

## The developement of EU customs law: from the community customs code to the union customs code

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*Published in:*  
Journal of Legal Studies

*DOI:*  
[10.1515/jles-2015-0014](https://doi.org/10.1515/jles-2015-0014)

*Publication date:*  
2015

*Document Version*  
Publisher's PDF, also known as Version of record

[Link to publication in ResearchOnline](#)

*Citation for published version (Harvard):*  
Truel, C, Maganaris, E & Grigorescu, D-R 2015, 'The developement of EU customs law: from the community customs code to the union customs code', *Journal of Legal Studies*, vol. 16, no. 30, pp. 83-106.  
<https://doi.org/10.1515/jles-2015-0014>

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## THE DEVELOPEMENT OF EU CUSTOMS LAW: FROM THE COMMUNITY CUSTOMS CODE TO THE UNION CUSTOMS CODE

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### 1. Introduction

#### 1.1. Background

The role of customs has changed significantly over the past 50 years to adapt to the evolution of international trade. Before containerisation, goods were carried in bulk, boxes or nets in a ship hold. It took several days to unload the cargo one piece at the time, giving customs authorities time to clear the goods and collect duties. When the first containership 'Gateway City' made its maiden voyage in 1957 from Port Newark to Miami it allowed dockworkers to unload cargo at a rate of 264 tons an hour<sup>1</sup>. In the 80's, when the current Community Customs Code was conceived, a crane at a port could unload 1,000 tons per hours. Today, a single crane can handle

3,500 tons per hour<sup>2</sup>, unloading a 12000 TEU<sup>3</sup> containership in just a half day. This advance in productivity is putting pressure on border agencies to process shipments much faster in order to avoid creating a bottleneck at the borders.

Customs clearance operates on a transaction per transaction basis where each import and export is processed individually, and as such it is directly affected by volume. In 2007, the customs administrations of the 27 European Union member states checked 1.545 million tonnes of sea cargo and 11.7 million tonnes of air cargo. They processed 183 million customs declarations, which amount to 5.5 declarations per second<sup>4</sup>. In this context, the current Community Customs Code<sup>5</sup> (hereinafter CCC), which is a paper-based system, has reached its limits. The succeeding legislation, the Union Customs Code<sup>6</sup> (hereinafter UCC) introduces profound changes for customs administrations and the trade.

#### 1.2. The role of customs: from checking cargo to supervising global trade

The principal function of customs in international trade is the collection of duties and taxes on the exportation and importation of goods. However, the role of customs has evolved in order to deal with a variety of changes in the international

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supply chain. Some changes resulted from the nature of business transactions; others came from the wider society. The volume of transactions is an obvious factor but a deeper change has occurred with the modification of the substance of customs transactions. The multiplication of free trade agreements, for instance, or the increasing volume of intra-company transfers demand less physical inspections and more analytic reviews of documents and transactions. The role of EU customs has therefore evolved from simply checking cargo at the border to supervising the Union's international trade<sup>7</sup>.

Security has always been a risk to the trade and as a consequence international traders have always tried to mitigate the various risks to their cargo. Following the events of 11 September 2001 the risk to the trade became a risk from trade. Customs administrations have seen their focus on border protection increased. In some countries such as the US, the line of reporting of customs has changed from the Treasury to the Department of Homeland Security. Other countries, like the UK, have kept their customs administration under the Treasury indicating that their main focus remains revenue collection<sup>8</sup>.

Beside security, customs administrations are also involved in the field of safety. They have to provide a line of protection for possible dangerous imports. They are often responsible for the application of measures such as sanitary, health, environmental, consumer protection, veterinary, phytosanitary, anti-counterfeiting as well as the control of compliance with technical standards. This wide variety of activities that is carried out at the borders has created a risk that controls and inspections, if applied by the different government departments, could lead to delays or conflicts between agencies. For this reason, and as far as possible, the customs administration is designated as the lead agency<sup>9</sup> for interventions at the frontier acting on behalf of other departments and government bodies.

