

EU Customs Developments

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EU Customs Policy

Union Customs Code Developments

On 12 December 2016, the EU's Customs Expert Group held a joint meeting with the Trade Contact Group to discuss proposed amendments to the Union Customs Code (UCC) and the UCC Delegated Act (UCC-DA), which supplements certain non-essential elements of the UCC. The amendments concern, inter alia, a new definition of the term 'exporter' as set out in Article 1(19) of the UCC-DA, the use of a special procedures authorisation issued under Article 211 of the UCC, along with certain issues in relation to temporary storage and temporary admission, common transit and indirect representation concerning special procedures.

On **30 January 2017**, the Customs Expert Group will meet again to discuss the definition of exporter, exceptions to the right to be heard and debts and guarantees. More generally, it will also discuss the challenges with and questions on UCC implementation that have surfaced since the UCC took effect on 1 May 2016.

Draft European Parliament resolution on tackling challenges of UCC implementation

On 8 December 2016, the European Parliament's (EP's) Internal Market and Consumer Protection (IMCO) Committee unanimously supported a draft resolution which calls for increased effectiveness of UCC implementation. It also requests a thorough review by the European Commission of the whole policy area and a new impact assessment.

Commission Communication on development and governance of EU Customs Union

In a Communication on management of the EU Customs Union issued on 21 December 2016, the Commission proposes to increase cooperation among national customs authorities so they can act more as one single entity. The Commission also states that the EU should have IT systems able to handle nine customs declarations per second.

Key priorities set out in the Communication include: (i) encouraging harmonised application of customs rules by the EU Member States; (ii) helping customs administrations becoming more effective; (iii) upgrading and aligning new EU-wide IT systems; and (iv) promoting best practices. The Commission also proposes to update the rules on control of cash at customs, in order to bring those rules in line with international norms and best practices in the fight against money laundering and financing of terrorism.

Tariffs

Duty Suspensions and Tariff Quotas

a) January 2017 Round

On 30 December 2016, the EU published the updated lists of duty suspensions (DS) and tariff quotas (TQs) applicable from **1 January 2017**. Products classified under the listed Combined Nomenclature (CN) codes and meeting related product descriptions can be imported duty free (in the case of TQs, only until the established TQ volume is exhausted).

110 new DS have been added and 116 DS have been deleted from the list, while 38 DS have been modified. 6 TQs have been eliminated and 11 new TQs have been introduced. 15 TQs have been amended to change the product description, TARIC code or quota volume.

b) July 2017 Round

On 10-11 November 2016, the Economic Tariff Questions Group (ETQG) held its first discussion on the list of DS and TQ applications submitted by the Member States for the **July 2017** round. Objections had to be filed prior to the second ETQG meeting of this round held on 16 December 2016.

c) January 2018 Round

The deadline for companies to file applications for the **January 2018** round is decided by individual Member States, and can be as early as **1 February 2017**. The Member States will have to forward eligible applications to the Commission by **15 March 2017**.

EU reduces duty rates for certain air-conditioning machines and some footwear

On 17 December 2016, the EU published a Regulation slightly reducing certain customs duties as of **1 January 2017**. It applies to imports of split-system air-conditioning machines comprising a motor-driven fan and elements for changing the temperature and humidity, and certain footwear. This duty reduction was agreed between the EU and China to take account of Croatia's accession to the EU.

Commission considers reinstating GSP+ preferences for Sri Lanka

During discussions in the EP on 7 December 2016, Commission officials acknowledged that Sri Lanka has made progress in complying with criteria for obtaining beneficiary country status under the EU's Generalised Scheme of Preferences (GSP) Plus. While the Commission indicated that more work is needed before the EU will reinstate Sri Lanka's GSP+ status, it is expected to happen in the near future. GSP+ status results in tariff preferences to GSP beneficiary countries that have ratified and effectively implemented various international conventions. The EU withdrew GSP+ status for Sri Lanka due to certain human rights issues in early 2010.

Environmental Goods Agreement

The 18th round of negotiations on the WTO Environmental Goods Agreement (EGA) took place from 26 November to 2 December 2016. A ministerial meeting aimed at concluding the EGA talks took place in Geneva on 3-4 December 2016, but failed to result in agreement. This was reportedly due to a refusal by the EU and US to accept a new narrower product list presented by China which, for example, no longer featured valves and wind turbines.

