INTRODUCTION OF UNION CUSTOM CODE – 1 MAY 2016

The Union Customs Code (UCC) is the largest rewrite and modernisation of customs regulations that has ever been seen and will come into force on 1 May 2016. It will affect most, if not all, exporters and importers.

The UCC introduces a new standard of practical competence or professional qualification directly related to customs activities. Training which provides recognised customs qualifications is limited in the UK, so the focus will be on evidence and demonstration of practical competence over the previous 3 years. This standard only applies to AEOC.

There's also an amendment to the compliance standard which means you need to meet customs legislation and taxation rules relating to your economic activity.

There's a transitional period for AEO authorisations issued before 1 May 2016. This period will go to 1 May 2019, when all AEOs must meet the new requirements. The reassessment work will be managed over this 3-year period and AEOs will be given more information on how and when this will be done.

WHAT EXACTLY WILL CHANGE ON THE 1 MAY 2016?

The Union Customs Code (UCC) comes into force in full on the 1 May 2016, but a few things will be subject to transitional timescales; these are mainly in the area of duty relief authorisation (Special Procedures). In brief below are some of the things that will happen on 1 May.

1) New customs valuation regulations will come into force and there are changes to certain areas as the €10 waiver ends, the statistical limit for postal consignments is reduced from £2000 to £750, no imports allowed to the Low Value Bulking Imports (LVBI) (though something similar could be approved under Simplified Declaration Procedures), new regulations for the inclusion of Royalties, Licence Fees and Trademark Fees and the use of the First Sale Price is removed (unless you meet the terms of the sunset clause).
2) The use of Onward Supply Relief (OSR) will only be allowed with full declarations and Simplified Declaration Procedure (SDP).
3) Changes to Customs Procedure Codes (CPCs), in particular the introduction of a new CPC series for End-Use entries (CPC 44 series).
4) No new imports will be allowed to the following:
   - Inward Processing Drawback (IP(D))
   - Processing under Customs Control (PCC)
   - Type D customs warehousing
5) Simplified Applications to use duty relief procedures, e.g. Inward Processing (IP), will now be known as Authorisation by Declaration and restricted to three uses per year with a maximum value of goods covered set at £500,000. This procedure will also need to be supported by a financial guarantee.
6) Local Clearance Procedures (LCP) is replaced by Entry into Declarants Records (EIDR) under Simplified Declaration Procedures (SDP).
7) Binding Rulings, such as Binding Tariff Information Rules (BTIs) become valid for three years instead of six and will be binding on the applicant as well as customs.

The Union Customs Code has raised many questions and concerns for Exporters on the impact it will have on businesses. This guide from Croner International Trade summarises some of these questions and clarifies the exporter's position.

** Source: Wolters Kluwer (UK) Limited – Croner International Trade 2016*

FREQUENTLY ASKED QUESTIONS

UNION CUSTOMS CODE – NO MORE FIRST SALE FOR EXPORT PRICE?

Question:

Is it true that the First Sale for Export Price is going in the EU? We have a contractual arrangement by which we buy goods from Hong Kong but we declare the transaction price of the goods between the Chinese supplier and the Hong Kong agent. This is because under current EU law we can confirm that the Chinese supplier is setting the EU Selling Price. Will we still be able to do that when the Union Customs Code comes into force on 1 May 2016?

Answer:

No. An end-use authorisation will require some form of guarantee to be in place to continue post May 2016. However, the transition period will apply to this type of authorisation and a guarantee will only be required when the authorisation is amended, re-issued or the transition period ends. At that point, if you wish to benefit from a reduction or waiver of the guarantee requirements, you may wish to consider meeting the AEO criteria or apply for an AEO authorisation.

UNION CUSTOMS CODE — AEO AUTHORISATION AND END-USE LICENCES

Question:

Are we required to have an AEO authorisation (C/S/F) to continue an end-use licence after implementation of the UCC in May 2016?

Answer:

No. An end-use authorisation will require some form of guarantee to be in place to continue post May 2016. However, the transition period will apply to this type of authorisation and a guarantee will only be required when the authorisation is amended, re-issued or the transition period ends. At that point, if you wish to benefit from a reduction or waiver of the guarantee requirements, you may wish to consider meeting the AEO criteria or apply for an AEO authorisation.

UNION CUSTOMS CODE AND ROYALTIES

Question:

We understand that the Union Customs Code (UCC) will affect the way duty is calculated on royalties. It has always been assumed that the royalties we pay do NOT having anything to do with goods, e.g. a royalty for marketing know-how and therefore is not subject to customs duty. Will this still be the case?

