

EU Customs Practice Group

February 2015

EU CUSTOMS POLICY

Commission Report on Customs 2013 programme

On 20 February 2015, the European Commission presented its final evaluation of the “Customs 2013” programme. This programme ran from 2008 to 2013, and aimed to support and foster cooperation and coordination between the Member States’ customs administrations and to protect the financial interests of the EU. It also sought to ensure supply chain security and trade facilitation, and prepare certain partner countries for accession to the EU.

The Commission has found that the Customs 2013 programme made a significant contribution towards several objectives, such as enhanced safety and security (through the Import Control System, the Customs Risk Management System and the Economic Operator Registration and Identification System); protection of the EU’s financial interests (noting the confirmed importance of the existing TARIC and Tariff Quota databases in ensuring correct calculation of duties and how increased risk management systems help to spot irregularities); and the facilitation of trade (through paperless declarations, risk management systems “with as little an inhibiting effect on trade as possible”, and increased interest in Authorised Economic Operator (AEO) status as a result of more mutual recognition agreements with non-EU countries). As regards AEO, the Commission notes it is aware of businesses’ perception that AEO benefits are “limited in practice”.

Based on interviews with customs officials, the report also finds, for example, that the EU legislator had underestimated the practical complexities of implementing the Import Control System; that the inherent complexity of EU customs classification legislation affected the clarity and user-friendliness of the TARIC and the Binding Tariff Information system; and that it was difficult to keep an overview of the proliferation of joint actions in recent years.

The report finally recommends, *inter alia*, to streamline the platforms used for sharing documents and facilitate communication between the Commission and the Member States, and to ensure flexible and adaptable, more goal-orientated and accountable joint actions. The Commission will prepare an Action Plan, and certain operational findings will be addressed in the course of the current “Customs 2020” programme.

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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.

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TARIFFS

Duty suspension and tariff quotas

The formal proposals for updates to the Duty Suspensions (DS) and Tariff Quota (TQ) Regulations as part of the July 2015 round are not yet available. However, the European Commission's dedicated webpage now shows which applications have been accepted or rejected.

Following the 15 March 2015 deadline for Member States to submit applications for the January 2016 round, the first meeting of the Economic Tariff Questions Group should occur between late April and mid-May 2016.

EU duty suspension for certain heavy oils and similar products

In early February 2015, the European Commission proposed a Regulation to allow repayment of duties on imports of certain heavy oils and similar products destined to undergo specific processes, which are classified under Combined Nomenclature (CN) code 2707 99 99.

The customs classification rules for these products changed in early April 2013. From that date, oils in which the weight of the aromatic constituents exceeded that of the non-aromatic constituents were no longer subject to zero duties, but to a duty of 1.7%. Because the EU aims to give the same tariff treatment to all types of heavy oils, it introduced a temporary autonomous suspension for applicable products as of 1 July 2014. The current proposal seeks to allow repayment of duties paid between the change of classification rules on 4 April 2013 and the introduction of the temporary autonomous duty suspension on 1 July 2014. This proposal will need to be approved by the Council before the Regulation can be published and enter into force.

FTA update

a) US

The 8th round of the EU-US Transatlantic Trade and Investment Partnership (TTIP) negotiations took place in Brussels on 2-6 February 2015. During this round, the parties held discussions on, *inter alia*, tariffs, and sector-specific and horizontal regulatory issues (i.e. regulatory cooperation, technical barriers to trade, and SPS).

The negotiations will be intensified in the coming months in order to make as much progress as possible in 2015, with the next round scheduled for 20-24 April and one further round before the Summer break. The parties are also aiming to organise inter-sessional discussions between certain negotiation teams in-between these formal rounds.

Meanwhile, the European Parliament (EP) held several debates during the week of 23 February in anticipation of the EP resolution on TTIP to be adopted during the plenary meeting of 18-21 May 2015.

It has further been reported that Turkey is seeking special treatment by the EU and US through the inclusion of a clause in the TTIP agreement that would pledge that it will be implemented by customs union members, or through an update of the EU-Turkey customs union agreement.

b) Japan

The 9th round of EU-Japan negotiations on the Economic Integration Agreement was held from 23 to 27 February 2015 in Brussels. The discussions included tariffs, technical barriers to trade, sanitary/phytosanitary issues, public procurement, services, investment, regulatory cooperation, and transparency.

