

## EU Customs Practice Group

April 2015

### EU CUSTOMS POLICY

#### Union Customs Code Developments

Following comments raised during the “inter-service” consultations (between the various European Commission Directorates and the Commission Legal Service) on the draft Implementing and Delegated Acts for the Union Customs Code (UCC), it has become clear that more time will be needed before these texts can be formally submitted to the other EU institutions and to the Customs Code Committee for review and approval. It is now expected that this process will run into the Summer, and that the final Acts will not be adopted until July or August. However, the detailed provisions in the two acts for the UCC are still set to apply from 1 May 2016. The time available for companies and customs administrations to adapt to the new EU customs rules will therefore be much less than the one year envisaged at the outset.

The Commission has indicated that it will start working on UCC guidelines in the Autumn of 2015, but also that it will be giving priority to developing the so-called “Transitional” Delegated Act. This Act would apply during the transitional period while necessary IT systems are being put in place, i.e. from 1 May 2016 until end 2020. The aim is to have these transitional rules ready for adoption by the end of 2015.

Meanwhile, the Commission has set up a special working group under the “Customs 2020” Programme to look into the UCC’s potential impact on the Member States’ IT systems. This Project Group is scheduled to complete this task by October 2015; its conclusions would then be included in the annual update of the EU’s Multi-Annual Strategic Plan (MASP), which sets out the EU’s IT strategy for customs rules and procedures. The next version of the MASP is not likely to be finalised until the end of the first half of 2016.

#### Data mining to detect customs violations

On 14 April 2015, the EU Council’s Customs Cooperation Working Party discussed a project on the use of data mining (i.e. data analysis technology based on mathematical algorithms) to detect possible customs violations. The purpose of this project is to increase the common use of data mining for the identification of Customs risk and detection of customs violations, to identify best practices, and to establish a customs data mining expert network to share information.

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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

### Increased GSP+ vulnerability threshold

On 17 April 2015, the Commission published a revised 'vulnerability' threshold for the special incentive Generalised System of Preferences arrangement for sustainable development and good governance (GSP+). As explained in the March 2015 Newsletter, the new Regulation raises this threshold retrospectively (as of 1 January 2015) from 2% to 6.5% to take into account the removal of four countries (China, Thailand, the Maldives, and Ecuador) from the list of GSP beneficiaries – and the related decrease in total GSP imports into the EU.

### Increased additional customs duties for US products

On 30 April 2015, the Commission amended the rate of additional customs duty on certain products originating in the United States. These additional customs duties were originally imposed in 2005 at the level of 15% as a retaliatory measure following the WTO's condemnation of the United States' Continued Dumping and Subsidy Offset Act (CDSOA). Every year, they are adjusted to match the deemed level of "nullification or impairment" caused by the CDSOA either by adding or removing products to the retaliation list, or by amending the level of additional duties.

The Commission considered that for Fiscal Year 2014, the level of nullification or impairment grew and it therefore increased the additional duty for the four products currently listed in Annex I to **Regulation 673/2005** (i.e. sweetcorn, frames/mountings for spectacles, crane lorries, and denim trousers) from 0.35% to 1.5% as from 1 May 2015.

### Tariff-Rate Quotas for wood exports from Russia

On 23 April 2015, the Commission published an amendment to the tariff-rate quotas applying to exports of wood from Russia to the EU. These tariff-rate quotas were put in place under a 2011 Russia-EU agreement reflecting Russia's WTO commitments to apply tariff-rate quotas (with lower export duty rates) for export of specified types of coniferous wood.

With this recent amendment, the suspension of the reduction of import ceilings that was earlier imposed for the quota period 2015 has been prolonged. This is in order to promote full utilisation of the tariff-rate quotas (in particular by traditional importers) for the quota period 2016.

## FTA Update

### a) United States

The 9<sup>th</sup> round of Transatlantic Trade and Investment Partnership (TTIP) negotiations took place on 20-24 April 2015 in New York. During this round, the parties discussed all three pillars of the negotiations (market access, regulatory cooperation and rules) but certain issues, such as rules of origin, were not discussed. The

next round of negotiations is scheduled for 13-17 July 2015. A political stocktaking meeting is expected to take place in early Autumn. Within the EU, the important vote of the European Parliament's (EP's) International Trade (INTA) Committee on a draft EP Resolution on TTIP negotiations has been postponed and is now scheduled to take place on 28 May 2015. This is reportedly due to the fact that no less than 898 amendments have been tabled. The EP plenary vote has consequently also been pushed back and is now expected to occur in June.