Answer:

Under the current arrangements the importer is often required to pay a royalty or part of a royalty in respect of technical information or “know-how” supplied by the seller. Claims that the royalty or part royalty does not relate to the imported goods may be accepted where it can be established that the particular information or “know-how” has to do with something clearly unrelated to the imported goods and that the amount paid is reasonable having regard to what is supplied.

Claims made for exclusion of payments for the provision by the seller to the importer of information necessary to assemble and/or use the goods for the purpose for which they were designed are not acceptable.

Payments made (whether the full royalty or only part) for technical information concerning a process or operation that is specialised in itself, are excludable from the customs value (for example the importer may be able to show that the process could be carried out by similar goods obtained from other suppliers, who manufacture them without specialised information from the licensor or the importer).

So in summary, marketing “know how” has not always been excluded from the Customs Value; it all depends on the circumstances. It is envisaged that the situation will remain much as stated above subject to the ongoing discussions with the Commission and production of suitable guidance. Currently there is nothing in the draft legislation to suggest that this will change under UCC.

UNION CUSTOMS CODE — ESTABLISHING NON-PREFERENCE ORIGIN

Question:

In the March 2015 version (V4) of the Delegated Acts (DA) relating to the Union Customs Code which comes into force on 1 May 2016, Annex DA001 appears to give a list of rules to indicate the rules for establishing non-preference origin. Does this really mean a company must hold evidence of CTH or value of originating content if that is the rule?

From our business viewpoint, this is very different and will require more evidence and checks than confirming the last substantial economic process (which is what we do currently). It will also require a lot of work establishing the origin of the components — we currently only do this if we wish to declare that the goods qualify for preference.

Answer:

There has been a huge discussion on this issue with industry voicing fierce opposition against the use of the country of destination criteria and the table of list rules as a mandatory condition to acquire economic origin. The compromise as far as I have been informed is the following.

Should this be required for purposes of access to the market (upon importation the origin criteria of the country of importation are applicable), EU entities are allowed to certify economic origin under the rules of the customs territory of destination but they may use the EU criteria.

To provide legal certainty, companies that evidence compliance with the table of list rules may claim a Certificate of Origin (ie sufficient proof) but when not fulfilling these criteria, companies may still use “any other method” to evidence what a “last substantial transformation” is and where the goods underwent such transformation (table of list rule is not a minimum/mandatory condition). We are expecting updates on this situation.

UCC SUNSET CLAUSE

Question:

My company has always imported goods under the Earlier Sales Price which has been an important financial advantage to us. We know that UCC removed the provision for Earlier Sales Price but we have had our contracts confirmed within 2015 so we can establish these prices. Is this enough for us to use the Sunset Clause we have heard of?

Answer:

You are correct. The earlier sale facility will be withdrawn and replaced by a last sale only rule on the 1 May 2016. There are transitional measures by which any binding contracts containing a reference to an earlier sales agreement may be used until 31 December 2017 — this is known as the sunset clause. For these contracts to be eligible for the earlier sale rule they must:

- be contractually binding
- contain reference to the earlier sales agreement
- have been entered into before the IA coming into force (expected to be the 20th day following its publication in the Official Journal of the EU). All legislative texts for the UCC have been finalised and were officially published on the 29 December 2015. In order to be able to use the sunset clause — for applying the First Sale for Export concept until 31 December 2017 — there must have been an agreement in place and this agreement must have been concluded prior to the entry into force of the Implementing Regulation (i.e. 18 January 2016).

UCC — IMPLICATIONS FOR EXPORTERS

Question:

My company mainly exports goods; we have very few imports from countries outside the EU. I have looked at the HMRC guidance notes on the Union Customs Code (UCC) and most of the changes seem to be related to importers. Am I missing something?

Answer:

Although the UCC relates to all customs entries you are correct in thinking that the more significant impact will be on imports from third countries, in particular for companies operating duty relief procedures. On the export side we recommend you consider the increase in Mutual Recognition Agreements (MRA) relating to supply chain security and the potential advantages of being an Authorised Economic Operator (AEO) under the Safety and Security certificate (AEO [S]).

With regard to UCC and export entries there are still the two different types of exports — direct and indirect (indirect being when the goods transit through another EU Member State before entering the destination country, e.g. road freight from UK to Switzerland via France). Currently, indirect exports require a paper version of the Export Accompanying Document (EAD — the export entry) to travel with the goods to the place of export to be stamped, thereby evidencing export from the EU. Under the UCC the paper EAD will no longer need to be presented at the office of exit with the goods. Instead, you only need to let the office of exit know the Movement Reference Number (MRN) of the export declaration when you present the goods for exit from the EU. You may wish to continue to have an EAD with the goods during the IT transition period to the UCC, but the declaration will be handled electronically. Therefore, as long as they are non-excise goods they will be entered to the transit procedure; the customs office of departure is the customs office of exit and non-excise goods placed under external transit are exited from the Union when they are put under the external transit procedure.

