CLECAT european voice of freight logistics and customs services •

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Update on Customs related topics of December 2017

CLECAT Customs and Indirect Taxation Institute

The current review cycle of the UCC DA is close to its finalisation. Next to that, on different other aspects and projects progress has been made since the last CITI meeting of 20 October 2017. In this document you will find an update on the different topics and accompanying documentation.

UCC DA amendments

On 8 November CLECAT received the latest update on the UCC DA amendment package. The final version is currently under consultation. Not much changes are expected because agreement was already reached between DG TAXUD, the Member States and other DG's of the Commission (mainly DG JUST and DG BUDGET). The only expected changes will be linguistic. The proposed amendments can be found in the following documents:

- Latest version of proposal for amended of UCC DA
- Latest version of proposal for amended of UCC DA ANNEXES
- Comparison between the latest version and the version of June

The amendments concern mainly several linguistic or formal legal changes, with little to no impact. Linguistic and translation issues is however an ongoing concern and several other changes are expected to come in the next few years. If CITI Members find any of these, they are kindly invited to report them to the CLECAT secretariat, so they can be addressed to the Commission. Next to the linguistic, translation and formal legal changes, below the most significant changes are highlighted.

Definition of exporter

As explained during the last CITI meeting, the Commissions legal service did not agree with the text of June, because the wording in the proposal was too vague for a legal text. The intention of DG TAXUD, however, was to create flexibility for parties in the supply chain to choose who can be exported (as long as they are established in the EU, as it was the case with the previous customs code). This is for example to accommodate Ex Works transactions. After several discussions and a few amendments, an agreement was reached between DG TAXUD and the legal service. The current proposed article is:

Article 1 (19) 'exporter' means:

a) a private individual carrying goods to be taken out of the customs territory of the Union where these goods are contained in the private individual's personal baggage;
b) in other cases, where (a) does not apply:
   i. a person established in the customs territory of the Union, who has the power to determine and has determined that the goods are to be taken out of that customs territory;
   ii. where (i) does not apply, any person established in the customs territory of the Union who is a party to the contract under which goods are to be taken out of that customs territory.

There were no more comments from Member States on this proposal and it is expected to be included in the legislation.

Extension of the time-limit for taking a decision on repayment or remission (art. 97)

In this new proposal a third paragraph is added to the article, which provides extra reasons for extending the time-limit for taking a decision on repayment and remission. The addition of this paragraph is necessary because the current article only provided reasons for extension in some very rare cases. In short, three situations will be added: a pending similar case before the Court of Justice (not national), verification of proof of origin and consultations on classification. Because all three decisions can be in favour of the economic operator, the amendment will also benefit economic operators and prevent unnecessary court cases. Originally the Commission proposed a more broader text (with more room for extension), but after comments from trade (including CLECAT) and DG JUST, DG TAXUD had to limit the new paragraph to the before mentioned three cases.

Approval of a place for the presentation of goods to customs and temporary storage (art. 115)

After deliberation with the Commission legal service, the extension of the time limit for declaring goods for a customs procedure or re-export is extended from 24 hours to three days and six days in case of a combination with a location of an authorised consignee.

Mixed storage of products (new article 117a)

Next to additional limitations of the mixed storage of union and non-union goods (for example in the case of anti-dumping measures), the Commission, supported by almost all Member States, also wants to limit the mixed storage of goods falling within Chapters 27 and 29 of the Combined Nomenclature (mineral fuels and organic chemicals), which do not fall within the same eight-digit CN code, or do not share the same commercial quality and the same technical and physical characteristics. The reasons why are explained in the working paper: Common storage, accounting segregation and usual forms of handling (UHF) in Special Procedures

The proposal for this amendment led to several intensive discussions between trade and the Commission. Trade was only supported by one Member State. Together with Cefic (European Chemicals Association), ESC (European Shippers Council) and FETSA (Federation of European Tank Storage Association), CLECAT sent a letter to the Commission about their proposal. The new proposal is now more “soft” than the previous proposals and now excludes the anti-dumping measures. Nonetheless, the new article still includes the “commercial quality” sentence. According to the Commission this was already in the previous customs code, and should not lead to significant changes. Nonetheless, CLECAT, together with the other trade parties, is still investigating whether this is really the case. Although currently it seems that the problems are solved.

