

WSC POSITION ON THE REFORM OF THE UNION CUSTOMS CODE

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I. Executive Summary

- **The Customs Union Acting as One:** WSC supports the proposed UCC Customs Data Hub with a Shared Trader Interface. The current mosaic of divergent national customs systems generates significant costs, duplicate IT developments, additional functional data sets, contradictory submission processes and uncoordinated system deployments. This represents a significant economic drag for Europe.
- **A Stable Legal Transition:** Until deployment of the EU Customs data hub, the existing UCC secondary legislation and data annexes need to be maintained to enable the core UCC IT Entry Systems, including ICS2 to function. The EC draft proposal lacks adequate transitional provisions for the Entry Processes.
- **Cargo Security:** New importer/exporter obligations, including provision of advance cargo security data are an important step forward. But powers to prevent a carrier from unloading the goods, in case of missing data could severely disrupt trade.
- **Provision of Advance Cargo Data on Arrival:** Parties other than the carrier also need to be legally required to provide missing advance cargo data once the goods have arrived. This would mirror the current UCC and the new proposal's pre-loading ENS filing requirements.
- **Port of Arrival vs Port of Discharge:** The reform proposal does not distinguish between cargo remaining on board a vessel and cargo to be unloaded in a specific EU port. Cargo should only be placed in temporary storage or under a customs procedure at the intended port of discharge not the first EU port in a vessel rotation.
- **Temporary Storage:** Proposed reduction of temporary storage from 90 days to 3 days is likely to have serious negative implications for import and transshipment processes in EU ports. The objectives of this change remain unclear.

II. Introduction

The World Shipping Council welcomes the published reform's goal of introducing a new, data-driven vision for EU Customs, replacing traditional declarations and divergent national processes with supply chain based controls centred on an EU Customs Data Hub. Economic operators wish to be able to interact with a genuine Customs Union rather than a collection of differently functioning parts. Establishing properly harmonised processes, requirements

and systems via a Customs Data Hub will facilitate EU trade and remove economic drag on the single market.

Notwithstanding, the need for this reform, the EU should ensure the current UCC IT systems many of which are in mid-deployment can continue to be relied upon by trade and Member States, until the new Customs Data Hub is deployed. The reform process should fully preserve the current legal basis for those IT systems, their filing processes and data sets for as long as they remain in use. Business needs a stable and legally certain transition to the proposed new customs environment.

Finally, the new UCC proposals require amendments to ensure better adaptation to key operational differences between the transport modes carrying EU trade. Maritime commerce accounts for 90% of the EU's external trade and needs a well-adapted legal basis. New models for the cargo entry processes appear inspired by road or air cargo models. But these are not necessarily suitable for maritime commerce, which operates on a very different scale, and with multiple port calls on each voyage.

The World Shipping Council¹ is a non-profit trade association representing the liner shipping industry. WSC members carry over 90% of the world's containerised trade and a substantial share of the world's roll-on/roll-off cargoes. WSC members' operations and investments extend well beyond ships to port terminals, warehouses, truck companies and the information technology systems that are critical for EU logistics and supply chains.

III. A Customs Union Acting as One and Moving Forward with Trade

WSC is inspired by the vision of unified EU customs environment embodied by the Data Hub, but trade needs a legally stable transition to reach it.

- a. **The EU Customs Data Hub:** the Customs Data Hub will be made operational in stages from 2028 – 2038. Ultimately, it will process and manage all UCC customs data exchanges with trade, replacing most national IT interfaces and systems. Data relating to individual shipments will be collated from multiple supply chain parties. The 'Hub' will house the new 'engine' that processes and stores customs data and runs EU level risk analysis.

Under the current UCC framework, individual Member State IT systems each with their own national or locally developed trade interface, generate considerable costs for economic operators (EOs) dealing with customs. EOs active in several Member States are obliged to develop and maintain multiple IT connections across the EU or pay commercial third parties to transmit their data. Divergent systems generate new functional data requirements - undermining the nominally harmonised EU Customs Data Model.