DIFFERENCE BETWEEN POTENTIAL AND ACTUAL DEBT

Question:

What is the difference between a potential and actual debt? We have read about the requirement for bank guarantees under the UCC for these debts.

Answer:

An actual customs debt is the amount of customs duty calculated at import and relates to what we call deferment accounts whereby an importer can receive goods without paying customs duty as they are put on “account” under the deferment system.

A potential customs debt relates to the amount of customs duty suspended under duty relief procedures such as Customs Warehousing or Inward Processing. In the UK this type of duty has not required any security (guarantee), but under the UCC there will have to be a financial guarantee in place.

UCC AND FINANCIAL GUARANTEES

Question:

When reading about the UCC the main thing mentioned is the introduction of Financial Guarantees for actual and potential duty liabilities. Is this a significant change? We have a deferment account, so will this have to change?

Answer:

This is a significant change to UK Customs procedures, as the UK has not required a financial guarantee to cover potential duty liabilities under duty suspension procedures such as Customs Warehousing (CW) or Inward Processing Relief (IP). A financial guarantee has been required for actual debt and this is the deferment account. There are no changes to the deferment account systems, but if you are an AEO [C] approved company you will be able to request a reduction to the deferment guarantee amount for customs duty after 1 May 2016. SIVA — the Simplified Import VAT Accounting — system, which has operated in the UK for a number of years, allows businesses to apply to HMRC for a reduction in the amount of guarantee cover needed for VAT incurred at import. SIVA will continue to operate after the 1 May 2016, but it has been advised that new companies applying for SIVA Approval will have to meet AEO [C] criteria. Companies already SIVA approved will be contacted by HMRC if they wish to reassess their eligibility for SIVA.

IP DRAWBACK UNDER UCC

Question:

We currently hold an authorisation to import goods under Inward Processing Relief (IP) Drawback. Can you explain what will happen after the 1 May 2016 as I understand Drawback will no longer be permitted?

Answer:

You are correct — from 1 May 2016 no imports can be made to IP Drawback. If you wish to continue using Inward Processing you will need to have in place a new IP Suspension authorisation. This new authorisation will come under UCC conditions and should be flexible enough for you to use effectively, though this will include the requirement for you to have a financial guarantee in place to cover the potential duty liability. For goods entered to IP (D) prior to the 1 May 2016 the drawback claims must be submitted before 31 October 2016 or the company will forfeit the duty. IP (D) disposals must meet CCC conditions even if made after 30 April 2016. Extensions to IP (D) through-put period will not be granted beyond 30 April 2016.

UCC MANDATORY GUARANTEES

Question:

Do you have any details on the mandatory guarantees that will come into force under the UCC?

Answer:

Firstly companies will not come under the UCC conditions which, among other things, require a bank guarantee to be in place to cover potential debt until you have renewed your authorisations. Upon authorisation or approval under the UCC, a guarantee will be required for the following customs procedures.

- Inward Processing (IP)
- Outward Processing (OP) under prior importation or under the standard exchange system
- Temporary admissions where the UCC does not provide for an outright guarantee exemption
- End-Use
- Temporary storage
- Customs warehousing.

Once your approvals come under the UCC conditions you will need to calculate your potential liability to Customs for import duty suspended within a “reference point”, e.g. the through-put period approved under the IP authorisation. The liability, if covering goods of different commodity codes and duty rates, must be calculated against the highest duty rate. Companies that are AEO (C) approved may apply for a 100% guarantee waiver or, if a company is affirmed by HM Revenue & Customs to be AEO compliant, then they can apply for a waiver of up to 30%.

IP AND END-USE PROCEDURES UNDER UCC

Question:

We have IP and End-Use procedures which don’t expire until November 2016 and February 2017 respectively. We understand that the Union Customs Code (UCC) becomes law in May 2016. Do we have to reapply for our approvals before May 2016 or can we continue to use our current customs authorisation?

Answer:

You may continue to use these authorisations and approvals until their expiry date or until 30 April 2019, whichever is earliest. The responsibility will be with you to reapply in good time before the expiry date to be approved under UCC conditions. If you fail to re-apply in good time there can no extensions to the current authorisations and your approvals will cease.

INTERNAL VERSUS EXTERNAL TRANSIT

Question:

When looking at the UCC we see the terms “internal transit” and “external transit”. What do these mean?

Answer:

The Internal Transit procedure under the UCC Special Procedures covers the movement of Union goods (formerly known as T2) between two Member States via a non-EU country (eg Switzerland) in order to maintain and prove their status.

External Transit covers the movement of non-Union goods (formerly known as T1) under duty and tax suspension within the EU.

