

EU Customs Practice Group

June 2014

EU CUSTOMS POLICY

EU legal framework for customs infringements and sanctions

It appears that the discussion on the proposal for a legal EU framework for customs infringements and sanctions within the relevant Council working group is progressing very slowly, and contacts expect that at least two Council Presidencies may have to pass until the Council could agree on its position on this proposal. It remains to be seen if a compromise text will be proposed during the Italian Council Presidency (July-December 2014). In early July, the European Commission is expected to update the Council about the bilateral discussions it has held with individual Member States on the proposal.

Meanwhile, on 5 June 2014, the Commission published a corrigendum to the explanatory memorandum of its December 2013 proposal for a Directive on an EU legal framework for customs infringements.

18-month programme of the EU Council

The 18-month programme issued at the start of the Italian EU Presidency (July-December 2014) states with respect to customs unions matters, that the upcoming trio of Presidencies (of Italy, Latvia and Luxembourg) will, among other things:

- aim to continue and finalise work on the proposed EU framework for customs infringements and sanctions;
- aim to continue and finalise work on the proposed Regulation to amend **Regulation 515/97** on mutual assistance, to ensure a correct application of customs (and agricultural) legislation;
- continue to monitor legal implementation of the UCC; and
- continue to monitor the state of implementation of the EU Customs Action Plan to combat intellectual property rights infringements.

Own Resources Package

The three legislative acts forming the so-called 'Own Resources' package for 2014-2020 adopted in May were published in the Official Journal on 7 June 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.

TARIFFS

Duty Suspensions and Tariff Quotas

a) July 2014 Round

The two Regulations containing the updated lists of EU duty suspensions and tariff quotas for certain agricultural and industrial products applicable from 1 July 2014 were adopted by the Council on 24 June 2014. **Regulation 713/2014** featuring the tariff quotas was published on 28 June 2014. **Regulation 722/2014** with the duty suspensions was published on 1 July 2014.

b) January 2015 Round

The third meeting of the Economic Tariff Questions Group (ETQG) to discuss applications for the January 2015 round is due to take place during the week of 14 July 2014. This is normally the final ETQG meeting before the Commission proceeds with the drafting of its formal proposals reflecting those applications on which consensus was reached among Member States.

c) July 2015 Round

The national deadlines for filing applications for the July 2015 round are rapidly approaching. Applications supported by the Member States must, as always, be filed with the European Commission by 15 September 2014, and will then be discussed in the usual series of three ETQG meetings.

FTA Update

a) Japan

In late June 2014, the EU made the decision to continue FTA negotiations with Japan in the context of the one-year review process. This is mainly because Japan is considered to have made sufficient progress towards opening its markets during the first year of FTA negotiations. The 6th round was confirmed to take place in Tokyo during the week of 7 July 2014.

b) US

On 18 June 2014, EU Trade Commissioner, Karel De Gucht, met with his US counterpart to discuss the ongoing Transatlantic Trade and Investment Partnership (TTIP) negotiations. The 6th round of the TTIP talks will take place during the week of 14 July 2014. During that round, the parties will continue discussions on trade in goods and services, regulatory issues, government procurement, environmental protection and labour rights, energy and raw materials, and opportunities for small- and medium-sized enterprises (SMEs). A round of stakeholder presentations and briefing events will be organised during the same week.

c) Ukraine, Moldova and Georgia

On 27 June 2014, the EU signed the Association Agreements (which include FTAs) with Ukraine, Georgia, and Moldova marking an important step in a process

that has been slowed down considerably in recent months under Russian pressure and events in Crimea. Provisional application of the trade provisions is foreseen after certain procedural steps have been completed. In July, trilateral meetings will take place between the EU, Ukraine and Russia to discuss the impact of the EU-Ukraine FTA on relations with Russia.

d) Thailand

On 23 June 2014, the EU Council adopted conclusions confirming that, due to political developments in Thailand following the coup d'état in May, official EU visits to Thailand are suspended, and that the EU will reconsider its engagement *vis-à-vis* Thailand, noting that agreements between the EU and Thailand "will be affected". Therefore, the EU-Thai FTA negotiations are currently on hold.

e) Mercosur

The month of June ended without Mercosur members participating in EU FTA negotiations, seemingly being unable to internally agree on the Mercosur tariff offer. Pending agreement among Mercosur countries, the EU has reportedly confirmed that no date has been fixed yet for the exchange of tariff offers. The target dates for such exchange of offers have been changed several times in recent months.

f) Ecuador

The 3rd round of negotiations between the EU and Ecuador concerning the accession of Ecuador to the EU-Andean FTA took place on 9-13 June 2014. The EU reported that good progress has been made, but that a number of issues still remain to be solved. The next, and possibly final, round is scheduled for the week of 7 July 2014.

g) Vietnam

The 8th round of FTA negotiations between the EU and Vietnam took place in Brussels on 23-27 June 2014. Following the round, good progress on all issues up for discussion was reported, and both sides confirmed that they would like to conclude the negotiations swiftly – perhaps as early as before the end of this year.

h) Turkey

On 17 June 2014, the Turkish Economy Minister reiterated Turkey's wish towards the EU to be included in the TTIP talks. The EU and Turkey are reportedly also discussing the possible updating of the EU-Turkey Customs Union. However, the official press statement issued following the EU-Turkey Association Council meeting of 23 June 2014 does not refer to such possibility.