On 20 April 2015, EU Trade Commissioner Cecilia Malmström presented a Commission report entitled "Small and Medium Sized Enterprises and the Transatlantic Trade and Investment Partnership" which shows the results of a 2014 survey on the challenges EU Small and Medium Sized Enterprises (SMEs) face when exporting to the US. In the area of customs, the report specifically identifies certain SME hurdles such as customs valuation methods, costly container inspections, and payment of a sales tax for goods (even if only placed under temporary importation), combined with difficulties to obtain duty drawback at re-export from the US, long lead-times and the need for costly brokering services to manage complex US rules.

Meanwhile, it has also been reported that parliamentarians in certain EFTA countries, such as Norway and Switzerland, have criticised the EU's negative attitude towards a possible TTIP mechanism allowing third countries to accede to it.

### b) Japan

The 10<sup>th</sup> round of FTA negotiations between the EU and Japan took place on 22-28 April 2015. The parties held discussions on most of the areas for inclusion in the future trade agreement and focussed on further consolidation of the negotiating texts. The 11<sup>th</sup> round of the EU-Japan FTA negotiations will take place in early Summer 2015.

### c) Canada

It is expected that Canada will ratify the Comprehensive Trade and Economic Agreement (CETA) this Autumn at the latest. The ratification of CETA on the EU side, on the other hand, is expected to be significantly delayed as the European Commission has not yet finished the legal scrubbing of the final consolidated CETA text (after which the text of the agreement must be translated into the EU's 24 official languages). Furthermore, it is generally expected that the European Commission may want to wait for the legal opinion which it has requested from the EU Court of Justice (CJEU) on the EU competence to sign and ratify the FTA with Singapore.

Meanwhile, the Commission has issued a proposal for a Council Decision to sign and allow provisional application of the EU-Canada Strategic Partnership Agreement (SPA). Negotiations for this SPA were concluded in March 2014. The SPA generally aims to advance EU-Canada foreign policy and sectoral cooperation, as well as provide a platform for joint action on the international stage. The SPA also contains customs specific provisions with respect to, *inter alia*, cooperation and exchange of views on each others' laws and regulations on border management, and a commitment to continue to engage in customs cooperation.

#### d) Singapore

On 27 April 2015, EU Trade Commissioner Cecilia Malmström responded to a question from a Member of the EP (MEP) on the EU-Singapore FTA. This response clarified that the Commission will not issue a proposal on the signature and provisional application of the FTA until it receives the requested CJEU opinion on the EU competence to sign and conclude the EU-Singapore FTA alone, or whether it should be concluded as a "mixed" agreement by both the EU and the EU Member States.

#### e) Vietnam

On 7-9 April 2015, a delegation of EP INTA members held meetings with the Vietnamese Prime Minister, the Foreign and Trade Vice-Ministers, and other Vietnamese stakeholders to discuss the ongoing EU-Vietnam FTA negotiations. During these meetings, the EP delegation underlined that substance should prevail over speed in concluding the negotiations.

#### f) Ukraine

An EU-Ukraine Summit took place on 27 April 2015. The EU and Ukraine announced that after January 2016, there will be no further delays in the implementation of the EU-Ukraine Deep and Comprehensive Free Trade Agreement (DCFTA), despite Russia's repeated requests for such delays. However, at the same time the parties did refer to the importance of trilateral consultations between the EU, Ukraine and Russia on DCFTA implementation.

#### g) ASEAN

On 26 April 2015, ASEAN Trade Ministers and EU Trade Commissioner Malmström announced that the possibility of resuming the region-wide EU-ASEAN FTA negotiations will be explored in the coming months. Senior officials will meet towards the end of the year to take stock of the situation and explore the way forward, and report back to the Ministers. The negotiations between the two blocs were paused in March 2009; after that date, the EU has started FTA negotiations with certain individual ASEAN countries, but the ultimate EU aim has always remained a regional FTA.