Application of the external transit procedure (for Union goods) in specific cases (art. 189)

There are some substantial changes in this article. Not only the title is replaced, but 2 significant paragraphs are added. The first being that goods being moved within the territory of the Union under TIR and ATA, SHALL be placed under the external transit procedure.

The second amendment concerns excise goods (directive 2008/118/EC). This paragraph states that excise goods MAY be placed under the external transit procedure. This is a correction done for the purpose of the amendment of the UCC IA, in order to eventually exclude excise goods from being transported under the internal transit procedure or a STC after export. The change of the IA will take at least one year before it is amended.

The full package of the proposal for excise goods can be found in the working document: Possible legal amendments concerning the determination of the office of exit and related provisions (which concerns more than just the excise adjustments).

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Reduction and waiver of guarantees for potential customs debts

Unfortunately, a very important amendment is missing in the current review cycle of the UCC DA. The reduction or waiver of the guarantees for potential customs debts is essential for any involved actor in trade, but in particular for SME's. Potential customs debts only materialize in very rare situations of non-compliance. The high amount of related guarantees (easily amounting to hundreds of thousands EUR) appear therefore disproportional, potentially excluding many Economic Operators (EO) of dealing with customs matters and incurring huge costs for the rest of EO's. Therefore, CLECAT together with several major trade associations sent a letter to the Commission proposing a solution. This was supported by most Member States.

Article 84 of the UCC DA sets the criteria for obtaining a waiver or reduction of guarantees for potential customs debts (transit, customs warehouse, temporary storage, temporary import etc). The main issue of this article was that one of the criteria stated that:

"the applicant can demonstrate having sufficient financial resources to meet his obligations, for the part of the reference amount not covered by the guarantee"

If this wording is literally interpreted by a Member State, it does not make any sense for EO's to apply for a reduction or waiver, because they would still need to reserve the before mentioned hundreds of thousands EUR, without a necessity to ever pay them. This is both impossible to most SME's and very difficult for Member States to assess.

After several intense discussions in the past few months, DG TAXUD proposed a new text on 9 November, which is welcomed by CLECAT, because it takes into account some of the main concerns and provides a more realistic approach towards the assessing and granting a reduction or waiver of a guarantee for potential customs debts. Most important is the addition of a new paragraph which states:

When assessing whether the applicant has the financial capacity to pay the customs debt and other charges likely to be incurred in connection with the goods concerned, customs authorities may take into account the risk of incurrence of the potential customs debt in relation inter alia to the volume and type of customs related business activities of the economic operator and to the type of goods for which the guarantee is required.

This provides the flexibility for Member States to not only take into consideration the financial resources, but also the chance those resources would be needed, which is very limited in almost all cases. Nonetheless, CLECAT made 2 comments/proposals:

- The word "may" in the new paragraph would mean that it is a choice for a Member State to include this factor in the assessment. This could potentially lead to differences across the EU, which could conflict with the objective of this article and the UCC as a whole. Therefore, CLECAT proposed to change the word "may" to "shall", just as It is mentioned in the first part of the new paragraph 4. A change to shall would ensure a more harmonised approach, while maintaining the possibility for Member States to determine themselves the level of the risk and the appropriate number of guarantees.
- Next to the legislative amendment, CLECAT expressed that it is important that any re-assessment of guarantees should be as much as possible after the amendment. It would be very unfortunate if some companies would have to comply with the criteria of the current text while others could benefit from an improved text.

The Commission agreed with the proposals, however it is up to the Member States to approve and the positions of Member States are quite different on this point. Currently, CLECAT is awaiting the final proposal of the Commission on these points.

Because of the extensive discussions on article 84 and the disagreement between Member States, the opportunity for amending the UCC DA on this point within this review cycle was missed. This could mean any new amendment will only be finalised by the time customs authorities have already re-assessed the guarantees according to the current text, leading to unnecessary burden and different treatment of economic operators across the EU, including distortion of competition and transparency. Therefore, CLECAT and other trade bodies keep insisting on a quick solution. It is not clear for the moment when a new proposal will be accepted and when it will enter into force.

