application of import duties - origin

- Suppression of Art. 25 CC (**circumvention of origin**) but re-introduction in Art. 33 DA
- Introduction of **regulations** determining the **origin of individual goods** (Art. 57, 67)
- Non-preferential **origin certificates** may be issued for export according to the rules of the **country of destination** (Art. 61)
- More **non-preferential origin rules** transformed into a regulation (Art. 62, Annex 22-01 DA) so that the scope of the non-binding list rules will be reduced

2. Title II: Application of import duties – customs value (1)

Abolition of the possibility to use **earlier sales** as transaction value (Art. 128 IA):

1. The transaction value of the goods sold for export to the customs territory of the Union shall be determined at the time of acceptance of the customs declaration on the basis of the sale occurring immediately before the goods were brought into that customs territory.
2. Where the goods are sold for export to the customs territory of the Union not before they were brought into that customs territory but while in temporary storage or while placed under a special procedure other than internal transit, end-use or outward processing, the transaction value will be determined on the basis of that sale.

Transitional rule (until 31 December 2017) in Art. 347 IA:

The transaction value of the goods may be determined on the basis of a sale occurring before the sale referred to in Article 128(1) of this Regulation where the person on whose behalf the declaration is lodged is bound by a contract concluded prior to ...[Entry into force of this Regulation].

2. Title II: Application of import duties – customs value (2)

Art. 136(4) IA

Royalties and licence fees are considered to be paid as a condition of sale for the imported goods when any of the following conditions is met:

- the seller or a person related to the seller requires the buyer to make this payment;
- the payment by the buyer is made to satisfy an obligation of the seller, in accordance with contractual obligations;
- **the goods cannot be sold to, or purchased by, the buyer without payment of the royalties or license fees to a licensor.**

Art. 157(2) CCIP:

[...] a royalty or licence fee shall be added to the price actually paid or payable only when this payment:

- is related to the goods being valued, and
- constitutes a **condition of sale of those goods.**

2. Title III: Customs debt, guarantees (1)

- Any person providing **wrong information** for the drafting of a customs declaration may become debtor (Art. 77 (3), 79 (4))
- Persons **acting on behalf** of a person obliged to fulfill an obligation and persons participating in the act leading to the non-fulfillment of the obligation may become debtors (Art. 79 (3) (b))
- Alignment and merger of the provisions on the incurrance of an **irregular customs debt** leading to more possible debtors (Art. 79)
- **Simplification** of the provisions concerning the **assessment** of a customs debt basic rule: duties are assessed according to the conditions at the time the debt is incurred (Art. 85)
- Costs for **storage** and **usual forms of handling** in case of proof not taken into account; same for classification changes (Art. 86(1, 2))
- Duty relief after **outward processing** calculated on the basis of the value added (Art. 86 (5))

2. Title III: Customs debt, guarantees (2)

- **Comprehensive guarantees** can be provided for several procedures, temporary storage and deferred payment (Art. 89 (5), 95)
 - Comprehensive guarantees may be authorised for a reduced amount or waiver; if the comprehensive guarantee covers an existing debt (deferred payment), only a reduced guarantee may be authorized and the debtor must be AEO (customs simplification)
 - **Relief from post-clearance recovery** incorporated in the rules for repayment/remission of customs duties (Art. 116 – 121)
 - **Obvious negligence** is no longer relevant, except for relief on the basis of equity (Art. 120), and the condition that the debtor could not reasonably have detected an error (Art. 119)
 - More possibilities for an **extinction** of the customs debt (Art. 124) if no deception was attempted
- Examples:** correction of an error (provided the type of error is listed in Art. 103 DA), re-export of the goods

2. Title IV: Bringing goods into the EU

- Successive and **multiple filing** for entry summary declarations may be introduced later (Art. 127)
- **Entry summary declaration** can be combined with declaration for temporary storage (Art. 129); declaration data will be changed once the IT systems have been adjusted
- For **temporary storage** (Art. 144 – 149)
 - the storage period is prolonged to **90 days**
 - an **authorisation** and a **guarantee** is required for the authorised storage facility
 - **movement** to another place or storage holder (i.e. without NCTS), even to another Member State, can be authorised
 - only **AEO** (customs simplification) may be authorised to move goods to another Member State