CLASSIFICATION

Classification Regulations

In June 2014, the European Commission adopted the following two Classification Regulations:

- **Implementing Regulation 646/2014** classifies a product of steel with a partially threaded- and partially plastic-lined body designed to be part of a mounting suitable for furniture under CN code 7318 19 00 as other threaded articles of steel.
- **Implementing Regulation 647/2014** classifies a coupling for aluminium hoses under CN code 7609 00 00 as aluminium tube or pipe fittings.

Additional Note to Chapter 22

The European Commission on 13 June 2014 published an Additional Note to Chapter 22 to clarify the scope of subheading 2207 20 (Ethyl alcohol and other spirits, denatured, of any strength).

EU judgment on customs classification of certain oil products

On 12 June 2014, the Court of Justice of the EU (CJEU) issued its judgment in Case C-330/13, *Lukoil Neftohim Burgas AD v. Nachalnik na Mitnicheski punkt Pristanishte Burgas Tsentar pri Mitnitsa Burgas*, concerning the customs classification of certain oil products. The applicant, Lukoil, argued that certain goods described by it as 'heavy oils, lubricating oils; other oils for undergoing a specific process' should be classified under CN code 2710 19 71. The Bulgarian customs authorities considered that CN code 2707 99 99 (certain other aromatic hydrocarbon mixtures) should be used. Lukoil challenged that decision in the Administrative Court of Burgas, which referred the question to the CJEU.

The CJEU held that the decisive criterion for the classification of goods under heading 2707 is the predominance by weight of aromatic constituents, while the criterion for classification of products under heading 2710 is the predominance by weight of non-aromatic constituents. The Court also considered that the category 'aromatic constituents' is broader than 'aromatic hydrocarbons'. The Court concluded that a product falling within heading 2707 which cannot be classified under a specific subheading, must be classified under the residual subheading 2707 99 99.

Nomenclature Committee Developments

a) Textiles and Mechanical/Miscellaneous Sector

The report of the 132nd meeting of the Textiles and Mechanical/Miscellaneous Sector of the Customs Code Committee (of 5-8 May 2014) has recently been made available. During that meeting, the Committee delivered a positive opinion on the proposed classification regulations for small metal boxes (CN code 7326 90 98),

silicone bottle tops (CN code 3926 90 97) and oil lamps (CN code 9405 50 00). The Committee delivered 'no opinion' on a proposed classification regulation for beach cleaning machines (CN code 8479 10 00). The Committee also discussed proposed classification regulations for, *inter alia*, turbine wheels, turbine housings and exhaust-gas turbochargers, pick-up trucks, screws/implants for surgical use, sub-assemblies for LCD televisions, LED tiles, small cameras, single LEDs with protection diodes, media servers, snowmobiles, electrical filters, cartridges for game consoles, and video wall monitors with built-in PC.

Initial discussions took place on the classification of, *inter alia*, gyroscopes, utility vehicles, Hi-Fi systems, smart watches, multimedia equipment, remodelled cars, solar panels, fibreglass woven fabric, wrist supports, mobile phone cases, and musical clocks in toys. The Commission also presented a working document clarifying the existing legal framework for classifying cables fitted with USB connectors. In addition, the Member States were briefed on discussions on the classification of waste.

The 136th meeting of the Textiles and Mechanical/Miscellaneous Sector of the Customs Code Committee will take place on 2-4 July 2014. The agenda indicates that the Committee is scheduled to issue an opinion on the classification of various products discussed during the 132nd meeting (see above), and to conclude the examination of the classification of media servers, cartridges for game consoles, UV water sterilisers, gyroscopes, steel pipe nipples, electrical filters, utility vehicles, multimedia equipment, remodelled cars and solar panels. A first discussion is scheduled on the classification of, *inter alia*, films with aerials or aerial arches, Hi-Fi systems, smart watches, electronic money boxes, metal fastening fittings, retaining rings, accupacks, toys with a built-in music module, car receivers/radio back panels, central information display back panels, free wheels, sprocket wheels and ductile steel.

b) CN Sector

The report of the 134th meeting of the Combined Nomenclature Sector of the Customs Code Committee (of 23 May 2014) was published in June. The report shows that the Committee, *inter alia*, examined the creation of new CN Explanatory Notes for castors and held a state-of-play discussion on the possible creation of new CN codes for lubricants, succinic acid and 1, 4-butanediol. The Committee also voted on the creation and deletion of new codes under code 3824 90 (Other Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products)), and the creation of new codes for phosphonates under code 2931 90, contained in the draft CN2015.

