

EU Customs Practice Group

May 2015

EU CUSTOMS POLICY

High-Level Seminar on Customs

On 7-8 May 2015, the Latvian EU Presidency convened a “Customs 2020 High-Level Seminar on Management of the External Border of the European Union” in Riga. During the event, representatives from the EU’s 28 national customs administrations, the European Commission, Europol and the European Agency for the Management of Operational Cooperation at the External Borders exchanged views on how to strengthen border controls while still ensuring quick and efficient border crossing for people. They also adopted the “Riga Declaration on the Efficient Management of the External Border (Passenger Controls)”.

TARIFFS

EU duties on heavy oils suspended

On 19 May 2015, the Council adopted a Regulation retroactively suspending customs duties on certain heavy oils and similar products, falling under Combined Nomenclature (CN) code 2707 99 99 as destined for use as refinery feedstock to undergo one of a number of specific processes. The duty suspension applies to imports made from 4 April 2013 until 30 June 2014, and was adopted merely to avoid a difference in treatment with very similar products that, at that time, enjoyed an autonomous duty suspension.

Duty Suspensions and Tariff Quotas

On 18 May 2015, the European Commission published its formal proposals to update the EU Duty Suspensions (DS) and EU Tariff Quota (TQ) Regulations in the July 2015 round. Both proposals were discussed in the Council’s Working Party on Customs Union on 21 May 2015 and formal adoption should occur in June.

The DS proposal seeks to add just over 100 products and remove 11 products, and would amend almost 40 existing suspensions. Under the TQ proposal, 2 TQs would be deleted and 7 TQs added. At the same time, the amount for 6 TQs would be increased, and the product description for 2 TQs would be amended.

Once adopted, these amendments are set to take effect on 1 July 2015.

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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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The January 2016 round has meanwhile started. Just under 200 DS applications and 14 TQ applications are on the table. The first meeting of the Economic Tariff Questions Group (ETQG) has already taken place. As always, three ETQG meeting will take place before the Commission issues formal updating proposals for the January round in the Autumn of 2015.

Soon, the July 2016 round will commence. The Member States have until 15 September 2015 to file applications, and therefore tend to accept applications from companies until early or late July.

FTA Update

a) United States

On 7 May 2015, the EU's Foreign Affairs Council took stock of the ongoing negotiations for the Transatlantic Trade and Investment Partnership (TTIP) agreement and encouraged the Commission to seek meaningful progress across all three pillars of the agreement by the Summer so as to enable the negotiators to *"tackle more delicate, political issues thereafter."*

In May, the Commission published its long-awaited paper on Investor-State Dispute Settlement (ISDS) and its updated proposal on horizontal regulatory cooperation under TTIP.

On 28 May 2015, the European Parliament (EP)'s International Trade (INTA) Committee adopted its long-awaited draft resolution on TTIP; this is a controversial topic so the vote in the plenary EP session scheduled for 10 June has been postponed while INTA considers various proposed amendments. As regards tariffs, INTA aims to eliminate all tariffs under TTIP, except on an exhaustive list of agricultural and industrial goods (not yet defined) which would either not be liberalised, or be liberalised at a slower pace.

The 10th round of the TTIP negotiations is scheduled for July 2015.

b) Japan

The 23rd EU-Japan Summit was held in Tokyo on 29 May 2015. The topics discussed included the pending negotiations on both a Strategic Partnership Agreement and Free Trade Agreement (with focus on access to each other's public procurement markets, geographical indications, and non-tariff barriers). The joint Summit statement notes that FTA negotiators have a mandate to settle outstanding differences with a view to reaching agreement encompassing all key issues preferably by the end of 2015. The next FTA negotiating round is set to be held in July 2015.

c) Ukraine

The EU's Foreign Affairs Council confirmed on 7 May 2015 that the EU-Ukraine Deep and Comprehensive