Brexit news

A report by two UK House of Lords committees published on 13 December 2016 estimates that an FTA between the UK and the EU will take longer than two years to negotiate, and that a transitional agreement “will almost certainly be necessary”.

Recently, several countries have indicated their willingness to conduct FTA negotiations with the UK after Brexit. On 10 November 2016, the **Turkish** Minister for Economy stated that his country has agreed to negotiate a “wide-ranging trade deal” with the UK (and reportedly warned the UK against major drawbacks of a customs union with the EU). **Argentina’s** Commerce Secretary has reportedly stated that Mercosur is interested in a trade agreement with the UK as well. It has also been reported that the UK and **Norway** will commence a trade policy dialogue in **December 2016**. The UK-**Australia** Trade Working Group met for the first time on 30 November 2016 to identify “early priorities” for a possible UK-Australia trade agreement, and UK Secretary of State for International Trade Liam Fox will visit Australia in the **first quarter of 2017** for further discussions. During this first meeting, parties discussed the parameters of a future bilateral FTA once the UK leaves the EU.

Senior officials at the UK’s Department for International Trade have meanwhile announced that the UK will seek continuity in existing EU trade agreements with some 30 countries, including certain developing countries, as well.

The UK has further announced it is planning to copy the EU’s schedule of commitments at the **WTO** after Brexit.

EU FTA Update

a) Court opinion on EU and Member State competence (EU-Singapore FTA)

On 21 December 2016, Advocate General Sharpston of the Court of Justice of the EU (CJEU) issued an advisory opinion on whether the EU on its own has the requisite competence to sign and conclude the Free Trade Agreement (FTA) between the EU and Singapore. The Advocate General considers that the FTA can only be concluded by the EU and individual Member States acting jointly. More specifically, she has identified the FTA chapters for which she believes the EU enjoys exclusive competence, and those where the EU’s external competence is shared with the Member States. The Advocate General’s opinion is advisory and does not bind the Court. Nevertheless, Advocate General opinions are considered influential and followed in the majority of cases. The actual Court Opinion is expected to be delivered in **early 2017**.

b) EU Trade Policy Day

On 9 November 2016, the EP organised a Trade Policy Day. The focus of discussions was on how to shape global trade policy and the popular legitimacy of EU trade policy. During this event, EU Trade Commissioner Malmström stated the EU has a “legitimacy problem” when concluding FTAs, adding that the EU “must reach out to the citizens more than we did before”.

c) Effects of FTA negotiations on agriculture

On 29 November 2016, the EP’s International Trade (INTA) and Agriculture (Agri) Committees held a joint meeting with the Commission to discuss the effects of trade negotiations on agriculture. The discussion focused on findings of a recent Commission report on the effects of 12 pending and potential EU FTAs (with Japan, the US, Canada, Mercosur, Australia, New Zealand, Japan, Vietnam, Thailand, and Turkey). In the report, the Commission assesses the expected cumulated impact of tariff reduction, removal of non-tariff measures and value-add offered by geographical indications.

d) United States

Following Donald Trump’s victory in the US Presidential Elections, EU lawmakers have openly admitted that Transatlantic Trade and Investment Partnership (TTIP) negotiations will not be completed in the foreseeable future. Commission President Juncker has stated there is little hope of concluding the TTIP talks **before 2019**. EU Trade Commissioner Malmström has noted that negotiations will remain “in the freezer” for “quite some time”, and the Chair of the EP’s INTA Committee Bernd Lange has said that “TTIP is history”. US President Obama and German Chancellor Merkel, on the other hand, called for continued transatlantic cooperation and not giving up on a bilateral trade pact.

However, it has been reported that EU and US officials have agreed to compile a detailed overview of the progress made in the TTIP negotiations, presumably in the hopes that this may encourage President-Elect Trump to continue the negotiations.

e) Canada

Following the difficult process to ensure signature of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) in late October 2016, another stumbling block was cleared in November 2016 as the EP rejected a motion to challenge CETA in the CJEU. This motion had been proposed to seek the Court's assessment as to whether CETA is compatible with the EU Treaties.