Contradictory submission processes, varied certification requirements and uncoordinated implementation schedules across the EU create serious economic drag. An EU level IT interface embedded as proposed in the hub would be a rational solution to the fragmented, costly and inefficient status quo.

WSC Position: WSC firmly supports the introduction of an EU Customs Data Hub which will allow better supply chain visibility and enable Customs controls to become more

¹ EU Transparency Register: 32416571968-71.

targeted and strategic. Above all WSC fully endorses the move to replace the current mosaic of costly and divergent national customs IT systems with a centralised interface that manages all data exchange with trade.

- b. Legal Certainty for the Transition:** Until the Customs data Hub is deployed EU trade will depend on the current UCC IT systems, many of which are in mid-deployment. Core cargo systems such as ICS 2, MS and the EOs that use them depend entirely on the existing legal framework and the data requirements contained in the UCC and its Implementing and Delegated Regulations. This extensive legal basis has been carefully developed in consultation with Member States and industry. However, legal transitional provisions for the UCC Entry Processes are missing in Title VI of the EC proposal. On adoption of the new reform proposal the old UCC will be repealed and replaced. As it currently stands the core UCC IT systems will continue to be in operation but their legal basis will have lapsed.

One provision to extend the legal framework in Article 80 (9) of the new reform proposal is insufficient. It states that until deployment of the EU Customs Data Hub, '*..the entry summary declaration shall be considered the advance cargo information.*' However, what entry summary declaration does this refer to? It should be clarified that the ENS is constituted by the data requirements currently listed in Data Annex B, filed according to the same detailed multiple filing rules and timelines set down in the Delegated and Implementing Acts. Without those provisions economic operators will not be able to use those core UCC IT systems. (Please see the annex for a list of UCC provisions that should be maintained until deployment of the EU customs data hub).

It is essential that carriers can legally rely upon those provisions, that determine precisely how carriers should file ENS, Arrival Notifications (AN) Presentation Notices (PN) and temporary storage declarations (TS). Based on the existing UCC legal provisions, carriers have made substantial investments and considerable changes to their commercial, operational and IT systems. The UCC should provide clarity that they will continue to apply at least until the EU Customs Data Hub is deployed.

WSC Position and Proposal: The new UCC should provide legal certainty through the addition of transitional legal provisions to Title VI that would have the following effect:

Until their replacement by the EU Customs data hub, the existing legal provisions of Regulation 952/2013 and its Implementing and Delegated Acts, relating to ENS, EXS, AN, PN and TS submission, will remain in force alongside the data requirements as set down in annex B of the UCC Delegated Regulation.

IV. Advance Cargo Information for Secure Supply Chains

Extending cargo security filing to importers will hugely improve cargo risk assessment but amendments are needed to prevent transport disruption and obtain data from the right party.

- a. Importer Security Filing:** The UCC reform aims to place more responsibility on the importer or the exporter of the goods, including for the provision of advance cargo security information. In its communication the Commission states that: '*..... For example, the importer can provide the relevant information about the product and the transaction, while the carrier can provide the information about the routing and arrival separately.*'

WSC supports this approach. It is strongly in the interest of accuracy and data quality that more data should be obtained directly from parties that generate that information in the normal course of their business. This is a core principle of the WCO Safe Framework of Standards. Importers will have access to detailed product information that carriers do not. They will likely be privy to the cargo sales and purchasing agreements which can reliably provide buyer and seller information. Under ICS 2, by contrast the Commission is principally relying on carriers and forwarders – with access only to the transport contract - to provide such information.

While a positive shift, several important questions must be clarified. For example, 1). how would the designated importer requirement be applied in respect of 'to order' cargo where such goods are sold in transit and no EU buyer is identified when the voyage begins? Moreover, 2). do these requirements apply to 'third country - third country' shipments where the cargo has no EU nexus, other than being on board the vessel during an EU port call? In such cases who should perform the role of the EU Importer? It is not feasible to expect the carrier to step into this role for the very reasons cited above concerning their lack of access to the relevant data about the goods.