Registered Exporter (REX)

The registered exporter system was introduced at the 1st of January 2017 and its usage is steadily growing. Figures of the Commission of 5 December show that for the beneficiary countries (CH, NO and GSP countries) there are currently 10.076 REX registrations (8204 in India). In the EU there are currently 18690 active REX registrations in 26 Member States (in Italy and Malta there are no registrations yet). The most EU registrations (12.175) are from the UK. Recently the list of beneficiary countries was updated on the DG TAXUD website. Also, from September 2017, the REX may be used to register EU exporters for both the GSP and the CETA business processes. Until the end of 2017, there is a transition that allows EU traders who are already "approved exporters" to export to Canada under CETA using their Approved exporter number. From 1st of Jan 2018, EU traders must have a REX number to export to Canada under CETA.

Because REX is a completely new system and its usage is being expanded currently, already several changes were made in the past year. These updates include for example CETA and an update for the goods codes to the nomenclature list valid for 2017. Next to that REX 2.0 is already foreseen. This includes for example an electronic centrally-deployed possibility for the EU Traders to apply to become a REX Registered Exporter and to implement a specific EU REX Trader Portal, to be in production in 2019. More details will follow in Q1-2018.

In the last DG TAXUD Trade Contact Group (TCG) meeting of 31 October, CLECAT has additionally addressed several points to the Commission:

Who can be re-consignor

There are various interpretations by Member States of who can be re-consignor, which is mentioned in art. 37 (21)(c) of the UCC DA. Previously/currently, with the Form A it was possible for (for example) a logistic service provider (LSP) or customs broker to act as “re-consignor” and to replace and/or split the preference document on behalf of customers situated outside of the EU. This happens quite regularly. For example: a company based outside the EU has its goods distributed throughout Europe by a LSP. Part of the goods are declared for free circulation and part goes to Norway or Switzerland. In that case the LSP has to act as re-consignor. With the new legislation some Member States consider that a company like an LSP or a customs broker cannot be a re-consignor. A definition of a re-consignor is given in article 37 (21)(c) of the UCC DA, but does not mention who can act as such. Because the lack of such a description, some MS now figure that only “actual” exporters/producers can be re-consignor. This leads to many practical issues. Therefore, CLECAT has requested a clarification from the Commission about who can act as a re-consignor and whether, just like it was previously/is currently with a Form A, a service provider (like a freight forwarder or a customs broker) can act as such.

Checking of authorisations

With the online service of DG TAXUD companies can check the validity of a REX number. This is a helpful tool, but it also has an important shortcoming. Registered Exporters can choose whether or not their company details are displayed in the tool. This means in the case a company does not allow it, a company in Europe can only check the validity, but not whether it was applied by the rightful company. This can lead to fraud. A company could in such a case use the REX number of another company in order to obtain preferential origin. A customs broker cannot check this and will do a declaration in good faith. Later customs, who can check it, will then find out the broker was involved in fraud and the broker can be held accountable for that (especially with a lack of clear distinction between responsibility and reliability in art. 15 (2)). It is already known that Form A's from countries like Bangladesh cannot always be trusted. Now the risk of fraud becomes even higher as there is no customs authority anymore which is directly involved in the issuance of a preferential origin statement. This problem could be solved by displaying in any case the company details in the online tool of DG TAXUD. We are then better able to determine whether a company is rightfully applying REX.

System-to-system validity check

Next to the wish for better information, CLECAT requested if the DG TAXUD tool could also be made available for system-to-system communication. Because, just as customs authorities, we try to automate our processes as much as possible. Currently the checking has to be done manually. A system to system solution would allow us to do the checks automated, which not only saves time, but also prevents mistakes.

The Commission and other trade parties have recognised and acknowledged the requests of CLECAT. During the TCG plenary meeting it was finally decided to have a separate, dedicated meeting about REX in order to discuss the requests in detail. This meeting is expected in January or February 2018.

Centralised Clearance

As explained during the last CITI meeting of October, the business case for Centralised Clearance for Import (CCI) was accepted by the Member States and a new project group was formed in September. Currently the project group consists only of Commission and Member States and two project group meetings were already held, in which progress was made on Business Process Models (BPMs) for Registration, Acceptance, Amendment, Invalidation and Risk & Control. The group has also started to look at message content. According to the Commission update on 6 December, good progress has been made and trade will be involved again soon. The current planning is to have joint meeting again in January 2018.