Also in November 2016, the EP's INTA Committee postponed its vote on CETA (originally scheduled for 5 December 2016) until **24 January 2017**. The EP plenary vote on CETA (originally scheduled for December 2016) has therefore also been delayed, until **early 2017** (probably **1 or 2 February 2017**).

Meanwhile, on 8 December 2016, the EP's Employment and Social Affairs (EMPL) Committee voted for a non-binding opinion recommending that the EP rejects CETA, noting that CETA could lead to job losses and a widening of the income gap between skilled and unskilled workers. Also, the EP's legal service reportedly issued a legal opinion in which it concludes that statements and declarations recently added to CETA are legally binding and in line with existing provisions in the agreement.

The EU and Canada have drafted a 'non-paper' on developing a multinational investment dispute mechanism in trade agreements, open to all interested parties. This document has been circulated to the EU Member States, discussed at the World Investment Forum, and was presented at the OECD Forum on Investments in October 2016. The Commission and the Canadian government have also co-hosted an expert meeting with third country government representatives on the establishment of a multilateral investment court which would replace the bilateral investment court systems included in existing EU FTAs. Further discussions on such a court are scheduled to take place in the margins of the World Economic Forum in Davos on **20 January 2017**. Meanwhile, the European Commission has launched an impact assessment and is planning to ask the EU Council for a negotiating mandate to establish an international investment court in the **Autumn of 2017**.

f) Japan

Japan and the EU have had intense inter-sessional discussions on the EU-Japan Economic Partnership Agreement (EPA) following the 17th round of negotiations in September 2016. An informal round of EPA talks was held during the week of 12 December 2016, and the next official round of EPA negotiations will take place **mid-January 2017** in Brussels. Negotiators have apparently come close to a compromise on public procurement and geographical indications. However, other issues remain outstanding, such as in relation to market access for automobiles and agricultural products. It has been reported that the EU has offered to eliminate duties on around 80% of car parts imported from Japan. The announcement by President-Elect Trump that the US will withdraw from the Trans-Pacific Partnership (TPP) may help push the EU-Japan EPA towards conclusion. It is now hoped that agreement could be announced at the next EU-Japan Summit, scheduled to take place in **March 2017**.

Meanwhile, certain industry associations have issued statements relating to the EPA negotiations. BusinessEurope and Keidanren issued a joint statement calling for EU-Japan regulatory cooperation across all industrial sectors, using means such as harmonisation and mutual recognition of standards and regulations. The statement further lists specific measures for EPA incorporation. DigitalEurope and Jeita have also issued a statement welcoming the greater momentum behind the EPA negotiations and asking for a rapid conclusion of the talks.

g) South Korea

On 8 November 2016, the EP's INTA Committee presented a draft report on implementation of the EU-Korea FTA. This report was issued in the context of the EP's pending work on a resolution on the topic. The draft report will first be discussed and subject to a vote in the INTA Committee, tentatively scheduled to take place in **February 2017**.

The Commission has also launched a public consultation – open until **3 March 2017** – on implementation of the EU-Korea FTA in the context of an evaluation after four years of implementation. The evaluation will examine the effectiveness and efficiency of the FTA, the relevance of the FTA regarding current trade issues faced by the EU and Korea, the FTA's coherence with the EU-Korea Framework Agreement and objectives of EU trade policy, and the impact of FTA implementation on sustainable development, as well as on human rights.

h) Vietnam

On 3 December 2016, the EU Council published a decision on the conclusion of the EU-Vietnam Framework Agreement on Comprehensive Partnership and Cooperation (PCA). This agreement – which governs the overall bilateral EU-Vietnam relationship – was signed in June 2012 and provides, *inter alia*, for cooperation on trade and investment issues, and on customs matters and trade facilitation. EU ratification of the EU-Vietnam FTA, which is linked to the PCA, is still pending.

i) Ecuador

On 24 December 2016, the EU published the Council Decision on signing of the protocol of accession of Ecuador to the existing EU-Colombia/Peru FTA. This happened after the EP approved Ecuador's accession to the FTA on 14 December 2016. On 29 December 2016, the EU published a notice confirming that this protocol will be provisionally applied as of **1 January 2017**. Negotiations on Ecuador's accession were concluded in 2014, and the protocol was signed on 11 November 2016. The agreement provides for tariff cuts to be implemented gradually **over 17 years**. The EU will liberalise almost 95% of tariff lines upon entry into force, and Ecuador about 60%.

j) Ukraine

On 15 December 2016, the EU Council and the Netherlands agreed on a declaration in relation to the EU-Ukraine Association Agreement. The declaration emphasises that the agreement is not a stepping stone to Ukraine joining the EU and that it neither requires additional financial support by the Member States to Ukraine, nor obliges Member States to provide collective security guarantees or military aid to Ukraine. This declaration aims to address the outcome of the Dutch referendum which rejected the EU-Ukraine Association Agreement.