#### h) India

On 23 March 2015, the Indian Minister for Commerce and Industry stated that India is ready to resume FTA negotiations with the EU. The EU-India FTA negotiations were launched in June 2007, but have been stalled since the summer of 2013. So far, the EU has not issued an official reaction to the Indian statement.

#### i) Mexico

The EU and Mexico are reportedly "in the final stages" of their so-called 'scoping exercise' to decide on the scope of future negotiations to modernise the existing EU-Mexico FTA. The EU-Mexico FTA has been in effect since October 2000. The scoping exercise is expected to result in a joint vision report on the modernisation of the EU-Mexico FTA and an economic impact assessment, but this is all taking longer than expected to materialise.

#### j) Moldova

On 14 April 2015, the European Commission published a proposal for a Regulation to implement the safeguard clause and the anti-circumvention mechanism in the EU-Moldova Association Agreement in the EU. The safeguard clause in this Agreement provides for a possibility to suspend further tariff liberalisation or reintroduce the MFN customs duty rate in case the tariff preferences would result in an unexpected and significant increase of EU imports causing economic damage to EU industry. The anti-circumvention clause in the Association Agreement can trigger reintroduction of the MFN customs duty rate when EU imports of certain agricultural goods from Moldova exceed a given threshold without due justification of their exact origin. The proposal still has to go through the EP and the Council before it can be adopted and published in the Official Journal of the EU.

#### k) Thailand

On 31 March 2015, the EABC (a European trade lobby in Thailand) reportedly called for resumption of the EU-Thailand FTA negotiations despite the lack of a democratically elected government in Thailand (which was declared an issue of concern by the EU Council last year). The EABC reasons that the EU should already go ahead with the FTA talks as it will take some time to discuss many technical issues before negotiations can be concluded. EABC underlines that the agreement itself should only be signed once an elected Thai government is reinstated. The EU has not issued any recent statements with respect to possible resumption of the FTA negotiations with Thailand.

## *l) Turkey*

The European Commission and Turkey are expected to officially announce talks to modernise the EU-Turkey Customs Union before the Turkish general elections on 7 June 2015. The modernisation of the current agreement would relate to, *inter alia*, the inclusion of agricultural goods, services and investment in the scope of the Customs Union, and the possible involvement of Turkey in trade negotiations with third countries (notably in the TTIP negotiations with the United States).

## CLASSIFICATION

### Commission orders revocation of BTI for juices

On 24 April 2015, the Commission adopted a Decision addressed specifically for Germany, Spain, France, Austria, Portugal, and the UK to revoke certain listed Binding Tariff Information (BTI) issued for fruit juices, fruit juice concentrates, vegetable juices, and vegetable juice concentrates (whether or not mixed, as well as additives, diluted with water or aerated).

The Commission considers that these BTIs contain a tariff classification that is incompatible with the general rules for the interpretation of the Combined Nomenclature (CN). However, these BTIs can continue to be invoked by their holders for a transitional period of 6 months from the date of notification of the BTI revocation to the holder by the competent customs authorities.

### EU endorses HS Explanatory Notes and Opinions

On 1 April 2015, the EU endorsed a list of amendments to the Explanatory Notes (ENs) to the Harmonised System (HS) Convention (related to Chapter 29) and Classification Opinions (related to 10 HS Chapters) approved by the September 2014 session of the HS Committee (54<sup>th</sup> Session). As a result, BTI issued by the EU Member States which conflicts with these HS instruments has ceased to be valid, as foreseen under the EU's customs code.

### EU amends CN Explanatory Notes for Chapter 30 acids

On 30 April 2015, the EU also published amendments to the CNENs so as to introduce the recommended daily allowance for listed essential amino acids and essential fatty acids.

## New Classification Regulations

In the month of April 2015, the following EU Classification Regulations were published:

- **Commission Implementing Regulation 2015/676** classifies a wrist stabiliser in the form of a sleeve with two 'velcro-type' straps under CN code 6307 90 10 as other made-up articles.

- **Commission Implementing Regulation 2015/677** classifies a combination of four table legs of base metal for fixing under a tabletop under CN code 9403 90 10 as metal parts of furniture.

- **Commission Implementing Regulation 2015/712** amends a 2012 Classification Regulation for so-called "LED walls" suitable for sport or entertainment events, retail signage, etc. as it contains a CN code which no longer exists. As per the amendment, the currently applicable CN code is 8528 59 39, for other colour flat panel displays able to display signals from automatic data-processing machines with an acceptable level of functionality.