Customs Decisions System

On 2 October the new Customs Decisions system (CDS) became operational. Since then all Member States use CDS and/or the EU Trader Portal and UUM&DS, except for Denmark and the Netherlands which are carrying out further user testing with a view to join in the near future. There were also some changes in the choice of Member States of the architectural approach for example in France.

Since October several issues were discovered. This includes for example an incorrect customs offices list, the guarantee reference number was always mandatory even though the user selected "No" to the "Guarantee Indication" and some necessary fields were not displayed. Several issues were already solved in the past 2 months and several others will be solved in the next 2 months. Some other requests or issues need further analysis, for which dedicated workshops and meetings will be held.

Other planned initiatives for the next few months are:

- Guidance documents for each of the 22 types of applications
- Updates of user guides for the trader portals and UUM&DS
- Update of the eLearning module

A complete overview of issues, improvements and the state of play can be found in the presentation of the Commission of 6 December.

Import Control System 2.0 (ICS)

As mentioned in the last CITI meeting, ICS 2.0 is becoming a reality. ICS 2.0 is a very extensive and complex program with a large impact for Freight Forwarders. It cannot be compared anymore to ICS1, because of several fundamental changes, which include pre-loading cargo information for air freight, new data requirements and data structure, multiple filing (2 ENS filings replaced by >40 different ENS filings), Common EU Risk Management & EU Common Repository and of course a harmonised/shared trader interface.

The ICS2 program currently consists of 4 different projects:

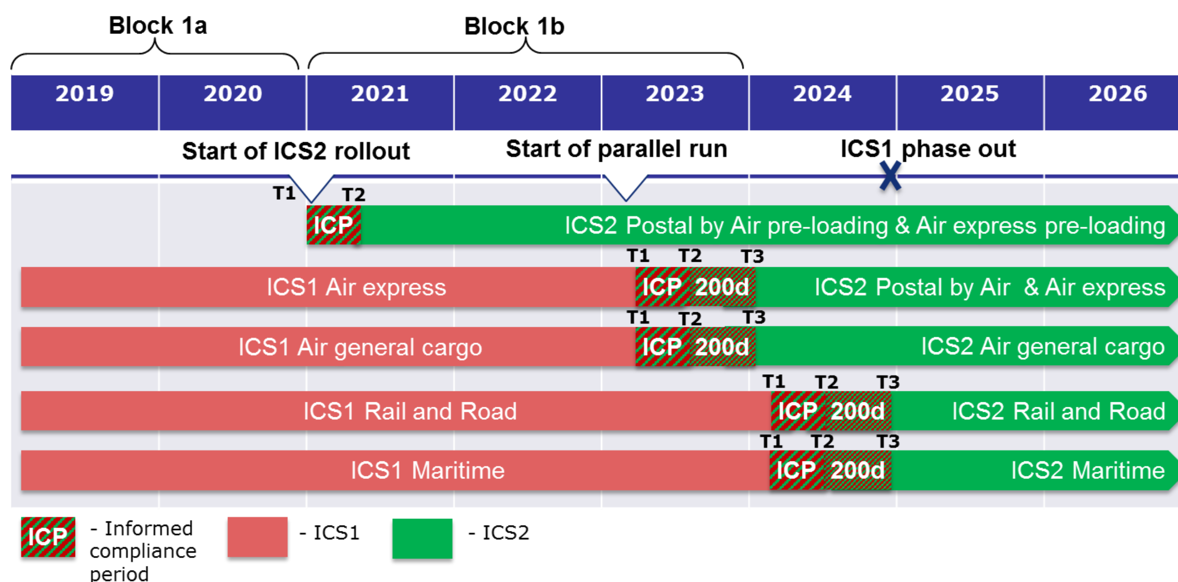
- Business Process Models (BPM) and functional specifications
- Harmonised/Shared Trader Interface
- Transition strategy
- Specific Commission and MS activities (for example on risk management)

On 6 December, the proposed shared trader interface and transition strategy were adopted by the Member States in the ECCG (Electronic Customs Coordination Group) and will be up for final adoption in week 50 by the CPG (Customs Policy Group). It is expected that the CPG will also accept both.

