

# EU Customs Practice Group

January 2014

## EU POLICY

### UCC Developments

The EU has started seeking input from the EU Member States and the trade community on the draft implementing and delegated acts to implement the recently adopted Union Customs Code (UCC). The Commission presented the draft implementing act to the Member State experts in the 'General Customs Legislation' section of the Customs Code Committee for discussion on 27 January 2014. It has also circulated copies to the Trade Contact Group consisting of representatives from European organisations. In response to a question from the European Parliament (EP), the Commission has further confirmed that stakeholders commenting on the draft texts will receive responses. It is unclear at this stage if and to what extent representatives of the business community will be invited to participate in meetings of the Customs Code Committee discussing the drafts. The Commission's aim is to adopt the UCC delegated and implementing acts by mid-2015.

### Customs 2020

In December, the EU's Customs 2013 Committee discussed the implementation of, and transition to, the Customs 2020 programme, which was adopted in December 2013. The first meeting of the new Customs 2020 Committee is planned for early 2014. The Commission has announced that the beneficiaries of the programme in 2014 will be the customs administrations of the EU Member States, but also Turkey, Macedonia, Serbia, Montenegro, Albania and Bosnia-Herzegovina.

### Customs Infringements and Sanctions

The Commission's proposal to establish a framework for harmonising customs infringements and sanctions was discussed by the Council's Working Party on the Customs Union on 17 January 2014, when it started its article-by-article examination. The Working Party will continue this exercise at its meeting of 10 February 2014. On the same day, the Commission was due to present its proposal to the European Parliament's Internal Market Committee (the lead committee on this proposal). The EU's Competitiveness Council is scheduled to have an orientation debate on this proposal on 26-27 May 2014.

## TARIFFS

### Duty Suspensions and Tariff Quotas

#### a) July 2014 Round

On 23-24 January 2014, the Economic Tariff Questions Group (ETQG) held its third meeting to discuss applications for amendments to the lists of Duty Suspensions and Tariff Quotas to be applied from 1 July 2014.

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*This newsletter briefly describes EU customs developments. Due to the general nature of its content, this newsletter is not and should not be regarded as legal advice.*

White & Case LLP – Avocats-Advocaten  
rue de la Loi, 62 Welstraat – 1040 Brussels – Belgium  
Tel: +32 2 239 26 20 / Fax: +32 2 219 16 26  
[www.whitecase.com](http://www.whitecase.com)

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As usual, the formal proposals for these amendments will be submitted to the Council in April/May.

#### *b) January 2015 Round*

The deadline for Member States to submit eligible applications received from companies for tariff quotas and duty suspensions for the January 2015 Round to the European Commission is 15 March 2014. These applications will soon thereafter be listed on the Commission's special webpage to allow Member States and interested parties to prepare for the first ETQG meeting discussing the January 2015 Round, to be held by mid-May. Many existing suspensions due to expire at the end of 2014 will likely be renewed automatically (based on their level of use), while certain others will expire unless a renewal application is filed.

#### **GSP – List of GSP Plus beneficiaries published, while others under consideration**

On 4 January 2014, the European Commission published **Regulation 1/2014** featuring the list of ten countries that now benefit from the EU's GSP Plus regime. GSP Plus is the special incentive arrangement for GSP beneficiary countries that meet certain criteria related to sustainable development and good governance. The ten countries are: Armenia, Bolivia, Costa Rica, Cape Verde, Ecuador, Georgia, Mongolia, Peru, Pakistan, and Paraguay.

The Commission proposal to also grant GSP Plus status to El Salvador, Guatemala and Panama is under consideration by the Council and European Parliament.

#### **EU in WTO Green Goods Agreement Talks**

On 24 January 2014, the EU and over a dozen other WTO members (Australia, Canada, China, Costa Rica, Hong Kong, China, Japan, South Korea, New Zealand, Norway, Singapore, Switzerland, Taiwan, and the USA) agreed to launch negotiations within the WTO framework for an agreement aiming to eliminate tariffs on so-called 'green goods' by the end of 2015. Future negotiations in this area will build on a draft list of 54 environmental products established by the Asia-Pacific Economic Cooperation (APEC) countries. Negotiators will also discuss the possibility of creating a 'living agreement' that can develop and evolve according to future needs and technology.