With the extension of their field of intervention, encompassing secondary "agency" functions, customs have become the "delivering partner" for the application of controls on behalf of other government departments. These include, *inter alia*, the control of prohibited and restricted goods, the collection of statistical information, the application of the common agricultural policy (CAP) and export license checks. The European Commission recognizing that the role of customs is significantly expanding beyond the collection of customs duties<sup>10</sup>, indicated that customs legislation must be adapted and that the UCC does reflect the new economic reality and the new role and mission of customs authorities.

As the level of these customs interventions should be equivalent throughout the European Union, any risk analysis and assessment should take into account the dimension of the internal market. Electronic information should allow risk-related data to be shared in real time between customs administrations of member states.

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The aim is to allow customs authorities to decide which consignment will be selected for physical checks at the border. The UCC keeps security checks at the border and transfers all other controls to the customs authority of the trader's premises where audit-based controls will be used to minimise the risk of fraud and non-compliance.

From checks at the borders to audit-based control, from paper-based system to electronic processes, the UCC is introducing a new paradigm for cross-border transactions and, as a result, traders need to adapt their internal systems, procedures, processes and sometimes their entire supply chain.

## **2. EU Customs: The Legal Framework**

### **2.1. The international legal framework of EU customs Law**

The concern of securing the border while facilitating legitimate trade is shared at the national, European and international levels. International bodies have developed initiatives and frameworks to introduce IT and simplify legislation affecting European Customs law as it is derived from various international treaties and conventions. These international agreements can be separated in two categories; those needing transposition into EU legislation and those having direct effect.

#### **2.1.1. Agreements needing transposition**

The General Agreement on Tariffs and Trade (GATT) was concluded in 1947 and entered into force on 1 January 1948 as GATT 47<sup>11</sup>. This multilateral agreement aimed at promoting international trade by progressively abolishing customs duties and non-tariff barriers. The EU, which was not a contracting party to the original GATT 1947, used GATT article XXIV to allow the EC to sign its trade agreements with other countries as a single Customs Union<sup>12</sup>. According to GATT article XXIV, a Customs Union is defined as two or more sovereign states merging their territories to form one single Customs territory<sup>13</sup>. The EC received with the Treaty of Rome<sup>14</sup> exclusive competence to elaborate, negotiate and enforce international trade related matters.<sup>15</sup>

The contractual system that was GATT 47 evolved into an international organization, the World Trade Organization (WTO) founded in 1995 and a new agreement, GATT 94 (concluded in 1994), as well as a set of additional agreements<sup>16</sup>.

The CCC and the UCC contain many provisions originating in the GATT agreements. For instance, legal protection in customs matters by independent courts has been one of the most important principles of international customs law since GATT 47. It is reflected in the UCC<sup>17</sup> in article 44.1 where: 'any person shall have the right to appeal against any decision taken by the customs authorities

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relating to the application of customs legislation which concerns him directly and individually.’

WTO agreements do not have direct effect; EU traders can only invoke WTO rules if the EU has issued specific provisions to transpose WTO obligations<sup>18</sup> such as in the case of the Anti-Dumping Agreement<sup>19</sup>.

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)<sup>20</sup> contains special requirements relating to customs measures to combat goods infringing intellectual property rights. They have been implemented by regulation<sup>21</sup> and are found in articles 134 for imports and 267 for exports of the UCC<sup>22</sup>.

The WTO Customs Valuation Agreement<sup>23</sup>, establishing rules for a standardised method of valuation of goods for customs purposes, is found in Title II Chapter 3 of UCC<sup>24</sup>. The international aspect of this agreement is critical for traders as it allows them to know in advance the taxable base on which the customs tariffs will be applied.

Furthermore, the WTO Doha Ministerial Declaration includes trade facilitation as an integral part of the current WTO work programme. The WTO describes trade facilitation as the ‘simplification of trade procedures’ and its main components are the simplification of customs rules, the use of modern technology, and transparency. The objective of the trade facilitation agenda is described as ‘clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit’. Trade facilitation is embedded across the UCC, which recognises that: ‘the use of information and communication technologies is a key element in ensuring trade facilitation and, at the same time, the effectiveness of customs controls, thus reducing costs for business and risk for society’<sup>25</sup>.