The shared trader interface (STI) will be a centrally developed interface by the Commission. This will be the very first time that trade and customs will exchange (summary) declaration data through an EU built system, instead of nationally built systems. However, Member States can choose whether they will use the STI. They also have a possibility to develop their own national interface. This has to be identical to the STI though. Therefore, currently already 24 Member States have stated they will use the central solution. For one MS (NL) the decision is pending and 3 MS have not given any reaction to the Commission yet (DK, HR, and SK). Previously Spain was the only MS which stated they will not use the STI, but recently they confirmed to the Commission they will also use it. Currently it is expected that eventually all MS will use the STI instead of a national developed interface.

More detailed information about the STI can be found in the Shared Trader Interface Vision Document

The preferred transition strategy is the scenario which was presented to the CITI in October. This will be a transition by group starting with Postal Air pre-loading and Air express pre-loading followed by second group of full Postal by Air, full Air express and Air general cargo, with the last group being Maritime, Rail and Road. See figure below.



More detailed information about the transition strategy can be found in:

- ICS 2.0 Transition Strategy Document
- Presentation of 6 December from DG TAXUD

MASP update & amendment proposal for the UCC

A major goal of the Code is the shift to a complete use of electronic systems for interactions between economic operators and customs authorities, and among customs authorities, and the end of paper-based procedures. The UCC provides in Article 278 that, until the shift to an electronic environment is completed, some transitional measures apply. Essentially, this provision permits the continued use of existing systems until the new, updated or upgraded electronic systems are operational. These transitional arrangements can apply until the end of 2020, at the latest.

2020 has always been considered an ambitious deadline, given the complexity of the task involved in completing seventeen interlinked electronic systems across the whole of the EU. When setting that deadline, it was anticipated that the rules supplementing and implementing the UCC would be adopted very soon after the adoption of the UCC in 2013, so that their provisions could be taken into account in developing the IT systems. However, as it happened, discussions on the supplementing and implementing provisions took longer than expected and the acts were only adopted in their final form in late 2015/early 2016. This led to a delay in producing the technical specifications for the IT systems dealing in one way or another with declarations and notifications.

Since the adoption of the UCC, work is proceeding at an intensive pace on the modelling for the systems but work on data harmonisation in particular has been more challenging than anticipated. Harmonisation of the data provided by economic operators is crucial for the interoperability of the different UCC electronic systems, for a harmonised application of the legal rules and for cooperation with other public services active at the border. Harmonising the data in line with international data models also ensures better linkages with third countries' IT systems and thus facilitates trade. However, this work involves a lot of investment in terms of time and financial means in fully reprogramming the existing electronic systems.

Therefore, it has become necessary to provide for a later date (2025 at the latest) for full completion of work on some of the systems. This will ensure the smooth implementation by 2020 of the other

systems and this will in turn facilitate the later implementation of the remaining systems in proper sequence. Half of the systems for which implementation is to be delayed already exist and are being upgraded under the UCC while the other half are new systems. The postponement of the delivery date for these electronic systems beyond 2020 conflicts with Article 278 of the Union Customs Code, which only allows the use of means for the exchange and storage of information other than the planned electronic systems until 2020.

Because of this reality, the deadline in Article 278 must be extended in respect of the delayed systems. As Member States and businesses need on average two years to plan for each electronic system, the Commission has to provide legal certainty by 2018 about the applicability of the transitional arrangements after 2020 up to 2025 (at the latest) and is therefore proposing an amendment to the UCC. CLECAT fully agrees with this amendment, because it provides a more realistic planning and having good systems is always better than having hastily implemented, faulty systems. Currently the EU is conducting a public consultation on this matter.

More information about the MASP, the amendment proposal and the current planning can be found in:

- TAXUD presentation for MASP acceptance
- MASP 2017 main body document for acceptance
- MASP 2017 consolidated project fishes
- Proposal for amendment of art. 278 UCC

EU Customs Data Model (EUCDM)

The EUCDM is the data model for Customs trans-European systems such as NCTS, AES, ICS and for Member States national systems (such as import). The EUCDM will soon replace the requirements of the (former) CCC IP for the paper based Single Administrative Document. The overall objective is to provide a technical instrument that models the data requirements laid down in EU Customs legislation and present a single and genuine source of information for the technical developments of the different IT systems that are used for data processing by customs in the EU.

