

NEW UNION CUSTOMS CODE

As we reported in our bulletin in January 2016, the publication of the provisions implementing the Union Customs Code (UCC) in December 2015 enables it to be fully applicable from May 1 2016. Links to the associated Community Regulations are attached below.

Moreover, the recent publication of the transitional provisions and of the Commission's work program relating to the development and deployment of the new electronic systems completes the legislative framework for the UCC to be phased in between next May 1 and December 31, 2020.

The Commission is currently preparing some interpretative guidelines which will contribute to the uniform interpretation of the UCC's new provisions by all the member states, with uniformity being one of the basic tenets of the new customs legislation.

Aside from the changes derived from the new UCC in relation to the use of new technology for the communication, exchange and storage of information, which will entail a progressive modification of the procedures used in this area, the main changes included in the UCC to the rules on foreign trade transactions, coming into force on May 1, 2016, are described below.

Note that our comments are not an exhaustive list of all the changes in the UCC and its implementing provisions, but simply an indication of those we consider might have a more widespread effect on foreign trade operators.

1. Decisions relating to the application of customs legislation

The procedure for applying for and adopting decisions regarding the application of customs legislation is expressly defined in that legislation, which means that the national provisions (the General Taxation Law and its implementing provisions, in Spain's case) will generally cease to apply.

2. Definition of exporter

The definition of exporter has changed, no longer focusing so much on the power of disposal over the goods, but on the need to be the holder of the contract with the acquirer in a third country (or at least to have the power to determine that the goods will be transported outside the Union) and to be established in EU customs territory.

3. Customs value

In relation to the customs value of goods, there are some important changes worth noting:

1. The option to use as customs value any value of a transaction other than the last sale occurring immediately before the goods were brought into that customs territory (i.e. first sale for export) is abolished, although transitional rules will apply until December 31, 2017. There are still some special rules for domestic sales and the use of customs warehouses.
2. The provisions relating to the adjustment for royalties and license fees for the different types of intangibles are unified, by eliminating the special provisions for trademarks, and specification of the requirements for their addition (already mentioned by the Technical Committee of the World Customs Organization and the Customs Code Committee in their comments).
3. In transactions between related companies, the compulsory need is laid down to examine whether the relationship between the parties has had an impact on the price.

4. Special arrangements

In addition to the simplification and rewriting of the former customs arrangements and uses, the main changes are the following:

1. Free warehouses and type 2 free zones are abolished. The other free zones become a customs warehousing procedure.
2. Specific use becomes a special procedure, subject therefore to authorization procedures.
3. The option to use equivalent goods is broadened to all the special procedures (subject to the limits laid down in the legislation), provided it is set out in the authorization.
4. In the inward processing procedure, the drawback system is abolished along with the requirement for the intention to re-export. The option for use of the procedure by non EU nationals is also broadened (discretionary authority).

Processing under customs controls is abolished also by being merged with the inward processing procedure.

Moreover, the determination of import duty in the inward processing procedure will be carried out, as a general rule, on the basis of the value of the good when the customs debt was incurred, unless the operator specifically asks for the elements existing when the goods were placed under the special procedure to be taken into account.

5. In the outward processing procedure, the option of determining the customs value on the basis of the processing costs becomes the general rule.

5. Customs procedures

1. Modification of the procedures implemented in relation to temporary storage facilities and the transfer of the goods between both, in addition to the storage periods being lengthened to 90 days.
2. Provision for centralised clearance for goods at European level and for a self-assessment system (self-assessment of duties and customs controls).
3. Redefinition of the local clearance procedure as an "entry in the declarant's records".
4. Simplification of the movements of goods to the Canary Islands yet to be implemented, but it will involve the abolishment of the single administrative document.
5. There are procedural changes concerning customs management, too abundant for a complete description in this document, such as the review of the simplifications for goods with a negligible value, summary declarations, proof that the goods have community status, pre-departure declarations and procedures on the exit of the goods, certificates on the preferential or non-preferential origin, etc.

6. Binding tariff and binding origin information (BTI and BOI decisions)

These types of information will be binding, not just for the authorities of the various member states but also for their owners, which must expressly identify them in their customs declarations and their periods have been shortened to three years.

Although it is specified that these types of binding information may be issued in respect of matters other than classification and origin, this has yet to be implemented.

7. Collection

7.1 Guarantees

1. The cases requiring compulsory and optional guarantees are distinguished.
2. The rules and validity of comprehensive guarantees are changed.
3. The cases qualifying for a waiver or a reduced amount in comprehensive guarantees for potential debts are provided (operators satisfying given requirements) or for a reduced amount for existing debts (only for economic operators authorized for simplifications).
4. The types of guarantees applicable and guarantors are defined. These changes may give rise to an alteration of the guarantees currently in use or to their reassessment in the context of the authorizations with which they are associated.

7.2 Deferment of payment

This has been made subject to request.

7.3 Interest on arrears

Interest on arrears will be calculated as determined in the customs legislation.

7.4 Remission and repayment

The application procedures for remission and repayment are simplified and the applicable time limits are changed.

8. Authorised economic operator (AEO)

Regarding the criteria for granting AEO status, a satisfactory compliance record is determined in relation to all areas of tax not just customs matters. Moreover, for the status of authorized economic operator for customs simplifications to be granted a sufficient level of competence or professional qualification for their services must be evidenced.

Both these requirements will also have to be satisfied to obtain customs simplifications generally (centralized clearance, comprehensive guarantee, etc.).

9. Transitional provisions

The new legislation enters into force generally on May 1, 2016, except in the following cases:

1. Authorizations granted before that date will be maintained: if they are valid for an unlimited period, until they are reassessed; if they are valid for a limited period, until the end of their validity period or, at the latest, May 1, 2019.

In any event the terms and conditions of use of these authorization must be adapted to the new provisions in the Code except in the cases expressly defined.

2. The binding information before May 1, 2016 will maintain its validity periods. It will also be binding for the owners.
3. The enforcement of payment decisions that have already been adopted are retained in force, either for an unlimited period or until the re-assessment of the authorizations to which they are related.
4. Seals: may be used until the stocks are exhausted or until May 1, 2019, at the latest.

Links to the UCC and its implementing provisions

1. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code:
<http://www.boe.es/doue/2013/269/L00001-00101.pdf>
2. Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015, supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code:
<https://www.boe.es/doue/2015/343/L00001-00557.pdf>
3. Commission Implementing Regulation of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code
<http://www.boe.es/doue/2015/343/L00558-00893.pdf>
4. Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446:
<http://www.boe.es/doue/2016/069/L00001-00313.pdf>

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