2. Title V: Customs procedures

- **Electronic customs declaration** becomes the standard – exceptions must be provided for in the law (Art. 158); transitional rules for situations in which no IT system is available
- Declarations may be lodged up to **30 days before** the **presentation** of the goods (Art. 172)
- Customs declarations may be **corrected** for up to **3 years** (Art. 173)
- Goods may be **released without a guarantee** (Art. 195)
- **Centralised clearance** can be authorised only for AEO (customs simplification) if at least two Member States are involved (Art. 179); the procedures covered are the same as for entry in the declarant's records

2. Title V: Customs procedures – entry in the records

- **Direct representatives** can no longer use this facilitation if they enter the declaration in their records (different from Art. 253(4) CCIP)
- Only **AEO** (customs simplification) may be authorised **not** to **present** the goods; only if the supervising customs office has access to all the necessary information (Art. 182, Art. 234 IA)
- Entry in the declarant's records may be authorised for (Art. 150 DA)
 - release for free circulation
 - customs warehousing
 - temporary admission
 - end-use
 - inward processing
 - outward processing
 - export and re-export
- **Excluded** are code 42, excise goods, export and re-export for which security data must be declared

2. Title V: Customs procedures – self-assessment

- **Self-assessment** (Art. 185) – only for AEO (customs simplification); the procedures covered are the same as for entry in the declarant's records (Art. 151 DA); very little has been specified in Art. 152 DA and Art. 237 IA

2. Title V: Disposal of goods

- Detailed rules on the disposal, abandonment, and sale of goods by the customs authorities (Art. 197 – 199)

Title VII: Special procedures (1)

- **Common rules** for
 - authorisations – needed for processing, temporary admission, end-use, warehouse storage facilities (Art. 211)
 - records (Art. 214)
 - discharge (Art. 215); bill of discharge now necessary also for end-use (Art. 175 DA)
 - movements (Art. 219)
 - usual forms of handling – no authorisation needed (Art. 220)
 - equivalent goods (Art. 223)
- **Examination of economic conditions** less often and only at EU level (Art. 211 (5, 6))
- For **AEO** (customs simplification) certain criteria are deemed to be fulfilled (Art. 211 (3), 214 (2), 223 (2))

Title VII: Special procedures (2)

- The use of **equivalent** Union or non-Union **goods** may be authorised for all special procedures except transit (Art. 223); however, the use of equivalent goods is excluded if the goods placed under the procedure are subjected to anti-dumping duties, are genetically modified, or if on re-exportation preferential proof is to be made out in cases where a no drawback provision applies
- The requirement to be **established** in the **EU** may be waived for inward processing and end-use on an occasional basis (Art. 161 DA); the customs declaration may also be lodged by, or in the name of, such person (Art. 170(3)(b) UCC)
- Customs warehouse **type D** and **free zone type II** suppressed
- **Inward processing** merged with processing under customs control and destruction at the request of the declarant (see Art. 5 No. 37)
- Inward processing **drawback procedure** abolished
- Benefit from **outward processing** on the basis of the value added
- **Compensatory interest** abolished

Title VIII: Bringing goods out of the EU (1)

- Possibility to lodge **separately** the **customs** and the **security declaration** (Art. 271(1))
- New definition in Art. 1(19) DA: 'exporter' means the **person established** in the customs territory of the **Union** who, at the time when the declaration is accepted, **holds** the **contract** with the consignee in the third country and has the power for determining that the goods are to be brought to a destination outside the customs territory of the Union, the **private individual** carrying the goods to be exported where these goods are contained in the private individual's personal baggage, in other cases, the person **established** in the customs territory of the **Union** who has the power for **determining** that the **goods are to be brought** to a destination **outside** the customs territory of the **Union**.

What happens if a person outside the EU takes the decision?