Free Trade Agreement (DCFTA) will be applied on a provisional basis from 1 January 2016, despite Russia's calls to postpone this date. Following trilateral meetings between the EU, Russia and Ukraine on 18 May 2015, EU Trade Commissioner Malmström noted that efforts to alleviate concerns expressed by Russia over the implementation of the DCFTA will be intensified. Practical solutions will be worked on and progress on these issues must be reported to the Ukrainian and Russian ministers and to the EU Commissioner no later than July 2015. Russia's concerns relate to customs cooperation, technical barriers to trade, and sanitary and phytosanitary issues.

d) Vietnam

The EU and Vietnam are due to hold their 13th negotiating round on a bilateral FTA on 8-12 June 2015 in Brussels. This has been portrayed as possibly the final round before the FTA negotiations that were launched in mid-2012 can be concluded. However, key outstanding issues to be resolved relate to EU access to Vietnam's public procurement market, Vietnam's rules on foreign investment (and a controversial rule requiring foreign investors to store their data in Vietnam), and Vietnamese tariffs for certain sensitive products (including rice, fish, sugar and textiles).

e) ASEAN

On 18 May 2015, the Commission published a Communication to the Council and the EP entitled "The EU and ASEAN: a partnership with a strategic purpose". The Commission is aiming to take trade relations with ASEAN to a different level – including by *"working towards an ambitious region-to-region Free Trade Agreement (FTA) building on bilateral agreements between the EU and ASEAN Member States."* Accordingly, the Communication mirrors the recent announcement made by ASEAN Trade Ministers and the EU Trade Commissioner that in coming months, the possibility of resuming the region-wide EU-ASEAN FTA negotiations will be explored.

f) Mexico

On 11 May 2015, EU Trade Commissioner Malmström and Mexico's Secretary of Economy Guajarda announced their joint intention to upgrade the EU-Mexico FTA which has been in place since 2000. The Commissioner is planning to seek a negotiating mandate from the Council after the Summer so that the negotiations could be launched before the end of 2015. A further announcement is expected to be made during the EU-Mexico Summit on 12 June 2015.

g) Turkey

On 12 May 2015, the EU and Turkey agreed to update their 20-year old customs union. The announcement came after technical discussions about each party's expectations and ambitions. The EU and Turkey will

now both conduct internal preparatory procedures (including an impact assessment), and seek negotiating mandates. The aim is for an updated customs union agreement to cover trade in agricultural products, but also access to services and public procurement, and investor protection. For various reasons (and due to related challenges), the negotiations on the EU-Turkey customs union update are not expected to start until next year (at the earliest).

h) Armenia

On 21 May 2015, the Commission reported that the EU and Armenia have reached an understanding on their future contractual relations that take into account Armenia's decision to join the Eurasian Economic Union (EEU – including Russia and certain other former Soviet Republics). The Commission has meanwhile requested a negotiating mandate from the Council with a view to negotiating a new agreement with Armenia to replace the DCFTA concluded earlier. That DCFTA became obsolete when Armenia decided to prefer the EEU project over an EU FTA.

i) Australia and New Zealand

EU Trade Commissioner Malmström is said to be considering seeking EU FTA negotiations with Australia and New Zealand. She is expected to include this proposal in the new EU trade strategy that she will present to the EU Member States in the Autumn of 2015.

CLASSIFICATION

EU Classification Regulations

In May 2015, the following Classification Regulations were published:

- **Commission Implementing Regulation 2015/803** classifies a plastic skull replica with flashing light emitting diodes under CN code 3926 40 00 as “other ornamental articles of plastic”.
- **Commission Implementing Regulation 2015/804** classifies a textile article designed to lift a person in a sitting position under CN code 6307 90 98 as “other made-up textile articles”.
- **Commission Implementing Regulation 2015/805** classifies a so-called “rate gyro”, used for giving various apparatus (such as wind turbines, engines or industrial machines) instructions on the appropriate position to operate, under CN code 9031 80 38 as “other electronic measuring or checking instruments, appliances and machines not specified elsewhere in Chapter 90”.

EU amends CN Explanatory Notes – mobile phone cases

On 22 May 2015, the Commission published amendments to the CN Explanatory Note (CNEN) for CN codes 4202 31 00 to 4202 39 00 (“Articles of a kind normally carried in the pocket or in the handbag”) to clarify that mobile phone cases are included in this heading.