The World Customs Organization<sup>26</sup> (WCO) is the international body of customs administrations. It administers the technical aspect of the WTO agreements on customs valuation and rules of origin. It is also working towards the development and improvement of customs law and produces tools, decisions and conventions that are translated into EU customs law. The WCO Customs Data Model, for instance, provides a global standard of electronic data requirement for communications between customs, government bodies and the trade.

The International Convention on the simplification and harmonization of customs procedures<sup>27</sup> (Revised Kyoto Convention) describes the basic principles that govern customs procedures used by traders to clear goods at import and export. According to Art. 12 (1) of the convention, all contracting parties are obliged to adopt and apply the basic Convention and the General Annex. The EU transposed this convention in 2003<sup>28</sup>. The changes brought by this convention, such as the

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dissociation between the places where the declaration is lodged from the place where the goods are physically located are, among other things, a justification for the introduction of the UCC<sup>29</sup>.

The WCO 'SAFE Framework'<sup>30</sup> of Standards to Secure and Facilitate Global Trade' developed the concept of Authorised Economic Operator (AEO), an accreditation programme allowing traders to be vetted and approved by their national customs authorities in exchange of facilitation measures. The AEO was transposed in EU law<sup>31</sup> in May 2005 and is covered in articles 38 to 41 of the UCC.

The WCO is also responsible for maintaining the international Harmonized System (HS). The Harmonised System, ruled by the International Convention on the Harmonised Commodity Description and Coding System is the common language of international trade. Its annex contains a universal multipurpose nomenclature of product codes elaborated under the auspices of the WCO. It is used as a uniform and universal system of identification of products by numerical 'commodity codes' with standard descriptions. Its aim is to ensure that all products are identified similarly worldwide in all languages. It is applied by 151 contracting parties<sup>32</sup> worldwide and is used as the basis for national customs tariff, to apply restrictions, prohibitions and quotas; to collect trade statistics, negotiate trade agreements and exchange data.

In the EU, this convention has been transposed in Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and the Common Customs Tariff<sup>33</sup>. The EU list of tariff concessions under the WTO<sup>34</sup> is also reflected in this Regulation, which follows the evolution of the Harmonized System (HS), as it is reviewed regularly. Whenever this list is modified on the international level, an amendment to this Regulation takes this into account<sup>35</sup>. The UCC, as its predecessor, specifies that import and export duties are based on the EU Common Customs Tariff.<sup>36</sup>

The United Nations Economic Commission for Europe has developed the International Convention on the Harmonization of Frontier Controls of Goods<sup>37</sup> and some of its rules on transit are reflected in the UCC<sup>38</sup>.

Although some international agreements are directly applicable, their procedural aspects are often reflected in the customs code.

Preferential agreements, such as in the case of a Customs Union (for example, EU–Turkey) or a free-trade area (EU–Switzerland) provide preferential treatment to products originating in any of the signatory countries, usually in the form of reduced or zero tariffs. Traders can therefore realise some substantial savings. Preferential agreements are, in principle, directly applicable and do not need implementing provisions, as in the case of the origin rules or the tariff concessions<sup>39</sup>. The same applies to decisions taken by committees established under such agreements<sup>40</sup>. Nevertheless, detailed provisions for issuing proofs of origin are codified in the UCC<sup>41</sup>.

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The 'Customs Convention on the International Transport of Goods under Cover of TIR Carnets'<sup>42</sup> which was transposed into EU law<sup>43</sup> introduced the requirement to provide the customs authorities with the electronic TIR data and initiated the exchange of this data between the customs administrations and for most part is not included in the UCC. This convention is directly applicable<sup>44</sup>. The Convention on Temporary Admission<sup>45</sup> (the Istanbul convention) is also directly applicable. Procedural aspects of both conventions are covered by the UCC<sup>46</sup>.

## 2.2. The European dimension

European law is the most important source of law for the Customs Code. In 1957, Article 2 of the Treaty Establishing the European Economic Community<sup>47</sup> stated that the Community has as its task the creation of a 'common market' and to 'progressively approximate the economic policies of Members States'. The means to establish a "common market" was the elimination of all obstructions to trade within the Community.