Under the new UCC proposals no cargo can be loaded on vessels or transported to the EU without identifying an EU based importer in the EU Customs Data Hub. Moreover, if minimum cargo security data is missing at the point of arrival, the carrier could be prevented from unloading the shipment. Considering the complexity of stow plans and discharge operations for 20,000 plus teu container ships, this could be very disruptive to shipping lines, ports and their customers. Powers to prevent the carrier from unloading should only apply in exceptional circumstances.

WSC Position and Proposal: The decision to require cargo security data from the importer is an important step to strengthen the EU's cargo risk assessment capabilities. However, at a minimum it should be clarified that provisions to prevent a carrier, unloading cargo will not apply before the mandatory use of the Data Hub. Moreover, the missing data and the exceptional circumstances, that would justify such a prohibition needs to be specified in secondary legislation after consultation with trade.

- b. Provision of Advance Cargo Data on Arrival:** The ability to obtain cargo security data from the right party depends on the multiple filing obligations established in the current UCC legal framework. This includes when cargo arrives in the EU without all the required ENS data having been filed. In these cases the missing data needs to be provided by the carrier or another party that holds it (see article 139, paragraph 5 – current UCC):

5. Where non-Union goods presented to customs are not covered by an entry summary declaration, and except where the obligation to lodge such declaration is waived, one of the persons referred to in Article 127(4) shall, without prejudice to Article 127(6), immediately lodge such declaration or, if permitted by the customs authorities, shall instead lodge a customs declaration or temporary storage declaration.

The reference to Article 127 (6) invokes the legal obligation on other parties such as freight forwarders or consignees to file data after arrival that they have not shared with the carrier. It reflects a critical understanding, underpinning multiple filing, namely that the carrier cannot be obliged to provide ENS data that they do not hold, have no means of

obtaining or no means of causing others to file. This general principle of legally requiring parties to file ENS when they do not share the relevant data has been included in the EC reform proposal for ENS submission prior to loading. Unfortunately, it has not been included in the relevant article concerning provision of missing ENS data after arrival of the cargo. Article 85 (2) simply states that:

'The customs authorities shall require the carrier to present the goods and provide the advance cargo information referred to in Article 80, where this information has not been provided at an earlier stage.'

WSC Position and Proposal: Recognising that authorities also need a legal tool to obtain the data that the carrier cannot provide when the cargo has arrived, a provision should be introduced to oblige other parties to provide the data they have not shared with the carrier in those circumstances also.

This could be addressed by stating that Article 85 (2) of the reform proposal applies '...without prejudice to Article 80 (5)' which requires those other parties to file such data they hold before loading.

V. A Customs Framework Fit for Different Transport Business Models

The UCC entry and storage processes need to be suitable for maritime transport. Some proposals are not well adapted and could harm the EU's maritime trade.

- a. **Cargo Arrival vs Cargo Presentation:** The replacement of the obligation to routinely present goods to customs with an arrival notification is intended to simplify and remove unnecessary customs formalities. However, in maritime transport it creates an unhelpful ambiguity about the status of freight remaining on board (FROB) the vessel.

Today, the Arrival Notification is sent by the carrier principally to inform customs at the first EU port call (in a vessel rotation) that the vessel has arrived in the customs territory. Even though all cargo on board the ship will have been covered by the ENS, only cargo that is to be discharged at that port for release or transhipment is then 'Presented to Customs'. Thereafter such cargo must be placed in temporary storage or under a customs procedure. The new proposal by contrast replaces Presentation with Arrival as the default notification to customs of cargo entering the customs territory. Article 83 states:

'The carrier shall notify the arrival of the means of transport entering the customs territory of the Union and of the consignments therein to the actual customs office of first entry.'

This obligation therefore applies to both cargo intended for discharge at that location as well as FROB cargo to be discharged in a subsequent EU or non-EU port. There could be many thousands of FROB containers on board the vessel at the first EU customs office of entry that suddenly would be required to be placed in temporary storage or under a customs procedure such as transit. This is not practical and would be hugely costly.

