

EU businesses call for a Union Customs Code that continues to support the global supply chain, economic recovery and innovation

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The new Union Customs Code [“UCC”] will become applicable in May 2016. The European Commission’s Taxation and Customs Union Directorate-General (DG TAXUD) is currently reviewing the fifth draft for the new Delegated Acts (DA) and Implementing Acts (IA) for the Union Customs Code (UCC). On 28 July, the European Commission adopted the DA which it said covers simplifications of the customs procedures. In the view of European businesses, however, the adopted DA does not include real simplifications and innovative solutions which would strengthen the competitiveness of European companies. In its current form, it will also have some negative impacts.

We therefore call upon the European Council and the European Parliament to take our concerns below on board in their assessments of the DA during the next two months. We also urge the European Commission to take our concerns on board for the IA, which stands to be adopted soon.

As previously stated, it is highly important for European businesses to continue to have the opportunity to benefit from existing customs valuation principles for the import of products into Europe. Innovative and future-oriented solutions are necessary. This is to ensure competitiveness in the high technology market place. To make it a truly effective and modern instrument, the UCC DA and UCC IA should reflect business needs.

However, despite numerous recommendations filed jointly by a wide range of business organisations to the Commission over the past few years, some very important regulations are still not included in the UCC IA and DA, such as the following ones:

- a real balance between the costs and benefits of becoming an Authorised Economic Operator (AEO);
- the introduction of innovative solutions for self-assessment, doing away with the transaction-based processing that exists today;
- practical regulations allowing companies to make use of centralised customs clearance;

Companies invest a lot of administrative and financial resources in order to obtain **AEO status**. And since being an AEO is increasingly standardised, it also means SMEs have to obtain the status in order to remain integrated within their supply chains. The proposed regulations offer no significant simplifications which would have a big impact on companies with AEO status today. Real simplifications, such as waiving entry summary declarations or pre-departure declarations would make a big difference.

Businesses also expected innovative solutions for **self-assessment**. In order to achieve this, the release of goods should take place at the EU border by simply telling customs authorities that the declarant owns an authorisation for self-assessment. In order to benefit businesses, no further information should be required at this stage. Instead, companies should be able to provide monthly or periodical simplified declarations with summarised data that corresponds to a tax registration used today.

On the other hand, several highly concerning provisions are still included in the draft UCC DA, including the following:

- The elimination of the current possibility to use an earlier sale in a chain of sales as the basis for customs valuation (« first sale ») and the introduction of the obligation to use the « last sale » (even if from EU customs warehouses) for this purpose;
- Overly broad language that risks the inclusion of all royalties and licence fees in the dutiable transaction value, even when these are not a condition of sale;
- The inclusion of unsuccessful research & development costs in the customs value.

The « **first sale** » principle gives companies the possibility to calculate customs duties based on the price of an earlier transaction in the chain of sales before entering the EU market if certain conditions are satisfied, notably that this clearly was a sale for export to the EU. Its removal and the imposition of a « last sale rule » will increase the customs duties to be paid (because the last sale will usually entail a higher price), and in turn also the costs to the consumers. The proposed definition of the sale for export also has adverse effect on economic regimes, such as warehousing, because it will lead to the assessment of duties based on a sale inside the EU at the EU market price.

The current rules are fully in line with the EU's obligations under the WTO customs Valuation Agreement, which uses the concept of "sale for export"

(and not “last sale”), and only allows royalties and licence fees to be dutiable when they are true condition for sale. Instead, the new draft further risks significantly expanding the amount of **royalties and licence fees** subject to customs duties by an overly broad interpretation of the « condition of sale » criterion triggering inclusion of such fees in the dutiable customs value. Where there is EU manufacturing or onward supply these changes may also have a domino impact and spill over into third country valuation increases, which would of course further affect the global competitiveness of our businesses.

Unsuccessful R&D costs are not used for the production of goods. Currently, in line with the provisions of the WTO valuation agreement, such so-called “assists” must only be included in the customs value if they are necessary for the production of the imported goods. The Commission’s proposal to include these costs would seriously expand the scope of R&D costs to be included in the customs value.

All of these changes would **hurt both large and small/ medium-size enterprises** (SMEs) relying on import and export of goods for their business and reduce the competitiveness of European companies at a time of economic uncertainty. The additional costs would in some cases eventually be passed on to EU consumers. In many other cases importers will not be able to pass these additional costs on due to market pressures, and will instead be forced to absorb them, thus reducing opportunities for further investments. In addition, without innovative and future-oriented solutions as well as real simplifications for AEOs, the competitiveness of European companies will be affected negatively. This is inconsistent with the objectives which the EU is targeting and with the assertive Trade Policy Agenda proposed by the Commission for 2010-2015, aiming for a sustainable economic recovery through increased competitiveness of EU companies and lower prices for EU consumers.

Further, we would like to receive more clarification on UCC Article IA-I-2-27 (123-08-IA) which clearly sets out the criteria to be met for the practical standards of competence or professional qualifications to make application, or renewal, of Authorised Economic Operator (AEO). These criteria may be open to local interpretation or further revision. It is unclear within the practical standards required for AEO authorisation whether a person can act in the capacity of several sites and/or several legal entities within their European group and therefore would like to request clarification.

In addition can we confirm whether clear guidelines will be published on how the criteria should be met.

These legitimate concerns by business, the European Parliament and various Member States cannot be ignored. We have urged the European Commission to take into serious consideration the compromise solutions that have been presented by several undersigned parties during the TCG consultations, either jointly or individually. We appreciate greatly the support of the Member States and Members of the European Parliament and we ask them to continue their efforts to obtain a positive customs framework for the European industry as time is running out to do so.

We note our continued commitment to remain available to discuss alternatives with you and of course with the European Commission.

The undersigned,