On 19 December 2016, the EU and Ukraine held the third meeting of the EU-Ukraine Association Council, during which parties underlined the importance of the Deep and Comprehensive Free Trade Area (DCFTA, which is included in the Association Agreement). The EU-Ukraine DCFTA was signed in June 2014 and has been applied provisionally since January 2016. Only the Netherlands has not yet ratified it, but it is hoped that the EU declaration will unblock this process in the Netherlands.

k) Mexico

On 9 December 2016, the Commission published six initial EU proposals for the on-going negotiations on modernisation of certain parts of the EU-Mexico FTA. The Commission's proposals cover, *inter alia*, public procurement, trade in energy products and raw materials, intellectual property protection, and rules of origin.

The Commission has also issued a report on the 2nd round of negotiations that took place on 22-25 November 2016. During the 2nd round, negotiators discussed such issues as trade in goods, rules of origin, customs and trade facilitation, technical barriers to trade, regulatory coherence, sanitary and phytosanitary measures, public procurement, energy and raw materials, and intellectual property.

l) India

During a recent bilateral meeting, the EU urged India to resume stalled Bilateral Trade and Investment Agreement (BTIA) negotiations (which started in 2007 but were halted in 2013) as soon as possible. This development is apparently linked with the approaching expiry of certain bilateral investment promotion and protection agreements (BIPAs) between individual EU Member States and India. FTA negotiations between the EU and India started in 2007, but have been on hold since the Summer of 2013. Discussions have been ongoing since January 2016 to assess whether sufficient progress can be made in key outstanding issues before formally resuming the FTA negotiations. It has been reported that India has indicated its willingness to restart negotiations "without any preconditions".

m) Philippines

It has been reported that the scheduled December 2016 round of EU-Philippines FTA negotiations has been delayed for technical reasons. The round will instead be held in **early 2017**.

n) Turkey

On 21 December 2016, the Commission announced that it has requested a mandate from the Member States to start negotiations with Turkey on the modernisation of the EU-Turkey Customs Union which has been in place since 1996. The modernisation process would include negotiations on public procurement, regulatory cooperation, services and agriculture. The Council's decision on the Commission's request for a negotiation mandate is still pending.

o) Australia

The ongoing scoping exercise between the EU and Australia to decide which areas should be covered by a future trade agreement is expected to be completed soon. Negotiations could start in **2017**.

p) Mercosur

The EU has issued a report on the 26th round of negotiations on the trade part of the EU-Mercosur Association Agreement that took place in Brussels on 10-14 October 2016. It shows that the discussions covered trade in goods, rules of origin, customs and trade facilitation, technical barriers to trade, sanitary and phytosanitary measures, trade defence measures, subsidies, dispute settlement, services and establishment, public procurement, intellectual property, competition, state-owned enterprises, trade and sustainable development, the EU proposals on energy and raw materials and SMEs.

On 15 November 2016, EU Commissioner for Agriculture Phil Hogan indicated that the Mercosur bloc would have to lower its expectations for a generous EU market access offer for beef. The Mercosur president has stated that the EU's current offer is "unsatisfactory".

q) Tunisia

The European Commission has launched a public consultation on the EU-Tunisia Deep and Comprehensive Free Trade Agreement. The consultation will close on **22 February 2017**. The EU and Tunisia already have an Association Agreement, which includes a free trade area. However, the purpose of the new DCFTA (on which negotiations were launched in October 2015) is to increase trade liberalisation for agricultural and fisheries producers in particular, and to liberalise trade in services and investment.

r) Pakistan

On 23 November 2016, the EU-Pakistan Joint Commission met in Islamabad and agreed to strengthen bilateral trade and investment relations. This includes making full use of the potential provided by the EU's GSP scheme, and notably the so-called GSP+ scheme, while removing impediments to trade.