The next round will take place in Tokyo in late April 2015.

c) Vietnam

During the EP International Trade (INTA) Committee meeting of 24 February 2015, both the Vietnamese Ambassador to the EU and the EU's Chief Negotiator indicated that the aim is to conclude the FTA negotiations between the EU and Vietnam this year.

The negotiating parties have concluded talks on 7 out of the 15 chapters, including on customs and trade facilitation, and technical barriers to trade. Parties are still discussing market access for certain sensitive products on both sides, e.g. through tariff rate quotas for rice. Talks have also continued regarding such issues as rules of origin (in particular for textiles).

d) Ecuador

The text of the EU-Ecuador FTA (that will be attached as a protocol to the existing FTA with Colombia and Peru) has been made available on the European Commission's website. The text is provided for information purposes only and must still be transmitted to the Council and the EP for their approval, before the agreement can enter into force.

e) Indonesia

It has been reported in the press that Indonesia intends to revive bilateral discussions with the EU and initiate negotiations for a bilateral Comprehensive Economic Partnership Agreement. The EU and Indonesia have been discussing the scope of a possible future trade agreement since 2012, but the two sides have so far been unable to align negotiation ambitions.

CLASSIFICATION

Classification Regulations

The following classification regulations were published in February 2015:

- **Commission Implementing Regulation 2015/181** classifies an emulsifier intended for the food industry in the form of fine white-yellowish powder made from hydrogenated vegetable oil, with added mono-and diglycerides from a different vegetable oil, under CN code 3404 90 00 as other artificial waxes and prepared waxes.
- **Commission Implementing Regulation 2015/184** classifies so-called silica gel in the form of small transparent granules that absorbs moisture and that is presented to be used, for example, to protect and preserve medicines or to keep goods dry during shipment, under CN code 3824 90 96 as other chemical products not elsewhere specified or included.
- **Commission Implementing Regulation 2015/185** classifies a strawberry sauce that is presented in a 2kg plastic bag under CN code 2103 90 90 as a sauce.
- **Commission Implementing Regulation 2015/221** classifies a four-wheel drive utility vehicle for off-road use that can be used for a wide range of functions (pushing, hauling trailers, moving animals, transporting plants, etc.) as a new motor vehicle for transportation of goods, under CN code 8704 21 91.

The Commission further repealed a Regulation classifying blue polymethine dye (fluorescent dye) diluted in a mixture of solvents ethylene glycol and methanol, used in automatic blood analysers, under CN heading 3212 as dye and other colouring matter. This repeal follows a judgment from the Court of Justice of the EU (CJEU) ruling that a similar product should be classified as laboratory reagents under CN heading 3822.

Between 30 January and 13 February 2015, the members of the Customs Code Committee also gave a positive written vote on the classification of UV water sterilisers (proposed classification under CN code 8421 21 00), toys with built-in music modules (proposed classification under CN code 9503 00 41), electric skateboards (proposed classification under CN code 9506 99 90), and films with aerials or aerial arches (proposed classification under CN code 8504 50 95). These Regulations can now be formally adopted by the European Commission and published in the Official Journal, after which they will become effective.

Nomenclature Committee developments

a) Mechanical/Miscellaneous Sub-Section

The report of the 144th meeting of the Mechanical/Miscellaneous Sub-Section of the Nomenclature Committee of 12-15 January 2015 indicates that the Committee concluded examination of the classification of photo books, skull replicas, car receiver/radio back panels and central information display back panels, luminous shoelaces, long trousers, mini greenhouses, puzzle books, and biplane aircrafts. The Committee also discussed the classification of, *inter alia*, curtain materials, sun blinds for cars, long pile fabrics, sewing machines, monitor arms, LED glitter lamps, arm sleeves for smartphones, adhesive guns, mixer-converter analogic/digital pre-amplifier devices, drawing boards, grips for metal bars, wrought iron articles, the scope of Chapter 64 (footwear), and the wording of CN code 9018 90 50 on transfusion apparatus.