### 2.2.1. Creation of the Customs Union

The Treaty of Rome establishes in Art 9<sup>48</sup> that the Community shall be based on a Customs Union to cover all trade in goods and introduce the necessary tool with the "adoption of a common customs tariff in their relations with third countries"<sup>49</sup>. A third country is considered a country that is not member of the EU and whose products are subject to import duties contained in the common customs tariff. Once goods from third countries have been subject to the appropriate duties on crossing the external border of the union, they are regarded as being in "Free Circulation" and are treated like any other goods produced within the union<sup>50</sup>. Free Circulation is still the basic import procedure in the customs law. The fundamental freedom of the free movement of goods is to be administered by a Customs Union and the ECJ confirmed in its opinion 1/75<sup>51</sup> that customs matters fall within the exclusive competence of the European Community.

### 2.2.2. Prohibition of customs duties and equivalent charges

The EC treaty introduced in Art 9 and 12 the "prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect (...)"<sup>52</sup> The direct effect of this provision was confirmed in *Van Gend en Loos*<sup>53</sup> therefore companies and individuals can rely on this provision before national courts and tribunals to challenge national legislation and other rules imposing customs duties on movements of goods between Member States. The size of the duty and the purpose of the imposition are irrelevant. Furthermore a duty does not have to be protectionist as established in *Sociaal Fonds voor de*

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*Diamantarbeiders*<sup>54</sup>. A charge having equivalent effect to a customs duty was defined in *Commission v Italy*<sup>55</sup>.

### 2.2.3. Prohibition of quantitative restrictions and measures having equivalent effect

The Treaty of Rome established the principle of free movement of goods by prohibiting quantitative restrictions on imports<sup>56</sup> and exports<sup>57</sup> and measures having equivalent effect between Member States<sup>58</sup>. Both Articles are directly effective. "Quantitative restrictions" were defined in *Geddo v Ente Nazionale Risi*<sup>59</sup> and *R v Henn & Darby*<sup>60</sup> while the authoritative definition of "measures having equivalent effect" was given by the ECJ in *Procureur du Roi v Dassonville*<sup>61</sup>.

### 2.2.4. Derogation from prohibitions

The drafters of the EC Treaty recognised that many national laws might aim at preventing imports without having trade restrictions as an objective. Certain national laws restricting imports may therefore be justified and article 36 of the EC Treaty contained an exhaustive list of six derogations on which quantitative restrictions and measure having equivalent effect may be justified: public morality, public policy, public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, the protection of industrial or commercial property. These derogations are embedded in the Union Customs Code<sup>62</sup> and its predecessor.

The Single European Act<sup>63</sup>, in 1986 incorporated with article 13 the term 'internal market' into the EC Treaty and defined it as an area without 'internal frontiers in which the free movement of goods, persons, services and capital is ensured'. It laid down the timetable for the completion of the Single Market and the removal of intra-EU border controls.

The treaty of Maastricht<sup>64</sup> introduced, in 1992, Customs cooperation in "Title IV: Provisions on Cooperation in the Fields of Justice and Home Affairs" of the treaty. Aiming at ensuring uniformity in Customs matters, Article 135 of the treaty authorised the Council, acting on the Commission's proposal, to take measures to strengthen Customs cooperation between member states.

On 1 January 1993, with the implementation of the Single European Act, internal EU border controls were physically removed allowing for the free movement of goods<sup>65</sup>. All duties, quantitative restrictions and intra-EU customs clearance were finally removed. The concept of intra-EC "exports" and "imports" disappeared to be replaced with "supplies" and "acquisitions".

All goods transported within the Community Customs territory were considered Community goods under Art. 23(2) EC and, thereby, no longer subject to customs supervision. This also applied to all goods from non-member states, which have

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been cleared by customs and released for free circulation according to articles 23 (2) and 24 EC.

Trade within the EU became separate from trade with third countries creating a hybrid situation reflected in the customs legislation where it is not domestic trade but is equally different from trade within other countries<sup>66</sup>.

The European commission combined the various pieces of European Custom law into a single code: the Community Customs Code (CCC)<sup>67</sup> and the Customs Code Implementing Provisions (CCIP)<sup>68</sup>. The Community Customs Code entered into force in 1992 and became applicable on 1 January 1994.