The 138th meeting of the CN Sector of the Customs Code Committee is scheduled to take place on 17 July 2014. The agenda for that meeting includes a continuation of discussions on the topics already discussed during the 134th meeting.

c) *Agriculture/Chemistry Sector*

The report of the 135th meeting of the Agriculture/Chemistry Sector of 4-6 June was published in late June. It reveals that the Committee adopted favourable opinions on draft classification regulations on products for washing hair and skin, glucosamine products, mixtures of frozen fruits, eye wash products, and noodle dish preparations. The Committee also voted positively on draft Explanatory Notes (ENs) to subheadings of 0304 and 3301. The Committee delivered 'no opinion' on proposed amendments to the ENs for tobacco.

In addition, the Committee discussed the classification of, *inter alia*, fruit juices with tea extracts, artificial waxes, petroleum resin, various tobacco products, dental adhesives; the application of an Additional Note to Chapter 20; and the possible creation of new CN codes in subheading 3825 10 (municipal waste). The Member States were also updated on a WCO discussion on plastic containers.

d) *HS/WCO Coordination Sector*

The 137th meeting of the HS/WCO coordination sector is scheduled for 10 July 2014. The agenda includes, *inter alia*, a possible amendment of heading 7318 (fasteners), and of the ENs to Chapter 41 (leather). The possible acceleration of the publication of Commission Communications endorsing HS Committee guidance will also be discussed.

e) *BTI Sector*

The report of the 133rd meeting of the BTI Sector of the Customs Code Committee held on 15 May 2014 reports that the Committee was informed about the state-of-play of the external study for the analysis of aspects of uniform tariff classification and Binding Tariff Information (BTI). This study seeks to explore possible options for resolving classification disputes and improving the efficiency of the current BTI system. The Commission also provided information on the CLASS project, aimed at setting up a public database with classification guidance.

WCO Council adopts HS2017

On 27 June 2014, the WCO Council made the formal Recommendation to amend the Harmonised System (HS). The HS is updated every 5 years (last on 1 January 2012), and this latest round of amendments should be applied by the 150 HS Contracting Parties, including in the EU, as from 1 January 2017. However, first, the HS Contracting Parties now have six months to

file objections to the proposed amendments for the HS2017.

The WCO has reported that 234 sets of amendments to the HS are recommended. These relate to a wide range of products, including wood, chemicals, pharmaceuticals, ceramics, newsprint, LEDs, multi-component integrated circuits ('MCOs'), and hybrid and electric vehicles.

PROCEDURES

EU judgment on the removal from customs supervision of goods in transit

On 12 June 2014, the CJEU issued its judgment in Case C-75/13, *SEK Zollagentur GmbH v. Hauptzollamt Gießen*. This case relates to the removal of goods in transit from customs supervision. The Court held that an article (in this case a bicycle carrier) left for temporary storage must be deemed to have been removed from customs supervision if it is declared for an external Community transit procedure, but does not in fact leave the storage facility at that point in time, and is not presented to the customs office at the place of destination, even if the transit documents have been presented there. The Court also ruled that the person who, as the approved consignor, places the article in the external Community transit procedure shall be the customs debtor where the article is removed from customs supervision.

EU Aviation Security measures amended

On 21 June 2014, **Commission Implementing Regulation 678/2014** was published to amend aviation security rules, including for cargo. The amended rules seek to further align the security requirements for 'regulated agents' and the 'known consignor programme,' and for the customs Authorised Economic Operator programme, in order to allow for mutual recognition.

EU measures to facilitate maritime transport

On 25 June 2014, the European Commission published a report on the implementation of **EU Directive 2010/65** on reporting formalities for ships arriving in or departing from EU ports in which it announces a proposal for using an electronic manifest ('e-Manifest'). This should allow customs authorities to determine more swiftly the status of the goods (EU or non-EU). The Commission has also announced the imminent launch of an 'e-Freight' initiative, which should facilitate the transition from paper to electronic declarations for all modes of transport.

MISCELLANEOUS

EU Import ban on products originating in Crimea or Sevastopol

On 14 June 2014, the EU imposed an import ban on products originating in Crimea or Sevastopol as a further reaction to the annexation of the Autonomous Republic

of Crimea and the City of Sevastopol by Russia. As of 25 June 2014, the import into the EU of goods originating in Crimea or Sevastopol is prohibited, unless an origin certificate has been issued for such products by the Ukrainian authorities. However, the import ban does not apply to trade contracts concluded before 25 June 2014, if these are executed before 26 September 2014 and the execution of these contracts is notified at least 10 working days beforehand.

EU Commission Report on smuggling and fraud in excise goods

On 16 June 2014, the EU Commission published a report on the planning, implementation and results of a customs operation to tackle the risk of smuggling and fraud in excise goods. As a result of that operation, seizures in smuggled tobacco increased considerably. Furthermore, the report makes specific recommendations to ensure better risk targeting of smuggled excise goods going forward.

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

www.whitecase.com

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