s) Turkmenistan

The 16th meeting of the Joint Committee under the Trade and Cooperation Agreement between the EU and Turkmenistan was held on 10 November 2016 to assess bilateral progress on trade, economic development and bilateral cooperation. The EU and Turkmenistan concluded a Partnership and Cooperation Agreement in 1998, but it has not yet been ratified by all the EU Member States. Pending ratification, a bilateral Interim Agreement on trade and trade related matters has been in place since 2010.

t) Cuba

On 12 December 2016, the EU Council signed the political dialogue and cooperation agreement concluded with Cuba. This agreement features a chapter on trade and trade cooperation (mainly reaffirming their commitment to international rules and promising related cooperation). Negotiations between the EU and Cuba on this agreement were concluded in March 2016. The agreement will be concluded as a mixed agreement, which means that it must be signed by the EU and the Member States, and ratified by all relevant national and regional parliaments, before it can enter into full force.

u) Morocco

On 21 December 2016, the CJEU issued a judgment holding that the EU-Morocco Association and Liberalisation Agreement – which covers trade in agricultural and fishing products and has been in force since 2012 – is not applicable to Western Sahara. With this judgment, the Court set aside a 2015 judgment from the EU General Court which had annulled the Council's decision to conclude the Agreement. The General Court had reasoned that the EU had not undertaken an *ex ante* assessment of the potential negative human rights effects of the Agreement on the population of the contested Western Sahara region, to which the Agreement would apply. However, the CJEU disagreed by holding that the EU-Morocco Agreement does in fact not apply to Western Sahara.

Classification

Court judgment on classification of LED bulbs

On 8 December 2016, the CJEU delivered its judgment in Case C-600/15 (*Staatssecretaris van Financiën v. Lemnis Lighting BV*) on the customs classification of light-emitting diode (LED) bulbs. The question raised before the Court was under which CN heading such LED bulbs should be classified. The headings considered were 8539, 8541, 8543, 8548 and 9405.

As regards CN heading 8539 (electric filament or discharge lamps and arc lamps), the Court found it applies only to lamps which use a particular technique in order to produce light, which the product at issue does not do. As regards CN heading 8541 (diodes, etc.), the Court reasoned that this includes light-emitting diodes which are not assembled with other electronic components – and not LED bulbs, as these are also made of other components. As regards heading 8548, the Court considered that it includes in particular 'parts of machinery or apparatus', where the functioning of the machinery or apparatus is dependent on the subject parts; because an LED bulb is not indispensable for the operation of a lighting fixture, it could not therefore be classified under that heading. The Court also found that LED bulbs cannot be regarded as 'lamps and lighting fittings including searchlights and spotlights and parts thereof' within the meaning of heading 9405. The Court therefore finally concluded that LED bulbs should be classified under CN heading 8543, which covers electrical machines and apparatus not specified or included elsewhere.

Court judgment on classification of food supplements

On 15 December 2016, the CJEU rendered its judgment in Case C-700/15 (*LEK farmacevtska družba d.d. v. Republika Slovenija*). This case concerned the customs classification of certain food supplements intended for use against digestive disorders and containing probiotic bacteria as the main component. The applicant (LEK) considered that its three products (with the trade names Linex, Linex Forte and Linex Baby Granulat) were classifiable as medicinal products under CN code 3002 90 50 (cultures of microorganisms), and LEK had obtained marketing authorisations under EU medicinal products rules from the relevant authorities. However, the Slovenian customs authorities considered CN code 2106 90 98 (food supplements) to be appropriate for these products as the active ingredient is used in food supplements falling under that CN code. Upon appeal to the Slovenian court of first instance, LEK requested the products to be classified under CN code 3004 90 00 as medicaments for therapeutic or prophylactic uses. The court disagreed and LEK appealed again, leading to a referral to the CJEU.

The CJEU first noted that the fact that a product qualifies under EU medicinal products legislation as a medicine does not necessarily mean it will be classified for customs purposes under Chapter 30 (pharmaceutical products). The fact that LEK marketed these products as medicaments was also considered irrelevant for customs classification purposes. As a result, it agreed with Slovenian customs that the proper CN code was 2106 90 98.