## Nomenclature Committee Developments

### a) CN Sector

The report of the 149<sup>th</sup> meeting of the CN Sector of the Customs Code Committee (held on 31 March 2015) shows that the Committee examined, *inter alia*, proposals for the possible modernisation of CN Chapter 6 (live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage), and for new CN codes for soy-based beverages and other cereal and nut beverages, for fluorinated greenhouse gases, for tableware and kitchenware, and for lubricants, succinic acid and 1,4-butanediol. The Committee also discussed a proposal to introduce statistical Taric codes for rare earths, and a revision of **Regulation 2658/87** on the tariff and statistical nomenclature and on the Common Customs Tariff (the so-called "Base Regulation") to align it with the Lisbon Treaty which will ultimately lead to changes in the voting procedure for the CN.

### b) HS/WCO Coordination Sector

The minutes of the 147<sup>th</sup> meeting of the HS/WCO Coordination Sector of the Customs Code Committee that took place on 4-6 March 2015 were made available in April. During this meeting, the Committee accepted the draft Commission communication endorsing certain HS instruments adopted during the HS Committee's 54<sup>th</sup> session (see above) and discussed, *inter alia*, a possible amendment of the ENs to Chapter 41 (leather) and heading 3824 (anti-scaling preparations) and a possible amendment of heading 7318 (fasteners). The parties also held a discussion on the classification of non-dairy cream, and on the classification of IGBT modules from China as static converters under subheading 8504 40 (rather than as semiconductor products of 8541 29).

The 150<sup>th</sup> meeting of the HS/WCO Coordination Sector of the Customs Code Committee is scheduled to take place on 12-13 May 2015. The agenda for the meeting includes a possible amendment of the Explanatory Notes to heading 3824 (anti-scaling preparations), as well as pre-coordination of a HS Review Sub-Committee meeting and post-coordination of the 55<sup>th</sup> HS Committee meeting.

### c) *Mechanical/Miscellaneous Sub-Section*

The minutes of the 148<sup>th</sup> meeting of the Textiles and Mechanical/Miscellaneous Sub-section of the Nomenclature Committee that took place on 9-11 March 2015 has been made available by the European Commission. The report shows that the Commission adopted a positive opinion on the classification of wrist supports (see above) and table legs (see above), but was unable to adopt an opinion (resulting in a so-called 'no opinion') on the above-mentioned regulation on the classification of LED walls (CN code 8528 59 39). The Commission also continued its examination of the proposed classification of electronic money boxes, photo books, curtain materials, mop heads presented without handle, arm sleeves for smartphones, glue guns, mixer-converters analogic/digital pre-amplifier device, drawing boards, vibration engines used in mobile phones and tablets, photovoltaic (PV) junction boxes, free-wheel sprocket wheels, and LED glitter lamps. The Committee also discussed a revision of the CNENs to heading 7019 (Glass fibres (including glass wool) and articles thereof (for example, yarn, woven fabrics)) and revisited the classification of long trousers (for practices to determine whether they are men's or women's trousers).

A first discussion took place on the classification of adaptors and cables for game consoles, toner cartridges, cash drawers; telephone handset lifters, laminating machines, play mats, smartphone docking stations for use with only one type of mobile phone, and glass shelves.

In early April, the Commission launched a written vote on a number of drafts, including a draft amendment of the CNENs as regards mobile phone cases, textile slings, skull replicas and a draft classification regulation for gyroscopes. The vote period ran from 3 to 30 April 2015, so results are expected shortly.

## PROCEDURES

### EU-Hong Kong Customs Cooperation Action Plan

Disagreement between the European Commission and the EU Council on competence is extending beyond the EU-Singapore FTA (and possibly other FTAs, as explained above): On 7 April 2015, the European Commission issued a statement on the Council's endorsement of the EU-Hong Kong Action Plan on Cooperation in the Customs Enforcement of Intellectual Property Rights, noting that such endorsement is not necessary/appropriate, as this is a non-binding instrument which fully reflects an existing EU position and policy and the Commission alone is therefore empowered to sign this Action Plan. The Commission also stated that the changes to the Action Plan proposed by the Council cannot be accepted as they would breach confidentiality requirements in the EU-Hong Kong Agreement on cooperation and mutual administrative assistance in customs matters.