CUSTOMS DUTY ON TRADEMARK FEES

Question:

We understand that from 1 May 2016 we will have to pay customs duty on the trademark fees we pay to organisations such as Disney. We do not buy the goods from Disney but source them from licensed manufacturers generally in the Far East. Is this true?

Answer:

Under the current customs code most trademark fees could be excluded from the customs duty as they had individual criteria, which was different from that applied to royalty and license fees. Under the UCC, trademark fees come under the same criterion as royalty and license fees, which is basically a fee to be paid as a condition of the sale of the goods even if it is not paid to the company manufacturing/ supplying the goods. Though you need to review your particular situation further it does look as if these trademark fees you mention will be dutiable from 1 May 2016.

THE EORI SYSTEM UNDER UCC

Question:

Will there be any changes to the Economic Operator Registered Identification (EORI) system when UCC comes into force

Answer:

No. There are no changes to the EORI process. It is a requirement for all economic operators (eg businesses) involved in international trade to be registered and to have an EORI number. You will need to have an EORI number to be able to apply for any customs authorisations, approvals or decisions.

IMPORTING MILITARY GOODS UNDER UCC

Question:

I have heard that we will not be able to import to Military End-Use once the UCC comes into force. We are a subcontractor to the MoD and contractually have to provide goods as duty excluded. Do you have any further information?

Answer:

As you may be aware, there has been a different interpretation within the EU on the use of Council Regulation 150/2003, which permits a duty waiver on goods destined for Military End-Use. The UK has permitted subcontractors to enter goods to Military End-Use where countries such as Germany have said it can only be used by the military organisation at import. Firstly, companies currently holding Military End-Use authorisations will continue under the old rules until the authorisation expires or until 30 April 2019 (whichever is earliest). After that, sub-contractors that use Military End-Use under these conditions will have to apply for, and use, IP instead to suspend the customs duty. Therefore, once the Community Customs Code (Reg No. 2913/92) authorisations for Military End-Use are reissued as UCC authorisations, these goods (under Council Regulation 150/2003) will only be able to be entered to End-Use relief in the UK by the Ministry of Defence (MoD), under their own authorisation. Subcontractors will require approval to dispose of IP goods by Simplified Discharge by Anticipation (SDBA) which will require holding the relevant Certificates from the Competence Authority. Financial Guarantees will be required to cover the potential duty until the goods are correctly discharged and until a Bill of Discharge (BoD) has been submitted to Customs evidencing the transfer to the MoD.

PROCESSING FOR CUSTOMS CONTROL UNDER UCC

Question:

We currently import goods under Processing for Customs Control (PCC). We understand that this is becoming part of the new UCC Inward Processing procedures, is this correct?

Answer:

Processing under Customs Control (PCC) will no longer be available and from the 1 May 2016. No goods can be imported to PCC after 30 April 2016. PCC authorisation holders will be able to use their PCC authorisation to import their goods to IP during the transition period. They will be able to use their PCC authorisation with IP import entries until it expires or until 30 April 2019, whichever is earliest. New applications will be under UCC conditions and

be subject to a financial guarantee to cover the potential duty liability.

SIMPLIFIED IPR PROCEDURES UNDER UCC

Question:

Occasionally we import goods into the UK/EU for repair. We have always used the Simplified IPR procedures (SiA): will this still be available under the UCC?

Answer:

Yes, but it will not be as flexible and we recommend you consider applying for a full IP Authorisation. The Simplified Application made at the time of import to use duty relief procedures such as Inward Processing (IP) will be known as Authorisation by Declaration under UCC. UK HMRC have issued a statement to say that any one company (based on the EORI) will only be able to make three such applications a year with a maximum value of goods covered set at £500,000. As well as these restrictions, Authorisation by Declaration will be subject to a requirement to obtain a financial guarantee to cover the potential duty suspended from the 1 May 2016. There is a minimum guarantee level being quoted of €10,000 per transaction (though we have also heard that it could be reduced to €1000), which could make the use of this procedure expensive.

AEO [F] APPROVAL UNDER UCC

Question:

We are an AEO [F] approved company — do we have to arrange for a reassessment to come under UCC conditions?

Answer:

No. AEO [F] is no longer a criterion within the UCC but it will be accepted that you are both AEO [C] Customs Simplifications — and AEO [S] Safety and Security — approved. This does have to be reassessed before the end of April 2019 but you will not have to submit a new application. HMRC propose a transitional provision will be put in place phasing out AEO [F] over a number of years.

SANDRA SCANNELL
Northern Ireland Chamber of Commerce & Industry
02890 894098 M: 078 7078 0721
sandra.scannell@northernirelandchamber.com
Northern Ireland Chamber of Commerce and Industry, 4-5 Donegall Square South, Belfast, BT1 5JA
Head of Business Services