The Treaty of Nice<sup>69</sup> brought changes in relation to intellectual property. Art 133 EC dealing with provisions on common trade policy was modified to reflect the change of jurisdiction. Before the treaty, Member States dealt with international negotiations and conventions on intellectual property rights themselves. The Treaty of Nice transferred this jurisdiction to the EU.

Finally, as a result of the entry into force of the Treaty of Lisbon on 1 December 2009, article 23(1) EC establishing the Customs Union and adopting a common customs tariff has been renumbered article 28(1) TFEU, but has otherwise undergone very little change.

### 3. EU Current Customs law: The Community Custom Code

#### 3.1. The Community Customs Code

The current EU customs law is contained in the CCC<sup>70</sup> on the basis of articles 26, 95 and 133 EC Treaty.

Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code is the primary legislative act regulating EU customs procedures. The provisions define the main principles and approaches, provide essential rules for customs administrations and define customs policy. Commission Regulation (EEC) No 2454/93 (including all subsequent amendments) laying down provisions for the implementation of Council Regulation is a secondary legislative document adopted in 1993. It provides step-by-step detailed procedures for the implementation of the customs code taking into consideration various international treaties and conventions, which regulate customs activities. The CCC is supplemented by an explanatory document, the "Customs legislation and control of the application of Community legislation"<sup>71</sup>.

The CCC entered into force in 1992 and is applicable since 1 January 1994. As it is legally binding and directly applicable in all Member States<sup>72</sup>, it takes precedence over any conflicting national law and aims at promoting the uniformity of construction and application of the EU Customs regulations across the EU<sup>73</sup>. Implementing powers are conferred on the Commission, which is assisted by a

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Customs Code Committee governed by Rules of Procedure<sup>74</sup>. Where EU law does not apply, supporting national legislations take effect. In the UK, for instance, such legislation is the Customs and Excise Management Act 1979.

The nine titles of the CCC contain the basic provisions of European Customs law. The code is not self-executing and as such further provisions are found in the Customs Code Implementing Provisions (CCIP)<sup>75</sup>. All the provisions of the CCIP and CCC must be clearly worded in order for traders to immediately understand their rights and obligations<sup>76</sup>.

The CCC and CCIP lay out the rules for controlling the movement of goods across EU borders, while keeping a balance between the protection of the EU interests and the simplification and effectiveness of customs procedures<sup>77</sup>. They define the scope of customs legislation, the mission of customs<sup>78</sup> and the extent to which international trade is regulated by the CCC.<sup>79</sup>

The CCC has been subject to various changes. In 1997 certain amendments were adopted to simplify the code to make its implementation in the Member States more efficient<sup>80</sup>. They concerned the customs debt, control of free zones, and the simplification of formalities surrounding the customs declaration.

The amendments introduced in 1999 relate to customs transit. They clarify and improve the rules on discharging the transit procedure and the responsibilities of those authorised to use the procedure. They also cover financial guarantees and procedures for recovering debts arising from Community transit operations.

In 2000, an amending act<sup>81</sup> introduced procedures aiming at preventing fraud, simplifying and rationalising customs rules and procedures, facilitating the use of electronically submitted declarations, facilitating the use of the procedures for Inward Processing, Processing under Customs Control, Temporary Admission and Free Zones as well as defining a new concept of protecting "good faith" for those importing goods under preferential conditions.

In 2005<sup>82</sup>, the CCC was amended, introducing risk analysis for security purposes to be carried out before the arrival of shipments in the EU, and before the dispatch of shipments from the EU<sup>83</sup>. It also introduced the status of Authorised Economic Operators (AEO)<sup>84</sup>. AEO are businesses that, as a result of an audit of their internal processes, become accredited by customs. From customs perspective, AEO are low risk traders that can benefit from some simplified procedures and faster clearance.

Meanwhile, the Code Implementing Provisions have been subject to regular annual and sometimes biannual updates.