On 15 April 2015, the EU Council rejected the Commission's arguments, stating that the representation of the EU and the determination of policy are two separate functions, and that the determination of the EU's position on policy questions dealt with in the Action Plan therefore pertains to the Council's functions.

### Accession of Macedonia to the Conventions on a Common Transit Procedure and Trade Formality Simplification

On 15 April 2015, the European Commission issued two proposals for the position to be adopted by the Council in the competent EU-EFTA Joint Committees; these amendments (which reflect the accession of the Former Yugoslav Republic of Macedonia) pertain to the Convention on a common transit procedure and the Convention on the simplification of formalities in trade in goods.

### Judgment on Remission of Import Duties (Schenker)

On 16 April 2015, the CJEU issued a judgment in Case T-576/11 (*Schenker Customs Agency BV v. Europese Commissie*) as regards the remission of import duties. The applicant in this case (Schenker) had submitted 52 declarations for the release into free circulation of glysofate while claiming the origin to be Taiwanese. However, after investigation the glysofate was found to be of Chinese origin, and Schenker was ordered to pay higher (anti-dumping) duties. It sought remission of these duties under Article 239 of the Community Customs Code (allowing such action under "special situation" if certain conditions are met), but this was refused by a Commission Decision, so Schenker filed an action of annulment of that Decision.

The CJEU rejected the applicant's arguments which were built on claims regarding the issuance of certificates of incorrect origin by the Taiwanese Chamber of Commerce, the Netherlands authorities' alleged failure to act even though they were aware of the fraudulent situation, and the Commission's alleged failure to exercise effective control over the fraud investigation and to coordinate the case. The Court further agreed with the Commission that the applicant did not exercise the necessary diligence, which meant that the relevant requirement for the remission of customs duties in accordance with Article 239 was not satisfied. The Court thus concluded that the applicant was not in a "special situation" under the Customs Code provision.

## ORIGIN

### Origin Committee Developments

The 218<sup>th</sup> meeting of the Origin Section of the Customs Code Committee took place on 22-23 April 2015. While the report for that meeting has not yet been made available, the agenda indicates that the Commission and Member States were scheduled to discuss the state-of-play of the registered exporter (REX) project and a draft

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letter to be sent to the beneficiary countries in order to inform them about the future application of the REX system. The Committee was also set to discuss GSP-related collaboration with Norway, Switzerland and Turkey (including the creation of an interest group for sharing preferential origin-related information with Turkey). The agenda further included a discussion on pan-Euro-Mediterranean (PEM) matters, a debrief on origin rules related discussions with Vietnam, Egypt, Georgia, Turkey, Moldova, and Chile, and the verification of declared non-preferential origin for imported goods. Various issues related to the EU-Turkey customs union, and the terminology in, and validity of, supplier's declarations were also set to be on the table.

### **Textile products from the Dominican Republic**

On 16 April 2015, the EU published a decision of the Cariforum-EU Special Committee on Customs Cooperation and Trade Facilitation of 10 March 2015 granting a derogation to the Dominican Republic from the origin rules laid down in the CARIFORUM-EU Economic Partnership Agreement (EPA). As a result, special origin quotas apply until 9 March 2017 as regards certain denim trousers and cotton T-shirts from the Dominican Republic, allowing the application of simplified origin rules for those products until the quota is exhausted.

This derogation request by the Dominican Republic was based on the fact that its industry is in a difficult situation because the working and processing carried out in the neighbouring country Haiti (not considered a CARIFORUM state within the EPA framework) is affecting compliance with the origin rules in the EU-CARIFORUM EPA. The Dominican Republic argued that if it can no longer source from Haiti, then continued textile exports to the EU would be significantly affected.

### **MISCELLANEOUS**

#### **EU Launches Data Collection Project on Export Control Policy**

The European Commission announced on 23 April 2015 that it has contracted a consultant to conduct a "data collection project" in relation to the ongoing review of the EU's dual-use export control regime. This data collection project aims to support the impact assessment of economic, social and environmental aspects of the various options outlined in the Commission's communication of April 2014 on the EU dual-use review. The Commission is expected to submit a formal proposal on the EU's future Regulation on dual-use export controls in late 2015.

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