Classification Regulations

Since the last issue, the following EU Classification Regulations have been published:

- **Commission Implementing Regulation 2016/1957** classifies a so-called "electronic control unit" (ECU) that supplies power to xenon headlights of motor vehicles as other static converters under CN code 8504 40 90.

- **Commission Implementing Regulation 2016/1958** classifies a power distribution unit to be used for supplying electricity to various rack-mounted components in a cabinet under CN code 8537 10 99 as other boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of tariff heading 8535 or 8536 for the distribution of electricity.
- **Commission Implementing Regulation 2016/1962** classifies an unassembled shower door to be mounted and fixed to the wall under CN code 7020 00 80 as other articles of glass.
- **Commission Implementing Regulation 2016/2033** classifies a product consisting of glitter for toothpaste under CN code 3204 19 00 as a preparation based on a mixture of colouring matter of two or more of the subheadings 3204 11 to 3204 19.
- **Commission Implementing Regulation 2016/2221** classifies an article consisting of three plastic tubes with a Luer connector (preventing leaking) as other tubes, not reinforced or otherwise combined with other materials, with fittings, under CN code 3917 33 00.
- **Commission Implementing Regulation 2016/2223** classifies a so-called digital microscope, which functions only in conjunction with an ADP machine and has no inbuilt recording capabilities, under CN code 8525 80 19 as a television camera.
- **Commission Implementing Regulation 2016/2224** classifies a so-called wireless speaker adapter – which allows the user to listen to music from a smartphone or similar portable device on a home audio system or via separate loudspeakers – as a machine for the reception, conversion and transmission of voice or other data under CN code 8517 62 00.
- **Commission Implementing Regulation 2016/2225** classifies a so-called track roller for longitudinal and lateral guidance of a track chain under CN code 8431 49 80 as parts suitable for use with machinery of headings 8425 to 8430 other than cast steel.

The Commission also adopted **Commission Implementing Regulation 2016/1956** which adds a binding Additional Note to Chapter 94 (articles of bedding, etc.). It clarifies that the expression “stuffed or internally fitted with any material” covers material of any thickness. In addition, **Commission Implementing Regulation 2016/2222** adds an Additional Note to Chapter 95 with respect to articles for Christmas festivities.

Meanwhile, a written vote was held on draft Classification Regulations relating to drones without a camera, thumb grips for game console controllers, sets of tables and chairs, tatami puzzles, partially-coated fabrics, threaded coaxial cable connectors, and glass shelves.

CN Explanatory Notes – lighting fittings and “stone paper”

On 11 November 2016, the EU published a new CN Explanatory Note (CNEN) for CN code 9405 50 00 (non-electrical lamps and lighting fittings). It explains that this subheading includes lanterns of any material and candelabra, candlesticks and candle brackets for tea lights.

On 19 November 2016, the CNEN for tariff heading 3920 (“other plates, sheets, film, foil and strip, of plastic, non-cellular and not reinforced, laminated, supported or similarly combined with other materials”) was amended to clarify that it includes “stone paper” consisting of rock powder and plastic and used for stationery, bags, packaging, etc. A CNEN was introduced on the same day for CN code 3926 40 00 (“Statuettes and other ornamental articles”) to include articles consisting of rock powder, plastic and a small amount of other additives. At the same time, a new CNEN to 6810 99 00 (“Other” articles of cement, of concrete or of artificial stone) states that the subheading does not include “stone paper” and ornamental articles consisting of rock powder and plastic in cases where the plastic gives the article its essential character and the rock powder is a filler material.

EU publishes amendments to HS Explanatory Notes

On 11 November 2016, the EU published a communication endorsing amendments to ENs to the Harmonised System (HS) Convention, and related Classification Opinions and Decisions approved by the HS Committee during its 57th session in March 2016. The new amendments concern tariff lines in HS Chapters 03, 15, 21, 29, 30, 32, 33, 38, 61, 63, 69, 70, 73, 76, 87, 94, 95, and 96. The EU's classification rules dictate that communications of this kind mean that Binding Tariff Information (BTI) issued by the EU Member States which conflicts with these HS instruments has ceased to be valid.