The backbone of the EUCDM is the data provided by traders to customs authorities by means of the different declarations and notifications defined in EU Customs legislation, the data requirements of which as well as their formats and codes are defined in Annex B of the UCC-DA and of the UCC-IA respectively. The EUCDM also contains the mapping of these data requirements against the WCO Data Model. This mapping serves the following main purposes:

- To provide evidence that the EUCDM is fully compatible with the WCO Data Model.
- To link the data elements of the EUCDM with their corresponding data elements in the WCO Data Model, thereby defining unambiguously the relation between Customs needs and economic operators' data.

The objective is to extend in the future the scope of the EUCDM by integrating data elements used for the purpose of response messages and those used for the exchange of data between customs authorities, as well as those provided for in UCC-DA and UCC-IA Annex A. By its nature, and by virtue of the tool used to design it, which is also used by the WCO for the management of the WCO Data Model, the EUCDM enables Member States to complement it for their national purposes in full abidance of EU Customs provisions. Member States using the same data mapping tool, may inherit the EUCDM and complement it in accordance with their national needs. Other authorities may exploit

the EUCDM (for example for single window purposes) as published under other formats on the EUROPA website.

Currently the EUCDM is still under consultation and a consolidated core document is being made. One of the major topics for the EUCDM is also the creation of awareness and the training of both public and private customs professionals. On 20 November a meeting on this subject was held where this was discussed. As described under the MASP update, there is currently a delay in the development of the EUCDM. However, as this provides the basis for almost all other customs IT projects, there is an urgent need to speed up this process. The Commission has therefore suggested to have more dedicated (web)meetings and especially requested the involvement of trade in the process.

As discussed at the last CITI meeting, CLECAT will also organise a separate meeting on the EUCDM, which will probably by combined with the upcoming CITI meeting early February.

Export and transit transition strategy

Export – ECS/AES

The Union Customs Code introduced a substantial number of legislative changes which made it necessary to transform the currently operational trans-European Export Control System (ECS) Phase2 into the Automated Export System (AES). Together with other trade parties and Member States, CLECAT has raised the attention to carefully handle the transition in view of the huge volumes of customs declarations processed in the system and the major risk of disruptions directly impacting business.

The future Automated Export System (AES) will take into account the requirements of the UCC and its DA/IA. It will be aligned to the EU Customs Data Model and will continue to operate as a trans-European, distributed system that will require development activities at Commission level as well as at national level. The UCC DA/IA Annex B introduced updated requirements for declarations. New data elements were introduced, existing ones became redundant, the format of certain data elements had changed, and a number of them are grouped differently in the new structure, while the cardinality of some of them was increased significantly. The introduction of the EU Customs Data Model changed not only the format of certain data elements, but also the structure of the declaration messages. Besides the information exchanges, the business processes had to be aligned to reflect the new legislation. Not only existing BPMs were amended, but new BPMs were introduced. These have certain functionalities that are not present in the current system specifications.

These changes mean a complete overhaul of the existing ECS. Information exchanges are substantially different between the current system (ECS P2) and the future one (AES), they are not interchangeable. There are also incompatible processes and new ones that do not exist in the current system such as centralised clearance, and the new AES will include interfaces at national domain with EMCS and NCTS.

The smooth continuation of the export operations across all Europe depends on the transition plan, to migrate 28 National Export Applications from ECS P2 to AES. The ECS transition strategy document highlights the possible options and recommends a scenario to ensure the continuity, with the minimum level of risk and reducing the impact on traders while offering the expected flexibility in terms of national planning in order to address constraints at national level. The proposed strategy seems to be the only realistic and therefore the best scenario.

Transit

The same applies for transit (NCTS). These changes also mean a major update of the NCTS. New information exchanges are substantially different from the current system and not interchangeable. There are also incompatible processes and new ones that do not exist in the current system. The smooth continuation of the transit operations across all Europe depends on the transition plan, to migrate 35 National Transit Applications from Phase4 to Phase5. The proposed transition strategy can be found in the Transit transition strategy document .

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Contact details:
CLECAT – The European Voice of Freight Forwarders and Logistics
Rue du Commerce 77
B 1040 BRUXELLES
tel + 32 2 503 4705
willems@clecat.org

www.clecat.org