#### **FTA Update**

##### *a) Japan*

On 27–31 January 2014, the EU and Japan held the fourth round of EIA negotiations in Brussels. Discussions between the EU and Japan took place in several working groups covering trade in goods, technical barriers and customs facilitation. The next negotiation round is expected to take place in April 2014. The EU will perform in April or May 2014 its one-year review on

the elimination of NTBs by Japan in order to establish whether negotiations should be suspended.

##### *b) US*

In January, preparations were made in the context of the negotiations on a Transatlantic Trade and Investment (TTIP) agreement for the exchange of market offers for goods on 10 February 2014. A political stock-taking meeting between EU Trade Commissioner De Gucht and USTR Froman is scheduled to take place on 17-18 February 2014. The next (fourth) round of TTIP negotiations is due on 10-14 March 2014. The EU has also recently announced a public consultation on the investment and ISDS chapters in TTIP, published its negotiating position on financial services, and established an Expert Group to advise the Commission during negotiations.

##### *c) Vietnam*

On 13-17 January 2014, the sixth round of EU-Vietnam FTA negotiations was held in Brussels. The negotiators reported that agreement was reached on the customs and trade facilitation aspects. The next round of negotiations is scheduled to be held in Hanoi on 17-21 March 2014.

##### *d) Ecuador*

On 13-17 January 2014, the EU and Ecuador held the first round of FTA negotiations aimed at Ecuador joining the existing Association Agreement between the EU and Colombia and Peru. EU FTA negotiations with Ecuador in the context of the EU's negotiations with the Andean Community as a whole were stalled with Ecuador in 2009, when the country pulled out of the talks. Parties reported that progress was made on market access for goods, services and establishment, and government procurement, and that they 'hope to advance quickly'.

##### *e) East Africa*

On 30 January 2014, EU Trade Commissioner De Gucht met with Ministers of the East-African Community (EAC) to provide political guidance for the on-going FTA negotiations. Agreement has already been reached on a number of chapters, including trade facilitation and customs procedures, but the negotiations are not finished on other chapters.

##### *f) Mercosur*

Mercosur (not including Venezuela) and the EU were expected to exchange tariff offers in early February 2014, after the original deadline for the exchange of tariff offers was set for December 2013, but this deadline was reportedly extended at the request of the EU. Also, it was later reported that an EU-Brazil summit scheduled for 24 February 2014 will be postponed as no exchange of offers had taken place by mid-February.

## CLASSIFICATION

### Nomenclature Committee Developments

#### a) *HS/WCO Coordination Sector*

The report of the 126<sup>th</sup> meeting of the HS/WCO Coordination Sector of the Nomenclature Committee held on 18 December 2013 has been published. The Committee discussed, among other things, notes to the Harmonised System (HS) Committee concerning classification of a drum-housing for a combined harvester-thresher, self-adhesive thermo-sensitive paper, and a preparation used in animal feed. The Committee also discussed possible amendments of HS heading 73.18 (fasteners), and of the HS Explanatory Notes (HSEs) to Chapter 41 (leather). The Committee also expressed support for faster publication of EU communications endorsing HSEs and Opinions (currently, this takes over 6 months). The Commission further informed the Committee about development of a 'Classification Information System' for consultation by Member States before taking classification decisions.

The 128<sup>th</sup> meeting of the HS/WCO Coordination Sector of the Nomenclature Committee is scheduled to take place on 19-21 February 2014. The agenda includes the usual pre-coordination for an upcoming HS Committee meeting, and product-specific discussions on leather, snacks and certain animal products.