Moreover, we understand it was not the EC's intention to make FROB cargo liable to be placed in temporary storage or transit. Article 83 (5) states '...the carrier shall not notify goods brought into the customs territory of the Union which are unloaded and reloaded

onto the same means of transport during its voyage in order to enable the unloading or loading of other goods at the same port or airport.’ If that is the case, it is not likely that the EC intended FROB to be notified either. However, that is not reflected in the legal text and should be corrected.

WSC Position and Proposal: the new legal framework should distinguish between FROB cargo at the first EU port call, and cargo that is being unloaded for discharge in that port. Only the latter should be liable to be placed in temporary storage or under a customs procedure. To make this clear, provisions equivalent to current UCC article 139 (3) should be introduced into article 83 of the reform proposal:

‘Goods which are brought into the customs territory of the Union by sea or air and which remain on board the same means of transport for carriage, shall only be notified as ‘arrived’ in the customs territory at the port or airport where they are unloaded or transhipped.’

- b. Temporary Storage:** Under the UCC the maximum time allowed for cargo to remain in temporary storage was increased from 45 to 90 days which was welcomed by WSC at the time. Under the new UCC reform proposal the maximum time that cargo may stay in temporary storage is slashed from 90 days to 3 days. After this time, the cargo must be released, re-exported, or placed under customs warehousing or another customs procedure. The Commission has informed WSC that its proposal - broadly speaking replacing temporary storage with customs warehousing – was intended to provide 1). a facilitation for trade and 2). to increase the security of the goods stored in EU ports and compliance with non-fiscal rules.

The proposed reduction of temporary storage from 90 days to 3 days is likely to have serious negative implications for import and transshipment processes in EU ports. Customs are frequently unable to release the goods within 3 days. Even cargo that is customs cleared on arrival is often unable to leave the port due to logistical delays and shortages. Such cargo would then need to be transferred to a customs warehousing process. This will come with significant additional administrative and financial obligations via guarantees.

Moreover, transshipment cargo placed in temporary storage while the cargo waits to be loaded on a subsequent ship would be impacted. This maritime hub and spoke model is vital to connect EU importers and exporters with world markets. It depends on efficient functioning of temporary storage. Three days in Temporary Storage would be entirely insufficient time for cargo to be placed on a subsequent vessel, particularly in ports or for destinations that do not have high frequency services. Such an overly restrictive approach to temporary storage could potentially undermine the attractiveness of EU ports to serve as transshipment hubs both for European cargo and for global cargo flows between continents (compared to non-EU ports in the region). This measure is not a facilitation.

It is also questionable what advantage would be derived from a cargo security perspective. We understand that the intention is to approve temporary storage facilities as customs warehouses without additional investments. So, it is questionable how physical security would be improved. It is difficult to determine what additional cargo data is required that is not already provided in great detail via the ENS and Temporary Storage Declarations. The cargo would still be stored in an EU port. We also understand that there is a desire to have an EU importer designated for all such cargo. For transshipment cargo

moving from third country to third country there may be no EU importer and it would not be reasonable or effective to expect the carrier to step into that role due to their limited ability to verify the legal compliance of every single product they transport.

WSC Position and Proposal: The temporary storage proposals are likely to have serious negative implications for import and transshipment processes in EU ports. The objectives of this change remain very unclear. WSC and other maritime stakeholders wish to engage with the Commission and Member States to better understand their objectives and jointly find solutions that achieve those aims without harming EU maritime commerce.

- c. **AEO plus regime:** An important aspect of the reform package is the proposal to introduce an enhanced authorised economic operator (AEO) regime. So called ‘*Trust and Check*’ traders will need to meet existing AEO criteria in addition to granting customs full access to relevant parts of their IT systems. In return for enabling customs to directly monitor their compliance and the movement of their goods, Trust and Check traders will enjoy additional benefits, notably the possibility to release the goods from customs supervision and defer payment of customs debt.

WSC Position: In principle the Trust and Check regime may provide benefits for those economic operators willing to provide direct access to their IT systems. However, it is difficult to see any specific additional benefits for carriers, unless they are offering customs clearance services to their customers (which not all do) in which case, they would be able to self-release those goods.