Nomenclature Committee Developments

a) Textiles and Mechanical/Miscellaneous Sub-Section

On 26-29 May 2015, the 151st meeting of the Textiles and Mechanical/Miscellaneous Sub-Section of the Nomenclature Committee took place. The agenda indicates that the Committee was due to vote on a draft CNEN for steel pipe nipples and draft classification regulations on horticultural tents and puzzle books. The Member State experts were also set to conclude the discussion on the classification of glue guns, sewing machines, adaptors and cables for game consoles, smartphone docking stations, glass shelves, LED glitter lamps, sun blinds for cars, and decorative articles. Items on the agenda for first and further discussion included wheel sensor assemblies, STB power supply, control units for gas discharge lamps, sound machines, certain screws, and assembly kits for fixing water taps, toy cars, key holders, various types of medical braces, and child seats for bicycles.

b) Agricultural/Chemistry Sub-Section

The agenda of the 153rd meeting of the Nomenclature Committee's Sub-Section on Agriculture/Chemistry scheduled for 1-2 June 2015 shows that the Committee was due to discuss the classification of numerous products, including heavy oil undergoing a specific process, preparations based on synthetic lubricants, and various dietary and cosmetic preparations. The Committee would also be informed of the outcome of meetings of the Project Groups dealing with the chemical and food chapters of the HS held in March and April 2015.

ORIGIN

PEM Origin Protocols – Albania and Faroe Islands

The EU has published bilateral decisions concluded with Albania and the Faroe Islands, to replace the existing Origin Protocols under the respective EU trade agreements with a simple reference to the Regional Convention on Pan-Euro-Mediterranean (PEM) preferential rules of origin. These are therefore two more decisions making the PEM Convention the basis of origin rules under the EU's FTAs with countries in that region. This means that amendments to the PEM Convention can more swiftly enter into effect, without the need to update all the Origin Protocols between PEM countries each time.

EU-Israel Association Agreement list updated

The EU has published another update of the list of eligible and non-eligible areas under the EU-Israel Association Agreement. Products produced in Israeli settlements located within territories brought under Israeli administration since June 1967 are not entitled to benefits under the EU-Israel Association Agreement. This list therefore allows customs authorities of the EU Member States to check where exactly a product comes from in this context as all proofs of origin (movement certificates EUR-MED and invoice declarations alike) must bear the postal code and the name of the city, villages or industrial zone where production conferring originating status took place. The updated list is applicable from 1 June 2015.

Origin labelling for consumer goods still blocked

On 28 May 2015, the EU's Competitiveness Council again failed to agree on a Council compromise on the Commission's 2013 proposal for a new consumer product safety regulation, which contains a controversial "made in" labelling requirement. In an attempt to unblock the situation, the current EU Presidency (Latvia) presented a draft compromise text to serve as the basis for the Council position in trilogue meetings with the EP and the Commission. Based on a cost-benefit study recently made available by the Commission, the text suggested that mandatory origin labelling should only be imposed for two product categories, namely ceramics and footwear. However, the discussion during the Council meeting did not generate agreement and it is unclear what the next steps will be in this dossier.

Origin Committee developments

The report of the 217th meeting of the Origin Committee (held on 11-12 March 2015) has been made available. It shows that various matters related to the PEM Convention and the Generalised Scheme of Preferences (GSP) were discussed. In addition, the Committee discussed bilateral meetings held by the EU with Georgia and Algeria, and ongoing discussions with Turkey on updating the list of European Coal and Steel Community (ECSC) products to align it with the HS2012 changes. The Committee was also informed of the status of pending origin-rule related discussions with Vietnam and Japan in ongoing FTA negotiations. The Committee also discussed a working paper prepared by the Commission on documents on which an origin declaration may be made out. The intention is to publish that paper at some point so that companies as well as authorities have a best practices document available. Finally, exports to Palestine cleared through Israeli customs were discussed, as well as administrative cooperation from Saudi Arabia following the latter's removal from the EU's GSP list of beneficiary countries.