#### b) *Mechanical/Miscellaneous Products Sector*

The 129<sup>th</sup> meeting of the Mechanical/Miscellaneous Products Sector of the Nomenclature Committee will take place on 26-28 February 2014. During that meeting, the Committee is scheduled to issue opinions on draft classification regulations and CN Explanatory Notes on remote-controlled socket sets, TV simulators, water dispensers, devices for recording video sequences and still images, video monitors and HDMI splitters. Discussions should continue on the classification of luminous Frisbees, turbine wheels and housings, screws and implants for surgical use, pick-up trucks, LCD TV sub-assemblies, coronary angioplasty devices and electric skateboards. The Committee will, in addition, have a first examination of the classification of, among other things, snowmobiles, exhaust-gas turbochargers, pick-up trucks, electrical filters, cartridges for game consoles, LED tiles, cameras, UV water sterilisers, gyroscopes and single LEDs with protection diodes.

The Member States have also been asked to issue their written vote between 21 January and 12 February 2014 on draft Classification Regulations on LCD monitors (CN code 8528 51 00), rear-view camera systems (CN code 8528 72 40), sound editors for non-professional use (CN code 8519 81 35), disc jockey multiplayers (CN code 8543 70 90), LED floodlights (CN code 9405 40 99), and flame detectors (CN code 8536 50 19).

#### c) *Agriculture/Chemistry Sector*

The report of the 123<sup>rd</sup> meeting of the Agriculture/Chemistry sector of the Nomenclature Committee that took place on 5-6 December 2013 has recently been made available. During that meeting, the Committee discussed the possible creation of new CN codes in subheading 3824 90 (other mixtures and preparations containing oxirane (ethylene oxide), polybrominated biphenyls (PBBs), polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or tris (2,3-dibromopropyl) phosphate). The Committee also discussed the tariff classification of shower gels, eye wash, glucosamine, products listed in the proposed International Non-proprietary Names for Pharmaceutical Substances, and certain chemical and food products.

#### d) *Textiles Sector*

The 127<sup>th</sup> meeting of the Textiles sector of the Nomenclature Committee will take place on 18 February 2014. During that meeting, the Committee is scheduled to vote on the classification of cat scratchers and baskets for pets and conclude discussions on textile snow chains, mini pumps and pillow pumps, and an additional note to heading 9619 (Sanitary towels (pads) and tampons, napkins and napkin liners for babies, and similar articles). The Committee will also, for the first, time discuss the classification of wrist supports, wreaths and photo books.

### Improved procedures on classification discussions

The Nomenclature Committee (at the Heads of Tariff level) recently discussed various ways of solving classification inconsistencies more swiftly, and clearing the backlog of cases before the Committee, including through the use of the written procedure. The Committee further discussed, and most Member States supported, the possible publication in the Official Journal of 'statements' agreed by the Nomenclature Committee, rather than as annexes to the summary records of the meetings.

## ORIGIN

### Origin Committee Developments

The report of the 208<sup>th</sup> meeting of the Origin Committee (held in October 2013) has recently been made available. During that meeting, the Committee discussed certain Pan-Euro-Mediterranean (PEM) matters. The Commission also informed the Committee on the state-of-play of recently-concluded FTA negotiations with Canada, and on discussions with the EPA countries and Chile. The Committee also examined the possible modification of certain Customs Code Implementing Provisions to distinguish simplified proofs of origin issued or made out under a DCFTA or Autonomous Trade Measures (ATM) in a single partner/beneficiary country.

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France raised the issue of repetitive subsequent origin verification requests made by partner countries and the possible improvement of risk analysis. Other topics were a request by Cambodia for a transitional period to implement the new GSP EBA (Everything But Arms) rules on ASEAN cumulation, and value limits relating to origin rules expressed in various currencies. The Committee also discussed the non-preferential origin rule for solar panels/modules and a request by Sri Lanka and Indonesia on cumulation of origin for tobacco products under GSP, both of which have since then led to Regulations published in December 2013.