However, overall, the twenty-year-old code did not keep pace with the changes in information technologies, communication tools, new security and safety challenge. This has been said to compromise efficient customs clearance and risk-based controls within the internal market<sup>85</sup>. It also poses a risk for the collection of Value Added Tax (VAT) and duties, as highlighted by the reports by the European Court

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of Auditors on the use of simplified procedures<sup>86</sup> and the use of customs procedures<sup>87</sup>. These reports indicate that customs controls and manual procedures are often a source of financial losses for the EU. A decision was therefore made to adopt a paperless environment for customs and trade<sup>88</sup>.

In the Commission's vision, such extensive changes could not be achieved by continued amendment of the CCC, but could only result from a complete overhaul in the form of a new piece of legislation which would introduce the concept of paperless procedures based on IT systems<sup>89</sup>. The Commission concluded: 'It is in the interests of economic operators and the customs authorities in the Union, to assemble current customs legislation in a modernised customs code<sup>90</sup>'.

### **3.2. The Modernised Customs Code (MCC)**

In late 2005 the Commission issued a proposal for a EU Modernised Customs Code (hereinafter MCC). The objective of the MCC was mainly to move to paperless customs transactions. It was therefore drafted to implement IT solutions introducing electronic data processing techniques for all required exchanges of data, accompanying documents, decisions and notifications between customs authorities and between economic operators (traders).

In 2008, the MCC became Regulation (EC) No 450/2008 of the European Parliament and the Council of 23 April 2008, laying down the Community Customs Code (Modernised Customs Code)<sup>91</sup> with the intention to replace the legislation in force, the Community Customs Code (CCC).

The MCC entered into force on 24 June 2008 and was meant to be applicable, in accordance with Article 188(2), once its detailed implementing provisions were in force. It initially established 24 June 2013 as the final deadline for the detailed provisions to be in place. However, the IT solutions introduced by the MCC demanded substantial changes to the IT systems of some Member States, something that resulted in delays

### **3.3. The Recast**

On 20 February 2012, the Commission submitted to the European Parliament and the Council a proposal for a Regulation in the form of a recast of Regulation (EC) No 450/2008, for the purposes of replacing the MCC before its final date of application of 24 June 2013.

In addition to some small changes, the MCC now needed to be aligned to procedural requirements resulting from the Treaty of Lisbon that had entered into force. The treaty redefined the powers of the co-legislators and the Commission in articles 290 and 291<sup>92</sup>. The Commission commitments to propose amendments to all basic acts in order to align them with the new provisions of the Lisbon Treaty

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had an impact on the Customs Code, which had to be split between Delegated Acts and Implementing Acts in accordance with Articles 290 and 291 of the Treaty and the new 'Comitology'. As a result of these changes, the empowerment provisions were, in the vast majority of cases, delegated to the Commission. This is a significant change from the previous arrangements where most implementing provisions required a qualified majority agreement from Member States.

There have been some concerns that the UCC proposal did not achieve the right balance between delegated and implementing acts and that these have been wrongly weighted in favour of the Commission. These concerns have been shared by traders and Member States<sup>93</sup>. The UK government, for instance, feels that the extensive use of delegated acts, representing just over 80% of the empowerments, will have an impact on the influence exerted by the Member States. It has therefore expressed its intention to negotiate the reduction and limitation of the number of delegated acts. The Modernised Customs Code was also renamed "Union Customs Code".

#### **4. EU New Customs Law: the Union Customs Code (UCC)**

##### **4.1. Legal Basis**

The legal basis for the UCC is articles 33, 114 and 207 of the Treaty on the Functioning of the European Union<sup>94</sup>. Article 31 TFEU can no longer be a legal basis for a legislative act like the recast Regulation<sup>95</sup>. Furthermore, as the proposal falls under the exclusive competence of the Union, the subsidiarity principle does not apply and because the proposal does not entail any new policy developments compared to the initial proposal and resulting legislative act, it does not imply reassessing compliance<sup>96</sup>.

##### **4.2. UCC implementation provisions**

The empowering provisions that are directly applicable allow the European Commission to draw up the implementing acts ('IA') and delegating acts ('DA')<sup>97</sup>, replacing the current Implementing provisions ('CCIP')<sup>98</sup>.