The agenda of the 148th meeting of the Textiles and Mechanical/Miscellaneous Sub-Section that took place on 9-11 March 2015 indicates that a vote was scheduled on draft Regulations for a wrist support, table legs and an LED wall. Furthermore, the Committee intended to conclude the discussion on draft Regulations for many of the above mentioned products, and also for electronic money boxes, photo books, mop heads presented without handle, glue guns, vibration engines, PV Junction boxes, fibre glass woven fabrics, and free wheels. A first discussion was planned for adaptors/cables for game consoles, toner cartridges, cash drawers, handset lifters, lamination machines, control units for gas discharge lamps, wheel sensor assembly, STB power supply, smartphone docking stations, glass shelves, and drones (with and without camera).

b) Agriculture/Chemical Sub-Section

The report of the 145th meeting of the Agriculture/Chemical Sub-Section of the Nomenclature Committee which was held on 2-3 February 2015 has been made available.

During this meeting, the Committee discussed, *inter alia*, a proposal to amend the CN Explanatory Notes (CNENs) for tobacco and an amendment of a CNEN and an Additional Note to the chapter on pharmaceutical products. The Committee also delivered 'no opinion' on the tariff classification of "milk permeate" and "whey permeate", and approved an amendment to Additional Note 2(a) to Chapter 20 (sugar) and to Additional Note 4(a) to Chapter 27 (regarding standards for oil products). In addition, the Committee discussed the classification of a thinner product, glucomannan, and waste of electric and/or electronic equipment (WEEE), as well as a further amendment to Additional Note 2(e) to Chapter 27 (on the definition of gas oil), and the possible creation of new subheadings under 2202 90 (certain beverages).

The group also examined a proposed amendment to Note 4 to Chapter 40 proposed by the European Tyre and Rubber Manufacturers Association.

Court judgment on infrared thermal imagers

On 12 February 2015, the CJEU issued a judgment in Case C-134/13 (*Raytek GmbH and Fluke GmbH v. Commissioner for Her Majesty's Revenue and Customs*) regarding the classification of infrared thermal imagers. The case concerned the validity of a 2011 EU Classification Regulation classifying infrared thermal imagers which merely measure temperature as thermometers under CN code 9025 19 20 (at the time subject to 3.2% duty), rather than a different classification for certain optical radiation instruments (CN code 9027 50 00 – duty free at the time) supported by earlier Binding Tariff Information. The applicants argued that the Commission had altered the subject-matter of those two tariff headings. The CJEU disagreed with the applicants, but also noted that the products at issue in the case before the court were not necessarily the same as those covered in the disputed regulation. It therefore concluded it was up to the referring UK court to verify whether the products at issue have a function other than measuring temperature, and therefore might be considered something other than a thermometer for classification purposes.

ORIGIN

Origin Committee developments

The report of the 215th meeting of the Origin Section of the Customs Code Committee that took place on 11-12 December 2014 has been made available. It shows that the Committee discussed, *inter alia*, certain matters related to the Regional Convention on pan-Euro-Mediterranean (PEM) preferential rules of origin, the state of play of the Registered Exporter System (REX), as well as the legislative amendments needed in order to implement the REX system. The Commission also briefed the Committee on the customs sub-committees meetings with Lebanon and Tunisia, the state of play of the origin provisions in the association agreements with Georgia, Moldova and Ukraine, and on origin-related discussions in FTA negotiations with Japan and Vietnam. The Committee also discussed a question raised by Serbia concerning the acceptance of EUR.1 movement certificates stating the name of a Member State (instead of 'EU') and further held follow-up discussions on the EU-Korea Customs Committee meeting held in June 2014. The Committee also discussed the documents on which an origin declaration may be made out and the impact of the removal of generalised tariff preferences (GSP) benefits for some countries as of 1 January 2015. Finally, the European Anti-Fraud Office (OLAF) gave a presentation on cases concerning autonomous preferential arrangements (notably GSP), where preference may be denied without requesting subsequent verification, i.e. where it has

been established that the relevant goods did not originate in the declared country of origin.