EU publishes Explanatory Note regarding 3D printers

On 8 December 2016, the EU published an additional explanatory note to CN code 8474 80 90 (other machinery). It clarifies that the subheading includes 3D printers for making articles from materials referred to in heading 8474 (machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand).

Nomenclature Committee Developments

a) Textiles and Mechanical/Miscellaneous Sector

The 174th meeting of the Textiles and Mechanical/Miscellaneous sub-section of the Statistical Nomenclature Committee (NC) was scheduled to take place on 19-21 December 2016. The report of this meeting has not yet been issued. However, the agenda included, for example, the examination of proposed regulations concerning classification of DAB radios using Bluetooth/A2DP technology, model train sets and notepads. The Committee was also scheduled to discuss the classification of, *inter alia*, mobile phone cases, wireless charging plates, steering wheel covers, a combination of a trolley and a scooter, pulse oximeters, video converters, a weather station, touchless soap dispensers with a sensor powered by an electric motor, aluminium tubes as parts of coolers for motor vehicles, wrist band adapters for a smart watch, printing plates, light chains, fasteners for routers, van type vehicles, electric scooters, and aluminium rails.

b) Agriculture/Chemistry Sector

The summary report of the 173rd meeting of the Agriculture/Chemistry sub-section of the NC held on 17-18 October 2016 reveals that the Committee approved the adoption of a Classification Regulation on glitter for toothpaste and CNENs on "stone paper" (see above). The experts also discussed, *inter alia*, the classification of heat-sensitive ink ribbons in rolls, certain food supplements and food products, a running trap, "heat-not-burn" tobacco products and ink cartridges.

WCO Changes to HS Nomenclature

On 28 October 2016, the World Customs Organisation published 233 amendments to the HS Nomenclature, which will enter into force on **1 January 2017**. These amendments (which concern, for example, the machinery and transport sector) take account of, *inter alia*, technological progress. The changes include introduction of size criteria for newsprint, LED lamps, multi-component integrated circuits (MCOs), as well as hybrid, plug-in hybrid and all-electric vehicles. The EU has already implemented these changes in the Common Customs Tariff for **2017** (published last October).

Origin

REX and Overseas Countries and Territories

On 30 November 2016, **Commission Implementing Regulation 2016/2093** was published, granting Overseas Countries and Territories (OCTs) of the EU more time to implement the new EU rules on registered exporters (REX). This new system with registration of exporters and self-declaration of origin should apply from **1 January 2017**, but countries unable to be ready in time could request a derogation as regards the date of application of REX. The OCTs did so, and have now been given until **31 December 2019** to implement REX. Pending the completion of REX in the OCTs, the current origin certification process will remain in place.

Court judgment on the good faith clause

On 15 December 2016, the CJEU disagreed with the European Commission's determination to reject a request for remission of customs duties. The case (Case T-548/14, *Spain v. European Commission*) involved a GSP origin matter and the EU's good faith clause, which allows importers to rely on their good faith if certain conditions are met (i.e. an error was made by the authorities while the importer could not reasonably have been aware of this and acted with sufficient diligence).

A Spanish company had imported tuna products, declared these as having preferential Ecuadorian origin, and hence benefited from the GSP tariff based on a Form A certificate of origin issued by the Ecuadorian authorities. In the same period (May 2010), the Commission had published a "Notice to importers" in the EU Official Journal entitled "Imports of tuna from Colombia and El Salvador into the EU" in which it warned importers that there were reasonable doubts about the correct application of GSP origin rules and benefits for certain tuna imported from these two countries. The notice also stated that it could not be excluded that tuna was being imported under GSP from other countries without satisfying the relevant origin rules (without explicitly naming such other countries). During a subsequent special mission in September 2010 by the European anti-fraud agency (OLAF), it was indeed found that the Ecuadorian authorities had issued Form A certificates even though the GSP origin rules had not been satisfied. As a result, the Spanish authorities had requested post-clearance recovery of customs duties. The company requested remission of these duties relying on the good faith clause, and the Spanish authorities supported this request and sent it to the EU level, as required under EU customs rules.

Because the publication of a warning notice in the EU Official Journal normally means the good faith clause can no longer be invoked, the question here was whether the warning should have been understood to cover other GSP countries (including Ecuador) than those explicitly mentioned in the notice. The Commission argued that an experienced importer should have been able to deduct which countries involved risk. However, the Court held that the Notice did not constitute a proper warning with respect to Ecuador, and that the importer was therefore entitled to rely on the good faith clause.

