Importers Into The European Union Take Note: EU Customs Code Goes Into Effect May 1, 2016

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The EU Customs Code, known as the Union Customs Code (“UCC”), applies to all goods imported to, or exported from, the EU customs territory. The UCC was adopted in 2013 and goes into effect on 1 May 2016. The UCC is intended to simplify and clarify customs regulations throughout the European Union and to create an electronic system to expedite entry and exportation procedures.

The implementing regulations cover elements such as the import data set required to be electronically submitted to the Customs authorities. In addition, the regulations include many technical specifications regarding country of origin determinations, tariff classification, and valuation. An additional goal of the UCC is to be a paperless customs system throughout the EU by the end of 2020.

The UCC includes a number of changes of importance for economic operators. For example, under the new rules Authorised Economic operator (AEO) status will require approval. AEO status will be mandatory for operators that wish to avail themselves of certain simplifications such as those relating to the movement of goods between EU Member States for temporary storage. The definition of “exporter” changes with the new UCC and raises a question on whether non-EU established businesses may act as an exporter.

The rules on valuation for importers will be subject to change with regard to the “first sale” and royalties. The new UCC forbids the use of “first sale” valuation starting on 1 May 2016 for imports into the EU. Under the new rules, importers will have to use the value applicable immediately before the goods are brought into the customs territory of the EU. A “grandfather clause” does allow “first sale” valuation until 31 December 2017, provided that the importer is bound by a contract concluded before 18 January 2016. In addition, under current rules, royalties or license fees payable to a third party are only subject to duties where the seller or person related to him requires the buyer to pay for them. Under the UCC, the royalties and license fees will be included in the customs value, where the goods cannot be purchased or sold without paying royalties or license fees. This will therefore result in a higher duties to be paid by the importer.

The binding tariff information (BTI) also is subject to changes. Under current rules, BTI is binding only for the customs authorities, but with the UCC, it becomes binding for economic operators. The binding origin information (BOI) will also be binding for economic operators, with minor changes to determining non-preferential origin.

The UCC introduces a centralized clearance facility which will enable operators to declare goods electronically and pay their customs duties at the place of establishment. Operators will be able to determine the amount of duty payable through a self-assessment facility. In addition the operators will no longer need to provide information to multiple government agencies as the new “one-stop-shop” system will allow data to be disseminated automatically throughout the EU. Finally, the UCC introduces the right for economic operators to be heard, subject to certain exceptions.

Several provisions such as self-assessment and one-stop-shop will likely be beneficial for many economic operators as they will smooth the application process and ease the procedures. However, the abolition of the first sale rule, the establishment of a new valuation procedure and other changes may increase costs. Uncertainties such as who may act as an exporter will be resolved with time and will need to be closely monitored.