Customs Code Committee vote on preferential origin rules

Between 6 and 19 February 2015, the members of the Origin Section of the Customs Code Committee were scheduled to issue a written vote on proposed amendments to the EU's Regulation on the rules of origin relating to the EU's GSP regime and preferential tariff measures for certain other countries or territories. These amendments relate to, *inter alia*, the extension of the REX system to Norway, Switzerland and Turkey (once certain conditions are fulfilled); amended conditions for the retrospective issuing of Form A certificates; the introduction of a tolerance in width requirements for Form A certificates of origin; and the imposition of transitional measures and a phasing-in approach until 31 December 2019 for the REX system. The proposed Regulation would further contain detailed rules concerning the protection of personal data in the REX system, and new rules concerning the splitting of consignments (to clarify that the splitting of consignments may only take place without loss of GSP status if carried out by exporters or under their responsibility). The outcome of the vote is not yet known.

EU publishes new origin protocol in EU-Montenegro Association Agreement

On 4 February 2015, the EU adopted the Decision of the EU-Montenegro Stabilisation and Association Council replacing the origin protocol of the bilateral Association Agreement. The new protocol makes reference to the PEM Convention, which should allow Montenegro to benefit from diagonal cumulation of origin under the Convention when certain conditions are met.

VALUATION

Valuation Committee Developments

The report of the 17th meeting of the Valuation Section of the Customs Code Committee that took place on 10 October 2014 was made available in February. During this meeting, OLAF representatives gave a briefing about the outcome of the recent joint customs operation (JCO) "Snake" between the EU and China which targeted undervaluation of textiles and footwear. The Committee also discussed the valuation of know-how, the determination of the unit price under the deductive method and the calculation of "greatest aggregated quantity", and the use of "Bitcoins" for transaction settlement and related currency conversion issues. The Committee also prepared for the Autumn session of the World Customs Organisation (WCO) Technical Committee on customs valuation (TCCV) by discussing the net margin method and the resale price method in the context of related party transactions and transfer pricing, the valuation of distribution fees based on net profits, the valuation of goods in global value chains, the

treatment of fees for unlocking a function of imported goods after importation, and certain issues in relation to royalties and licence fees.

The Committee further discussed a possible transitional clause in the draft implementing act for the Union Customs Code (UCC) to allow continued use of “first sale” under prior contracts to determine the customs value of goods in a chain of successive sales.

The 18th meeting of the Valuation Section of the Customs Code Committee took place on 5-6 March 2015. The agenda for that meeting indicates that the Committee was scheduled to discuss, *inter alia*, sales on consignment of perishable fruits and vegetables, prices invoiced in foreign currencies with pre-fixed exchange rates, customs valuation treatment of price increases in specific circumstances, the valuation of know-how, a proposed monitoring action, and WCO guidance on advance rulings. The Committee was also planning to pre-coordinate the meeting of the WCO TCCV that will take place on 4-8 May 2015 (which will cover many of the same topics as discussed above for the Autumn WCO TCCV meeting).

MISCELLANEOUS

Conclusion of WTO Trade Facilitation Agreement

On 6 February 2015, the European Commission issued a proposal for a Council Decision on the conclusion on behalf of the EU of the WTO Trade Facilitation Agreement. WTO negotiations on a trade facilitation agreement were concluded on 3-6 December 2013. In November 2014, the WTO General Council adopted the Protocol and opened it for acceptance by each WTO Member. This agreement will enter into force once accepted by two-thirds of the WTO Membership.

EU requests WTO dispute settlement panel over Russia's import duties

On 26 February 2015, the EU announced that it had requested the establishment of a WTO dispute settlement panel concerning certain import duties imposed by Russia, including on refrigerators.

EU Commission issues trade in seal products proposal

On 6 February 2015, the European Commission issued a proposal to amend the existing regulation on trade in seal products to implement the WTO's dispute settlement body report that was issued in the dispute between the EU on the one hand, and Canada and Norway on the other. The WTO's dispute settlement body had found that, while this ban is justified, some of the measures are nevertheless discriminatory. The proposed Regulation removes or modifies, *inter alia*, certain exceptions from the general ban on placing seal products on the EU's market.

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