AmCham EU position on UCC implementing provisions

EU decision-makers should ensure that these provisions do not harm European businesses and trade

Executive summary

AmCham EU welcomes the implementation of the Union Customs Code (UCC), which aims to increase the efficiency of customs and provide benefits for legitimate trade. We are however concerned by a number of elements of the UCC implementing provisions that will harm rather than be beneficial to business. This paper outlines particular issues surrounding valuation, safety and security, postal parity, free movement of goods and data requirements for simplified procedures.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €2 trillion in 2014 and directly supports more than 4.3 million jobs in Europe.

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POSITION PAPER

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Introduction

The Union Customs Code (UCC) was adopted on 9 October 2013 as Regulation (EU) No 952/2013 of the European Parliament and of the European Council. Its substantive provisions will apply from 1 May 2016, once the UCC-related Commission acts are adopted and in force.

The UCC Delegated Act, which covers non-essential elements of the Regulation, was adopted by the European Commission on 28 July this year. This Act will now be considered by the Parliament and the Council. In parallel, the Commission is currently finalising the Implementing Act that will lay down uniform conditions for the application of the UCC.

The American Chamber of Commerce to the EU (AmCham EU) fully supports the UCC's objectives to streamline and simplify customs legislation and procedures. Making everyday customs transactions more modern and efficient will facilitate the role of customs officials throughout the EU and create greater legal certainty for businesses. We welcome the completion of the shift to a paperless and fully electronic customs environment as well as the reinforcement of swifter customs procedures for compliant and trustworthy economic operators.

AmCham EU equally recognises the Commission's extensive consultation with Member States and trade interest groups in the preparation of the UCC implementing provisions. We would, however, like to draw attention to the following elements of these provisions that will negatively impact European trade and create harmful burdens for businesses, especially small and medium-sized enterprises (SMEs).

Valuation

AmCham EU has on numerous occasions expressed concern about the provisions regarding customs valuation and remains highly worried by the language in Revision 7. We regret that despite the lack of a legal or practical need to do so, the Commission will eliminate the possibility of using an earlier sale in a chain of sales, even though the current system with strict conditions applied so far has worked well. The current language in Article 128(2) goes even further as it would oblige use of the transaction value on the basis of a sale taking place from an EU customs warehouse, i.e. while the goods are already inside the EU and therefore clearly not 'for export to' the EU *('Where the goods are sold for export to the customs territory of the Union while in temporary storage or while placed under a special procedure […]'*). In our view, this is not in line with the World Trade Organization Customs Valuation Agreement (CVA), under which a sale from the domestic territory would not qualify as a 'sale for export' to the customs territory of the importing country. Under the CVA, such a sale could not be used to determine the transaction value and normally, another customs valuation method would have to be used. This provision therefore infringes one of the basic principles of the CVA.

At the very least, the combined reading of paragraphs one and two of the proposed Article 128 should be clarified so as to provide that paragraph two of Article 128 applies when there is no sale for export to the EU. For this purpose, the following amendments (in red) should be made to Article 128(2):

> *'2. When there has been no sale for export to the EU prior to the introduction of the goods into the customs territory of the Union, ~~W~~where goods are sold after introduction ~~for export~~ into the customs territory of the Union while in temporary storage or while placed under a*

special procedure other than internal transit, end-use or outward processing, the transaction value shall be determined on the basis of that sale.'

As regards the treatment of royalties and licence fees, the language in Article 136(4), and in particular its subparagraph (c), risks making all such fees dutiable even if their payment is not a condition of sale by stating that these must be included in the customs value if *'the goods cannot be sold to, or purchased by, the buyer without payment of the royalties or licence fees to a licensor'.* Under the CVA, the 'condition of sale' test must be undertaken on a case-by-case basis and it has been confirmed in certain commentaries that not all licence fees paid to a licensor necessarily qualify as a condition of sale. Here too, the EU may suffer consequences for going beyond what is permitted under the CVA. Since the EU serves as a role model for many countries, there is also a risk that EU products will become more expensive outside the EU if countries start using the EU's provision as a precedent to also include more royalties and licence fees in the dutiable customs value. After all, if the EU can disregard basic CVA principles, so could they.

We therefore urge the Commission to amend these provisions to bring them in line with the CVA and avoid a situation where EU businesses and consumers end up paying the price of higher import duties and higher consumer prices.

The requirement to provide a 6-digit Harmonised System (HS) Code as part of an Entry Summary Declaration

The requirement in Annex B, Chapter 3 of the Delegated Act forces carriers to submit advance data for security and safety risk assessment prior to arrival at the first point of entry in the EU. So far, a description of the goods has been accepted, but going forward, the Commission wants to receive a 6-digit numerical code describing the type of goods in a shipment instead.