### **'Made in' Labelling**

The Council's Committee of Permanent Representatives (COREPER) failed to agree on a negotiating position on the country of origin marking clause in the Commission's proposal for a Consumer Product Safety Regulation in January. A compromise proposal from the Greek Presidency on the controversial origin labelling clause was rejected by almost all Member States in the COREPER meeting of 22-24 January 2014. As a result, the first trilogue meeting between the European Parliament, the Council and the Commission originally scheduled for 23 January 2014, has been postponed.

### **Fraud networks to avoid anti-dumping duties**

At a WCO Conference on Origin Rules held on 21 January 2014, the Head of Customs Investigation at the EU's Anti-Fraud Office ('OLAF') commented on the increasing level of sophistication of fraud networks, which help companies avoid anti-dumping duties by disguising the true origin of a product. Malaysia was said to have been the preferred country for fraudulent transshipment at first, but other countries such as Thailand, Indonesia, Philippines, India and Vietnam have been used for that purpose subsequently. Taiwan is apparently the most recent typical transshipment country. The OLAF official also noted that nowadays, often two (rather than just one) transshipments are made in this context.

## **VALUATION**

### **Draft UCC Implementing Act looking to abolish use of first sale again**

In the draft UCC Implementing Act recently submitted for consultation (see above), the Commission proposes that only the last sale before goods are released for free circulation can be used as the basis for determining the customs value under the transaction value method. This provision would therefore abolish the current possibility to use an earlier sale in a chain of transactions for valuation purposes in the EU. Various EU business organisations as well as Member States are against such a change, and want the current rules to remain in place as there is no legal or practical need to change them, and the economic effect of this change would be significant.

The draft Implementing Act also contains language which risks the inclusion of certain royalties and licence fees in the customs value, even in certain cases where they do not fulfil the "condition of sale" requirement under international customs valuation principles. The Valuation Sector of the Customs Code Committee is expected to discuss the draft in March 2014.

## **MISCELLANEOUS**

### **EU-Japan Joint Customs Cooperation meeting**

On 24 January 2014, the EU and Japan held their sixth Joint Customs Cooperation meeting in Tokyo. Parties agreed that this dialogue has already strengthened bilateral cooperation and discussed the possibility of further cooperating on a variety of other customs issues. It was agreed that the mutual recognition of Authorised Economic Operators (AEOs) should be further improved by automated exchange of information. Cooperation in the area of cargo risk management will also be enhanced.

### **Russian WTO dispute against the EU**

On 6 January 2014, Russia requested consultations with the EU under the WTO dispute settlement rules regarding certain anti-dumping measures imposed by the EU on several products imported from Russia, including ammonium nitrate, certain welded tubes and pipes of iron or non-alloy steel, and certain seamless steel pipes of iron or steel. This is the first WTO complaint by Russia since it joined the WTO in 2012.

### **New Manual for IPR Enforcement Applications**

In January 2014, the European Commission issued a manual on submitting applications for customs enforcement of intellectual property rights (IPRs).

The IPR Enforcement section of the Customs Code Committee is also scheduled to meet on 5 February 2014. It will then discuss this manual, as well as the implementation of the EU Customs Action Plan to combat IPR infringements for the period 2013-2017 and progress of the Customs 2013 Project Group on IPR customs enforcement regarding small consignments. The Committee was also scheduled to adopt an IPR customs training plan and discuss the Action Plan concerning EU-China customs cooperation on IPR.

### **EU Joint Customs Operations**

On 21 January 2014, the European Commission reported that Joint Customs Operations (JCO) were carried out targeting smuggling (e.g. of cigarettes and alcohol) and customs fraud in certain high-risk areas such as the EU's eastern border. All 28 Member State customs administrations, as well as the Commission (DG TAXUD and the Anti-Fraud office OLAF) were involved. The JCO operation was also the first operation to target excise and VAT fraud.

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White & Case Brussels LLP  
Rue de la Loi 62 Wetstraat  
1040 Brussels  
Belgium

[www.whitecase.com](http://www.whitecase.com)

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