The agenda of the 219th meeting of the Origin Committee (scheduled for 9 June 2015) shows that the Committee will coordinate for the 22nd meeting of the

PEM Working Group, and discuss issues under the EU-Central America FTA, as well as receive a debriefing by the Commission on the EU-Japan FTA negotiation round held in April 2015. In addition, there will be information on a trade federation consultation on a horizontal value added rule, and the derogation to GSP origin rules granted to Cambodia for bicycles using parts from Malaysia will be discussed.

PROCEDURES

Accession of Macedonia to Conventions

As of 1 July 2015, Macedonia will join the Conventions on a common transit procedure and on the simplification of formalities in trade in goods, to which the EU, the EFTA countries and Turkey are also Contracting Parties. Macedonia was invited to join these Conventions earlier this year and deposited its instruments of accession in late May.

Guidelines on Customs Controls on Transboundary Shipments of Waste

The European Commission has published Guidelines for customs controls on transboundary shipments of waste. The aim of these guidelines is to support compliance with the EU's Regulation on shipments of waste in order to protect the environment and human health and create a level playing field for the EU industry. The document should also provide customs officials with an operational tool to support them in carrying out their controls and identifying non-compliant waste shipments, to enhance cooperation between the customs authorities and national competent authorities, and to stimulate compliance by companies.

Recast of EU Common Rules on Imports from non-WTO countries

On 19 May 2015, new so-called "recast" common rules for imports from certain third countries with which the EU is not yet linked via WTO membership were published in **Regulation 2015/755**. This Regulation repeals the previous version of these rules from 8 June 2015 and only concerns imports from Azerbaijan, Belarus, Kazakhstan, North Korea, Turkmenistan and Uzbekistan. Among other things, it sets out when and how surveillance of imports into the EU from these countries can be obtained, and how ultimately safeguard measures could be imposed.

MISCELLANEOUS

OLAF report 2014

The EU's anti-fraud office (OLAF) has issued the OLAF Report for 2014 in which it notes that during that year, it received even more complaints than before (including 81 on alleged customs fraud), opened 234 investigations, and continued to reduce the duration of investigations. OLAF recommended the financial recovery of over EUR 900 million, and the authorities actually recovered EUR 135 million in the customs and trade sector, the highest

sum within the total recovered amount (EUR 206 million) and almost double the amount recovered in 2013. For example, in the case studies section, the report discusses a case of evasion of anti-dumping duties on open-mesh fabrics of glass fibres originating in China by means of trans-shipment fraud via Thailand. Cooperation with the Thai authorities allowed the case to be resolved and 13 EU Member States together recovered EUR 3 million in evaded duties. OLAF also coordinated 7 major joint customs operations, including operations relating to imports of counterfeit goods (“Replica” and “Ermis”), undervaluation (“Snake”), and fraud with high-excise goods (“Warehouse II”).

WTO Member talks on the Environmental Goods Agreement

During a 6th negotiating round held on 4-8 May 2015, the WTO members participating in the Environmental Goods Agreement (EGA) talks (including the EU and the United States) again discussed the list of products that have been proposed for tariff elimination. The participants (including the EU and United States) earlier put forward 650 such products, and that list is now being narrowed down to avoid including products that are seen by environmental groups as not satisfying appropriate ecological criteria. The current aim is to complete this review in June/July 2015, and to then conclude the EGA before the important UN Climate Change Conference taking place in December 2015.

WTO talks on the Information Technology Agreement

During the meeting of the Information Technology Agreement (ITA) Committee of the WTO on 8 May 2015, the participants were urged not to block the expansion of the ITA but to “accept what is already on the table”; various participants emphasised the need to conclude the so-called “ITA 2” negotiations soon. Under the existing ITA, import tariffs on certain IT goods have been eliminated by participants. Attempts to expand the list of goods covered by ITA with another 200 items started a number of years ago, but is reportedly blocked over the refusal by China to accept inclusion of flat screen monitor screens in the list and the insistence of certain other parties (South Korea and Taiwan) that these should be included.

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