While AmCham EU fully supports initiatives to protect citizens and increase supply chain safety and security, the filing of a 6-digit code will create no added-value for security and safety risk assessment as there is no guarantee that the code will be correct. It will, however, have a significant impact on the clearance process and fundamentally change current working practices in international trade. The sender of a shipment destined for the EU will have to know and provide a 6-digit code, which is not necessarily straightforward, placing a considerable burden on economic operators and especially SMEs. This in turn will stifle growth and runs contrary to efforts to enhance trade facilitation.

Customs representation

The UCC provides that customs authorities may require any person acting as a customs representative on behalf of someone else to provide evidence of this power of attorney. However, it also empowers the Commission to adopt delegated acts to determine cases where the evidence of empowerment is not required by customs authorities.

Unfortunately, the final version of the UCC Implementing Act does not include any clarification on this exemption. AmCham EU believes this is a missed opportunity as it means that there can be no exemption for economic operators acting as customs representatives, for example when declaring low-value shipments and correspondence. Removing the possibility of a blanket exemption for certain operations is not in line with business reality and could open the door to customs authorities requesting evidence. This could have a seriously detrimental effect on correspondence and small parcel traffic with very unwelcome delays in the clearance process.

A level playing field between operators

There are various implementing provisions that will offer postal operators a considerable, unacceptable, trading advantage over other services providers, such as the express sector. This is surprising, as the UCC aims to create a level playing field for economic operators. AmCham EU believes it is essential that any requirements or exemptions apply equally to all economic operators so as to avoid any discrimination.

Proof of Union status – free movement of goods within the EU

The introduction of a requirement for proof of Union status for all goods carried by air between Union airports presents a significant discrepancy with current Customs Code Implementing Provisions (CCIP), under which such proof is not required. The movement of Union goods by air directly between Union airports does not alter their status and should not require either proof of that status or manifest details beyond those normally included in standard intra-EU transport documentation.

It is unreasonable that under the UCC, Union goods moved directly between two airports within the EU would be considered to have lost their status. This requirement would hinder the quick and efficient movement of goods within the EU and could potentially contradict EU law on the free movement of goods. AmCham EU believes that this oversight should have been addressed in the preparation of the new UCC implementing provisions, as the current language in DA Art 119.3 (d) would unnecessarily create a new burden on businesses without clear justification.

Data requirements for shipments moving by air under a simplified transit procedure

The existing simplified Union transit procedure is meant to reduce data requirements and allow carriers to conduct their operations swiftly under time constraints. It allows carriers to use an electronic transport document to move consignments containing both Union and non-Union goods from one point to another within the EU customs territory, rather than requiring them to complete customs declarations.

According to the final version of the UCC Implementing Act, the Commission would require 18 additional data elements to be provided. Since such information is exchanged between two authorisation holders, we consider the introduction of this requirement to be not only unnecessary but also bureaucratic. Such a requirement would furthermore run contrary to the principles of better regulation. AmCham EU fails to see how this additional burden helps businesses if it will increase administration and time required to clear goods.

Entry in the declarant's records

Entry into the records (EiR) is an important simplification in the current Customs Code that will continue to exist under the UCC. This simplification has historically offered considerable benefits for traders that have solid Enterprise Resource Planning (ERP) software and/or recordkeeping system(s) containing the required data elements and transactions needed to allow traders and the customs authorities to carry out internal controls. However, Art 227.1 c) of the Implementing Act requires that the supervising customs office be given direct computerised access to particulars and supporting documents. This new requirement would result in significant additional costs for traders who have already substantially invested in and who have been assessed by customs authorities on the quality of

their security systems and processes in order to be granted the authorisation to use this simplification. AmCham EU urges policymakers to remove this specific requirement at least for traders with a Customs Simplifications AEO certificate (AEOC status), or a combined Customs Simplifications/Security and Safety AEO certificate (AEOF status). By the same token AmCham EU proposes the removal of the exclusions articulated in Art. 150, 3 of the Delegated Act that prevent traders from using EiR for (re) imports followed by a VAT exempted intra-community supply because traders that have been granted to use EiR are deemed to have sufficient controls in place to manage this process. This exclusion will make the process much more complex and cumbersome.

Conclusion

AmCham EU urges the European institutions to take our recommendations regarding the implementing provisions of the UCC into serious consideration. The window to ensure that these provisions truly modernise EU customs rules and do not create additional burdens for legitimate businesses is closing rapidly. It is essential to get it right now, rather than try to fix problems with amendments of these rules later. We remain committed and available to further discuss alternatives with Member States and the Commission.