Accession of Georgia to PEM Convention

On 13 December 2016, the EU published a decision of the Joint Committee of the Regional Convention on Pan-Euro-Mediterranean (PEM) preferential rules of origin, inviting Georgia to accede to the PEM Convention. The country submitted an accession request in September 2015. The PEM Convention provides for diagonal cumulation of origin between the EU, the EFTA states, the Faroe Islands, the Barcelona Process Countries (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, West Bank and Gaza Strip, Syria, and Tunisia), Turkey, the participants in the EU's Stabilisation and Association Process (Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo), and Moldova.

Procedures

Court judgment on responsibilities of transport subcontractors under external transit procedure

On 8 December 2016, the CJEU delivered its judgment in Case C-547/15 (*Interservice d.o.o. Koper v. Sandor Horvath*) on the requirements for transport subcontractors under the external transit procedure. The rules for this procedure were laid down in Article 96 of the former EU Customs Code (which now fall under Article 226 of the UCC), and impose obligations on carriers to produce goods intact at the customs office of destination.

The Court concluded that these obligations also apply to any person, including a transport subcontractor, who *actually* transports the goods knowing that they are moving under the external transit procedure. In this case, the transport subcontractor first handed over the goods to the main carrier (together with the transit document), and then assumed responsibility for the goods again to continue with the transport. The Court held when that is the case, the transport subcontractor is under an obligation to ensure that the relevant goods have been produced at the customs office of destination. If the subcontractor is aware that the transit procedure has not been properly completed, it can also be held liable for this.

EU amends UCC rules on goods that have temporarily left customs territory

On 23 December 2016, the Commission published an amendment to the UCC to ensure effective customs supervision of non-EU goods that have temporarily left EU customs territory by sea or air without stopping outside the customs territory. Originally, the UCC did not provide a legal basis for making such goods subject to certain requirements when they re-enter the EU (e.g. presentation to customs and waiting for authorisation before unloading or transshipment). This has now been corrected.

Miscellaneous

EU agreement on Conflict Minerals Regulation

On 22 November 2016, the Slovak Presidency of the EU Council, the Commission and the EP reached informal agreement on the final text of the future EU Conflict Minerals Regulation which covers tin, tungsten, tantalum, gold. The Regulation will introduce a mandatory certification system for importers, smelters and refiners, along with voluntary reporting by larger EU manufacturers and sellers for trade in these minerals. The smallest importers will be exempt from mandatory due diligence requirements, and recycled metals, existing EU stocks and by-products will be excluded from the scope of the Regulation. The due diligence provisions for import are set to apply as of **1 January 2021**.

EU publishes amendments to Dual-Use Export Controls Regulation

On 15 November 2016, **Commission Implementing Regulation 2016/1969** was published, updating the Annexes to the EU Dual-Use Regulation (**Regulation 428/2009**) containing dual-use items that are subject to controls at EU export. As always, this annual amendment reflects the most recent changes to the international control lists on which the EU Annexes are based.

EU amends rules on trade in goods used for capital punishment and torture

On 13 December 2016, the EU published a Regulation strengthening the 2005 rules concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment. Under these amendments, the EU has introduced a specific set of export control rules to prevent certain goods from being used for capital punishment in a third country. Relevant requirements include the need to apply for prior authorisation at export of covered goods. At the same time, an EU general export authorisation is foreseen for exports to countries that have abolished the death penalty for all crimes. For the time being, these export controls apply to certain anaesthetics, but the Commission is empowered to list additional goods under a special procedure.

Commission proposals on VAT modernisation for e-commerce

On 1 December 2016, the Commission presented a package of proposals to modernise VAT rules for cross-border e-commerce. Proposals include (i) new rules allowing companies that sell goods online to manage their VAT obligations through a digital online portal; (ii) introduction of a yearly VAT threshold of EUR 10,000 (under which cross-border sales for online companies are treated as domestic sales); (iii) removal of the current VAT exemption for imports of small consignments from outside the EU; and (iv) an amendment of the current rules to enable EU Member States to apply the same VAT rate to e-publications as applied to their printed equivalents.

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