

UNION CUSTOMS CODE



AN UPDATE FROM HILDE BRUGGEMAN

COORDINATOR OF THE ECASBA CUSTOMS & TRANSIT WORKING GROUP

What is UCC?



Revision of Modernised Customs Code (MCC) to take account of **Lisbon Treaty** which became law on 1 December 2009

- Lisbon Treaty introduced **new powers for the EU Commission** and these had to be taken into account in legislation

Goal remains to start the implementation of the UCC and supporting provisions no later than on **1 May 2016...**

Implementing & delegated acts

- 1) UCC defines the powers delegated to the commission
 - 2) implementing powers include practical implementation measures where uniform implementation is required (**“implementing act”**)
 - 3) delegated powers allow supplementing/amending/deleting of non-essential elements (**“delegated act”**)
 - 4) different ways of control by the European Parliament /the Council
 - 5) conclusion:
 - complicated & long law making process, difficult follow up for stakeholders
 - decide if subject is appropriate matter for IA or DA
 - subsequent versions released and discussed with the trade contact group and member states
- **no stable texts yet...., timing uncertain**

Even more complicated....

all exchanges of information and declarations must be electronic in 2020 at the latest...

some provisions can not be applied without supporting IT-systems + functionalities



“Transitional Delegated Act” = legal basis to give member states / the Commission time for new / adapted IT-systems + functionalities.

- existing systems + functionalities taken into account
- phased planning for the IT-systems = phased implementation for UCC itself
- link with Work Program UCC and MASP Multi-Annual Strategic Plan
- expected timing = end of 2015

Basic principles of UCC

- streamlining customs legislation /procedures
- offering greater legal certainty and uniformity
- increasing clarity for EU-customs officials
- **facilitating of trade** in line with modern day needs (simplifying customs rules, putting in place more efficient customs transactions)
- shifting to a paperless fully electronic customs environment by 2020
- rewarding of compliant /trustworthy economic operators (Authorised Economic Operators (AEO))
- **fighting against fraud**



Guidance & update of instructions

By national customs authorities

Roadmap for national implementation

- no stable legal texts yet
- national associations should insist on timely preparation
- incoming process / in particular temporary storage

By DG TAXUD

e-learning / training related support by December 2015

- 16 modules and UCC Matrix (UCC/DA/IA/Guidelines online tool)
- exclusively in English
- aiming at national customs as well as private sector.



Authorisations

Currently valid authorisations must possibly be amended to comply with new legislation.

- European database
- check status of possible authorisations with national customs authorities
 - avoid legal grey zone
 - some customs authorities are approaching economic operators
 - no stable legal texts yet....
- licence **temporary storage** now obligatory



Temporary storage – changes

“**Temporary storage declaration**” = “summary declaration” in CCC

- Time-limit: **90** i.s.o. 45 days
- Goods in TS shall be stored **only in temporary storage facilities** (i.s.o. in “places approved by the customs”)
- Authorisation for TS is obligatory
- Guarantee for TS is mandatory
- Non union-goods can be moved under TS rather than transit
- Notification of release to declarant and holder authorisation



Article 15 UCC

Provides for strict liability

on every economic operator (including ship agent)
for the correctness, accuracy and completeness
of **whatever kind of information** (including declarations)
that is provided to the customs authorities

- no intentional element required
- even “.... ...that **customs representative** shall also be bound by the obligation set out in.....” without differentiating between direct or indirect customs representation.....



Liability for misdeclaration in TSD - agent

*To refresh your memory - Incorrect cargo description in case of smuggling
- Wrong arrest by Court of Justice “papismedov”*

Several **criminal court cases against ship agents in Belgium**, still new ones

- question to Customs Debt & Guarantee section of Customs Code Committee, if Belgian interpretation of Papismedov correct yes or no
- answer member states **50/50**
- lively discussions within Commission
- to Customs Policy Group, OLAF and DG Budget
- supportive action by ECASBA (position paper)

To be continued



Liability for misdeclaration in TSD in UCC

Article 79.3 UCC - Debtor of customs debt incurred on import through non-compliance shall be

- Any person who was required to fulfil obligations concerned.

This is the carrier.

- Any person **who was aware or should reasonably have been aware** that an obligation under customs legislation was not fulfilled, and who acted on behalf of the person who was obliged to fulfil the obligation, or who participated in the act which led to the non-fulfilment of the obligation.

This is the ship agent.

- **difference = intentional element**

Liability for misdeclaration in TSD in UCC – carrier

“Papismedov” arrest became law?

No longer “person who introduced” (captain, crane driver, pilot...???)

but person who was required to fulfil obligations concerned

- “There is something fundamentally unjust in finding someone guilty for something they could not possibly know about” (J. Grange)
- reference for preliminary ruling by court of Justice in the most recent of the Belgian court cases (also one carrier summoned)
- contacts with ECSA, individual carriers would join

To be continued....

Criminal prosecution, the future rule?

COM (2013) 884 - 2013/0432 (COD) Proposal directive for a legal framework for customs infringements = sidelined

COM (2012) 363 Proposal Directive on the fight against fraud to the Union's financial interests **by means of criminal law = to become law**

- complemented by some procedural and investigational measures:
European public prosecutor + EUROJUST
- broader scope than customs only
- **Intentional element taken into account**
- misdeclaration of cargo description = within scope
- applicable in all European countries



INTERACTIVE DISCUSSION

(see preparatory notes)

- **External scanning – customs responsibility**
- **Conditions for ship agent to be authorised to act as direct representative.**
- **Advantages for AEO certified ship agents**
- **Extinguishment of customs debt in case of contribution in fight against fraude**