Title VIII: Bringing goods out of the EU (2)

- Art. 285a CCIP is abolished according to which the customs authorities may exempt an approved exporter from the requirement to lodge a simplified export declaration at the customs office of export for each removal of goods, provided
 - (a) the approved exporter informs the customs office of export of each removal, in the manner and form specified by that office;
 - (b) the approved exporter supplies, or makes available, to the customs authorities all information they consider necessary for effective risk analysis before the removal of the goods from his premises or the other places designated or approved by the customs authorities;
 - (c) the approved exporter enters the goods in his records.

Title IX: Electronic systems, transition, empowerments

- Transitional measures for situations without IT support (Art. 278)
- IT program (Art. 280) in OJ 2014 No. L 134, 46
- Pilot projects (Art. 282)
- Procedural rules for delegated and implementing acts (Art. 284, 285)
- Application of new provisions on 1 May 2016 (Art. 288 (2))

Part 3: The transitional rules

3. The transitional rules (1)

1. Authorisations valid on 1 May 2016

- having a **limited period of validity**, remain valid until the end of that period or until 1 May 2019, whichever is earlier
- all **other authorisations** remain valid, until they have been reassessed; decisions following a reassessment of an authorisation must be taken before 1 May 2019
- the following authorisations are not subject to re-assessment:
 - authorisations of exporters for making out invoice declarations
 - authorisations for the management of materials using the accounting segregation method for the determination of the origin

3. The transitional rules (2)

- binding tariff or origin information remains valid for the period set out in those decisions; such decisions are, as of 1 May 2016, binding also on the holder of the decision
- decisions granting a global deferment of payment remain valid until the re-assessment of the authorisation to use a comprehensive guarantee

Where a decision or an authorisation remains valid after 1 May 2016, the conditions under which that decision or authorisation is applied are, as of 1 May 2016, those laid down in the corresponding provisions of the UCC, the delegated and the implementing act

Customs authorities may accept applications for the granting of authorisations under the UCC before 1 May 2016; they may grant such authorisations before 1 May 2016, provided those authorisations are not valid before 1 May 2016

Part 4: Preparations for the transition to the new rules

4. Preparations for the transition to the new rules (1)

- Study the impact which the new rules can have on current business processes
- Identify new opportunities, such as benefits from
 - AEO status
 - centralised clearance
 - self-assessment
 - comprehensive guarantee for several procedures and other situations requiring a guarantee (e. g. deferred payment)
 - reduced guarantee or guarantee waiver

4. Preparations for the transition to the new rules (2)

- combination of inward processing, processing under customs control and destruction
- longer storage period for temporary storage (still need for a customs warehouse?)
- movement of temporary storage goods without use of a transit procedure
- use of equivalent Union non-Union goods
- the new rules concerning the assessment of the customs debt

4. Preparations for the transition to the new rules (3)

- Identify new risks or costs, such as those stemming from
 - the new rules concerning the assessment of the customs debt (e. g. for re-imports after outward processing) and the extension of debtors
 - the abolition of customs warehouse type D
 - the abolition of free zone type II
 - the introduction of the last sale rule for customs valuation
 - the need of a guarantee for temporary storage

4. Preparations for the transition to the new rules (4)

- Request adaption or replacement of existing authorisations for customs procedures and facilitations insofar as necessary (not necessary for processing under customs control, inward processing drawback procedure, customs warehouse type D), e. g.
 - place(s) of temporary storage if they have not been authorised
 - a single comprehensive guarantee for all situations requiring a guarantee
- Request authorisation for new facilitations, e.g.
 - reduced guarantee for deferred payment (only for AEO)
 - self assessment (only for AEO)
- Use possibility to amend customs declarations for the last 3 years

4. Preparations for the transition to the new rules (5)

- Adapt – once the specifications are available – IT systems to new data and system requirements, e. g. declarations for
 - temporary storage
 - customs procedures
 - the entry or exit of goods
- Re-write internal procedures and procedures with trading partners
- Train staff and management

Questions?

Michael Lux

Michael.Lux@customs-law.expert

www.customs-law.expert

Tel. 0032 2 6872008