The implementing provisions have been submitted in January 2014 in the form of draft UCC Delegated Act<sup>99</sup> (DA) and UCC Implementing Act<sup>100</sup> (IA) that are still, at the time of writing, under discussion in line with the Articles 290 and 291 of the TFEU between Member States and the business community.

##### **4.3. Entry into force and applicability**

The UCC, which is binding in its entirety and directly applicable in all Member States, was adopted on 9 October 2013 as Regulation (EU) No 952/2013 of the European Parliament and the Council. It entered into force on 30 October 2013. However, only some, mostly empowering, provisions are applicable since 30

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October 2013<sup>101</sup>. All other provisions will apply only on 1st May 2016, once the UCC-related Delegated and Implementing Acts are adopted and in force. Until 1 May 2016 the Community Customs Code and its Implementing Provisions continue to apply.

Furthermore, because the application of the UCC is based on the use of electronic data processing<sup>102</sup>, it is dependent on the availability of IT systems across Member States. A Commission decision establishes a set of dates for the completion of the deployment of IT systems for Member States and the trade community, with a deadline for completion of 31 December 2020<sup>103</sup>. The application of certain legal provisions will therefore have to be postponed and replaced by transitional measures for the periods pending the availability of the IT tools. This is a concern for the trade as they could be required to manage two parallel systems, an IT and a paper one<sup>104</sup>. This would not only be expensive but also create risks of non-compliance. The trade, therefore, emphasized the importance of member states' adopting and implementing measures at the same time.

#### 4.4. Existing provisions

The short lived MCC<sup>105</sup> was repealed on the day of the Recast Union Customs Code entered into force<sup>106</sup> on 30th October 2013. The current Community Customs Code<sup>107</sup>, Regulation (EEC) No 3925/91<sup>108</sup> and Regulation (EC) No 1207/2001<sup>109</sup> will be repealed from 1 June 2016<sup>110</sup> when the UCC becomes applicable.

In order to simplify and rationalise customs legislation, a number of provisions that were previously contained in separate community acts have been incorporated into the UCC<sup>111</sup> and will be repealed from the day of its application<sup>112</sup>. The UCC also introduces a legal framework for the application of certain provisions from the VAT Directive<sup>113</sup> applicable to customs legislation to trade in goods between parts of the customs territory.

#### 4.5. Scope of the Union Customs Code

The UCC applies to the EU Customs territory that is broadly similar to the sovereign territory of member states, with some differences. For instance, it includes Denmark, except the Faroe Islands and Greenland. The customs territory also includes the territorial waters and the airspace<sup>114</sup> of the member states. Foreign countries involved in international trade are all those which are located outside the customs territory of the EU itself.<sup>115</sup> It does not govern the supply of goods between Member States, provided duties and taxes have been paid and not under customs control.<sup>116</sup>

The UCC does not extend to trade in services or capital but only to the international trade in goods<sup>117</sup>. The term 'goods' is not further defined either in the

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TFEU or the UCC however the ECJ defined “goods”, in the context of customs duty, in *Commission v Italy*<sup>118</sup> as ‘products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions’. The term ‘goods’ also includes gas and electricity<sup>119</sup>.

The UCC makes a distinction between “Union goods” and “non-Union goods.”<sup>120</sup> As Union goods classify all goods with EU origin as well as those that originate from foreign customs territories but are released into free circulation (duty and taxes paid) in the EU. There is no positive definition of “non-Union goods”. They are goods other than Union goods, or goods which have lost their Union goods status<sup>121</sup>.

## **5. Conclusion**

There has been a significant increase in the volume of international trade since the implementation of the Single Market on 1st of January 1993 and the introduction of the CCC. The international and European legal framework has also evolved with the increase in trade agreements and new security requirements. The CCC is relies on paper-based processes, outdated procedures and despite having been updated is not fit for purposes anymore.

Its successor, the UCC rationalises and simplifies the legal framework. It introduces among other things the concepts of electronic customs declarations, centralised clearance, self-assessment, single windows, one stop shop, comprehensive guarantees that will bring some profound changes to how customs and the trade operate.

While at EU borders, customs authorities will still focus on security checks, inland customs offices will carry out all other controls such as duty, fiscal and commercial policy controls at the trader’s premises through audits and spot checks.