VI. Closer Coordination of the Customs Union

Alongside the EU Customs Data Hub, the reform package contains proposals to increase uniformity and consistent practices across the EU, but ongoing input from trade is vital.

- a. **An EU Customs Authority:** The proposed Authority, is intended to make the Customs Union act more uniformly through common risk management, and control processes. It may be given responsibility to develop and operate the EU Customs Data Hub.

WSC Position: WSC can support the intention behind the EU Customs Authority to make further progress towards a more harmonised and centralised management of the Customs Union. Efforts to achieve more coordinated risk assessment and consistent treatment of economic operators would be beneficial. Unfortunately, no mechanism is outlined for how the Authority should engage with and ensure adequate consultation with economic operators, including with trade representatives at EU level. This should be remedied during the legislative process as the tasks foreseen for the Authority will require regular input from the private sector and their representatives.

- b. **Common Infringements and Sanctions:** The reform proposes to introduce a minimum common core of acts or omissions that constitute customs infringements and a minimum common core of non-criminal sanctions and principles for their use. According to the EC the reform would not change the procedural legal order of Member States and would still allow them to apply additional customs infringements and national sanctions. The EU

Customs Data Hub will collect all decisions linked to customs infringements and their sanctions for transparency purposes.

WSC Position: WSC can support this proposal in principle as it will assist the development of a more uniform and consistent handling of customs infringements, which WSC members have reported vary considerably across the EU.

**NON-EXHAUSTIVE LIST OF UCC PROVISIONS THAT SHOULD BE MAINTAINED
FOLLOWING ADOPTION OF A NEW UCC AND UNTIL DEPLOYMENT OF THE EU
CUSTOMS DATA HUB**

Entry Summary Declaration

UCC Articles:

- 127 on lodging of an Entry Summary Declaration; when to be filed and to which Customs Office; responsible party; particulars to be filed by other parties and multiple filing.
- 128 on Risk Analysis.
- 129 on Amendments.
- 130 on declarations lodged instead of an ENS.
- 136 voyages not calling a third country.

UCC Delegated Act Articles:

- 104 on Waivers.
- 105 time limits for ENS filing.
- 110 Combined transport time limits.
- 112 Core multiple filing provisions: obligation to file when house bill issuer did not share data with the party issuing the transport contract. Obligation of the consignee to file buyer and seller to COFE when lowest house bill issuer does not file.
- 113. Responsibility for the particulars submitted.

UCC Implementing Act Articles:

- 182 legal basis for ICS 2 IT System
- 183 possibility to submit ENS through more than one data set.
- 184 Obligation to inform carrier / master NVOCC about issuance of a house bill/
- 185 registration of ENS particulars and notifications.
- 186 Risk analysis deadlines esp. (5) & (6).
- 188 Amendment and invalidation of ENS.

EXIT Notifications including Exit Summary Declaration

UCC Articles:

- 263 on customs declaration / re-export decl.
- 265 Risk assessment.
- 287 presentation of the goods presentation at exit.
- 270 re-export of non-union goods.
- 271-273 EXS filing and amendments.

UCC Delegated Act Articles

- 244 on time limit for pre-dept declaration.
- 245 filing waivers.
- 246 formalities for submission.
- 247 notification of exit.
- 248 invalidation of re-export notification.

UCC Implementing Act Articles:

- 326 UCC Electronic system.
- 327 goods not covered by a pre-dept declaration.
- 328 Risk Analysis.
- 329 Office of exit.
- 331 Presentation at exit.
- 332 goods formalities at exit.
- 334 certification of exit.
- 336 /337 Export and re-export.
- 341 EXS registration.
- 343 Re-export notification formalities.

National Entry System Formalities

UCC Articles:

- 133 Notification of Arrival
- 136 Voyages not calling a third country.
- 139 Presentation of the goods – excepting freight remaining on board during port call.
- 144 – 149 Temporary Storage

UCC Implementing Act Articles:

- 189 vessel arrival and diversion.
- 190 systems for presenting goods.
- 192 Temporary storage declaration submitted prior to presentation.
