

To the attention of:
Mr Philip Kermode
Director, DG TAXUD
B-1049 – Brussels BELGIUM

Brussels, 04 November 2015

Dear Mr Kermode,

The Trade Contact Group (TCG) members associated with this letter are writing to you with regard to the ongoing Union Customs Code (UCC) consultation process in relation in particular with one specific issue that appeared at the October 19-20 meeting.

In this respect we would like first to use this opportunity to thank you and your services for organizing the special meeting of the Customs Code Expert Group jointly held with TCG on the Transitional Delegated Act of the UCC (TDA). We found the meeting very useful.

However this two-day meeting obviously did not allow resolving all pending issues. One pending concern, not only common to all the signatories to this letter but also shared by Member States, is the area of guarantees. Building up on the information provided and discussion already held during the meeting, we consider it appropriate to present you in writing our position on this subject:

1. Requirement for a mandatory provision of a guarantee for temporary storage

Under the new legislation the provision of a guarantee for storage in temporary storage facilities becomes mandatory in comparison to current legislation where it is optional. Now, when putting all elements of the new legislation together (determination of reference amounts, lack of an IT guarantee management system by the time the UCC becomes enforceable, etc.) we are facing a situation where as from 1 May 2016 economic operators will have to provide financial guarantees with, in view of the number of shipments entered into temporary storage, amounts reaching many millions of Euros. This concern of trade is not new, as it has been raised by trade during the Union Customs Code Implementing and Delegated Acts Review Cycles.

Due to the fact that until now these guarantees were a national discretion, however in future if economic operators want to benefit at least from the use of a comprehensive guarantee (including reduced levels and waivers) they have to apply for the relevant authorisation before 1 May 2016. Unfortunately, because of the time constraints and work volumes of Member States, economic operators cannot be sure that their application will be processed to ensure that they will receive their authorisations before the date when a guarantee will be required.

We consider that the effect of all above-mentioned measures to both businesses and customs administrations will be very harmful for trade in the EU, possibly leading in some cases to bankruptcy, when in fact no genuine risk has been identified. In fact both Member States and trade representatives present at the October 19-20 meeting seemed to be in agreement that the risk that goods will disappear from temporary storage facilities, in particular considering the security requirements for such facilities to be authorized for temporary storage, is close to zero.

At the October 19-20 meeting we have already expressed our understanding and support of Member States' request to include a transitional period in the TDA, ensuring a smooth transition towards new requirements.

As we have no information as to how TCG will be further involved in the remaining TDA discussions, we would request you to consider our position on this particular issue.

2. Guidelines on guarantees

All discussions on guarantees so far show the complexity of the issue and confirm the need of a careful assessment of all its elements. Therefore in principle, we welcome the engagement of the Commission to create clarity and work with Member States and develop guidelines on the use of guarantees. Nevertheless we have to take into consideration that guidelines must not lead to a loss of flexibility.

We are of the view that the involvement of trade in the early stages of developing such guidelines is crucial as economic operators will be the ones providing these guarantees. It is therefore essential that we are allowed to share our practical input as to what is feasible. Thus, we would request you to consider any possibilities for trade representatives to be involved in the work of the Project Group established to develop guidelines on guarantees.

3. Conditions and use of guarantee waiver

The requirements and conditions to use a guarantee waiver have been discussed in detail already at the level of the UCC. Since then our understanding and the assurance given to us has always been that the possibility of using comprehensive guarantees with reduced levels and in particular guarantee waivers, would be an appropriate 'countermeasure' to balance the move from optional towards mandatory guarantees under the UCC.

Now that we have seen the latest provisions on reference amount for guarantees (e.g. Article III-2-01a in the TDA) and read them in relation to provisions in the UCC DA, we are concerned that the initial idea behind comprehensive guarantees and guarantee waivers is transforming into a bureaucratic and counterproductive process.

Moreover, in order to have a common understanding on the value of an AEO authorization under the UCC - we would kindly ask you to confirm that holders of an AEOC authorization, even if they have to formally apply, will be automatically eligible for a total guarantee waiver because an AEOC fulfills all criteria required to receive such kind of simplification in accordance with Article 95 of the UCC.

We are aware of and understand the time constraints related to the finalization of the UCC related documents and in particular the TDA. At the same time we believe the solutions to be provided for the transitional period and the guidelines to assist the implementation are equally important for both customs administrations and economic operators, as was again demonstrated at the October 19-20 meeting.

Thus, we encourage the Commission to consider various ways to keep TCG involved in these processes, and when the issue and/or time requires to ensure that the TCG will be invited to joint meetings with Member States, not least when guidelines on guarantees will be drafted.

We thank you for considering this letter. We remain available for any further information that you might need.

With best regards,