There are large areas of uncertainty to be clarified and as the UCC is not self-executing, a number of rules will be further specified in the code implementing provisions. The Delegated and Implementing Acts will therefore need to be studied individually, in relation to the UCC itself and the decisions contained in body of case law to understand the breadth and depth of the changes introduced by the new EU Customs law.

## **Notes**

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<sup>3</sup>Ton Equivalent Unit, which is equal to a 20’ container.

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<sup>4</sup>European Commission's Taxation and Customs Union Directorate-General <[http://ec.europa.eu/taxation\\_customs/customs/policy\\_issues/customs\\_strategy/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_strategy/index_en.htm)> accessed 15 February 2015.

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<sup>12</sup>Although the use of this article by the EC's and other countries has been disputed.

<sup>13</sup>Treaty on the Functioning of the European Union (TFEU) [2010] OJ C 83/47 art 28(1).

<sup>14</sup>EC Treaty (Treaty of Rome) art 113 and art 228.

<sup>15</sup>S Meunier, K Nicolaidis, 'Who speaks for Europe? The delegation of trade authority in the EU' (1999) 37/3, Journal of Common Market Studies 477.

<sup>16</sup>The General Agreement on Tariffs and Trade (GATT 1947) <[http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm#gatt47](http://www.wto.org/english/docs_e/legal_e/legal_e.htm#gatt47)> accessed 5 February 2015.

<sup>17</sup>Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code [2013]OJ L269/1 art 44.1 (The UCC)

<sup>18</sup>Case C-69/89 *Nakajima All Precision Co. Ltd v. Council of the European Communities* [1991] ECR I – 2069.

<sup>19</sup>Council Regulation (EC) 384/96 on 'protection against dumped imports from countries not members of the European Community' [1996] OJ L56.

<sup>20</sup>Agreement on Trade-Related Aspects of Intellectual Property Rights, Uruguay Round of Multilateral Trade Negotiations [1994] OJ L 336/ 214.

<sup>21</sup>Council Regulation (EC) 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights [2003] OJ L 196/7.

<sup>22</sup>UCC art 134.1 and art 267.3(e).

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<sup>24</sup>UCC Title II, Chapter 3 Value of goods for customs purposes.

<sup>25</sup>UCC recital 17.

<sup>26</sup>Founded in 1952 in Brussels as the 'Customs Cooperation Council' (CCC).

<sup>27</sup>WCO Revised Kyoto Convention (June 1999) <[http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx)> accessed 15 February 2015.

<sup>28</sup>Council Decision (EC) 2003/231 concerning the accession of the European Community to the Protocol of Amendment to the International Convention on the simplification and harmonisation of customs procedures (Kyoto Convention) [2003] OJ L 86/21.

<sup>29</sup>UCC Recital 12.

<sup>30</sup>WCO SAFE Framework of standards to secure and facilitate global trade (June 2005) <[http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe\\_package.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx)> accessed 5 February 2015.

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<sup>34</sup>Council Decision (EC) 94/800 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations [1994] OJ L 336/1.

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<sup>38</sup>UCC Title VII Special procedures, Chapter 2 Transit.

<sup>39</sup>Case 104/81 *Hauptzollamt Mainz v. Kupferberg* [1982] ECR 3641.

<sup>40</sup>Case C-188/91 *Deutsche Shell v. Hauptzollamt Hamburg-Harburg* [1993] ECR I-363.

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<sup>94</sup>Consolidated version of the Treaty on the Functioning of the European Union [2010] OJ C 83/47.

<sup>95</sup>UCC page 8.

<sup>96</sup>UCC Explanatory memorandum (3).

<sup>97</sup>UCC art 2.

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<sup>111</sup>Council Regulation (EEC) 3925/91 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing [1991] OJ L 374/4 and Council Regulation (EC) No 1207/2001 of 11 June 2001 on procedures to facilitate the issue or the making out in the Community of proofs of origin and the issue of certain approved exporter authorisations under the provisions governing preferential trade between the European Community and certain countries [2001] OJ L165/1.

<sup>112</sup>UCC article 245 (2).

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<sup>116</sup>UCC art 1.

<sup>117</sup>UCC art 1(1).

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