

EU Customs Developments

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EU Customs Policy

Full UCC implementation not possible by 2020

In a meeting held by the European Parliament (EP)'s Internal Market and Consumer Protection (IMCO) Committee on 21 June 2017, the EU Commissioner for customs matters, Pierre Moscovici, confirmed that it is clear that certain IT systems required for full implementation of the Union Customs Code (UCC) will not be ready by the **2020** deadline.

Accordingly, the European Commission and EU Member States are exploring the possibility of amending the UCC (and certain related legal instruments) to allow more time for completion of the IT system upgrade. The next version of the Multiannual Strategic Plan (MASP) will reflect a new time plan for the various systems, and may be pointing to **2025** for certain key IT changes.

It further seems that centralised clearance, the key process to be introduced under the UCC by 2020 as well, will initially likely be phased in only by certain Member States. Centralised clearance should ultimately allow handling of all customs formalities through a single customs office, including for customs operations in other EU Member States. To allow centralised clearance across the EU, a comprehensive upgrade of existing IT systems will first be required.

UCC Implementing and Delegated Act amendments

On 8 June 2017, Commission Implementing Regulation 2017/989 was adopted to correct and amend the UCC Implementing Regulation (2015/2447) as of 14 June 2017. These amendments aim to clarify and simplify the rules for issuing long-term supplier's declarations. They also introduce a longer period for exporters to register under the new EU Registered Exporter (REX) system, while clarifying the rules for guarantees under international road transit operations and the linkage between export and transit of excise goods.

Amendments to the UCC Delegated Regulation are still under consideration. They involve a new definition of "exporter", preferential treatment of goods under inward processing, and guarantee reductions/waivers. These amendments could still be adopted in the course of 2017.

EP resolution on customs management

On 16 May 2017, the EP adopted a detailed resolution on using evaluation of external aspects of customs performance and management as a tool to facilitate trade and fight illicit trade. In this resolution, the EP calls on the Commission to work closely with the EU Member States to ensure coordinated, uniform and efficient UCC implementation (and investigate divergent practices and their impact on trade diversion). The EP also calls on the Commission to address gaps in control systems (e.g. for goods transiting the EU) in close cooperation with international organisations such as the WCO and the OECD, reduce the administrative burden for legitimate traders, and ensure sufficient financing for IT systems while allowing for proper risk assessment. The EP also wants the Commission to deepen customs cooperation in the fields of intellectual property rights with third countries and free trade zones that are most frequently the source of illicit trade. Finally, the EP thinks the Commission should monitor respect for preferential origin rules more carefully.

Tariffs and FTA news

Duty suspensions and tariff quotas

On 27 June 2017, the Commission published two Regulations amending the lists of duty suspensions (DS) and tariff quotas (TQs) as of 1 July 2017. 69 new DS are now in place, while 2 DS have been eliminated, and 71 existing DS were modified with respect to the product description, classification or end-use requirements. The TQ update introduces 7 new TQs and increases the volume of 5 existing TQs.

The discussions on new requests for DS and TQs for the **January 2018 round** is ongoing. Also, the **July 2018 round** discussions will soon commence, as the deadline for Member States to transfer eligible dossiers to the European Commission was 15 September 2017.

Annual changes to additional EU customs duties on certain US products

As of 1 May 2017, the list of US products subject to additional EU duties was updated. In 2005, a World Trade Organization (WTO) panel found the US was violating WTO rules with its Continued Dumping and Subsidy Offset Act (CDSOA). As a result, the EU has imposed retaliatory duties on certain US products to compensate for the deemed level of nullification or impairment of US concessions caused by CDSOA. Every year, the level of nullification/impairment caused by CDSOA disbursements to US companies is re-estimated, and the level of corresponding additional EU duties adjusted accordingly. Either products are added to the list, or the level of additional duty amended.

This year, the level of nullification was found to have increased. The level of the additional duty on subject US products was therefore increased to 4.3% (from 0.45%), and no products were added to the list. Products subject to the additional duties are classified under tariff lines 0710 40 00 (sweetcorn), 9003 19 30 (spectacle frames), 8705 10 00 (crane lorries) and 6204 62 31 (denim trousers for women).

GSP+ status reinstated for Sri Lanka

As of 19 May 2017, Sri Lanka has re-gained its special GSP+ status under the EU's Generalised Scheme of Preferences (GSP). This development was put into effect through Commission Delegated Regulation 2016/836, and means that Sri Lanka will have duty-free access to the EU for most products. Sri Lanka lost its GSP+ status in 2011 over certain human rights concerns.

Bangladesh warned about losing special GSP benefits

On 17 May 2017, EU Trade Commissioner Cecilia Malmström warned Bangladesh that if it does not make progress with respect to labour rights and modernisation of textile factories, the EU could decide to temporarily withdraw its GSP benefits. Bangladesh currently enjoys tariff benefits under the EU's special GSP regime for least-developed countries. On 15 June, the EP also adopted a resolution expressing concerns in this area.

Autonomous EU preferences for certain Ukrainian goods

On 13 June 2017, negotiators for the EP's International Trade (INTA) Committee and the Council reached

agreement on the Commission's proposal to introduce autonomous temporary trade preferences for Ukrainian agricultural and industrial products. These temporary benefits would go beyond the preferences foreseen in the EU-Ukraine trade agreement (see below in the FTA update). This development comes after the Commission argued last year that the economic crisis in Ukraine called for more European support to facilitate the movement of goods, and proposed to scrap almost 50 tariffs and quotas for agri-food products and several industrial products for a period of three years.

The Council and the EP agreed to introduce tariff quotas for tomatoes, corn and certain grains which were smaller than proposed by the Commission (and with strict conditions attached); this was in line with an EP resolution adopted in May. They also rejected the Commission's proposal to offer additional tariff preferences for urea fertiliser.

The Council formally agreed on 17-18 July, after the EP approved the compromise text on 4 July 2017. The new preferences are expected to enter into force by the **end of September**, after they have been published in the EU's Official Journal.

Call for revival of international “green goods” negotiations

It has been reported that Japan, Korea, Norway, New Zealand, Taiwan, Turkey, Hong Kong and Switzerland called for the resumption of negotiations for a so-called WTO Environmental Goods Agreement (EGA) during a meeting of the WTO's Committee on Trade and Environment in June. The EGA negotiations between 18 WTO countries were launched in July 2014, but stalled in December 2016. The EU has observed that it is committed to concluding EGA “once circumstances allow us to so and participants are ready for engaging”.

Brexit news

Following the UK's letter of 29 March 2017 triggering the Brexit negotiations (see our previous issue), the EU27 leaders adopted “guidelines” for the EU-UK talks on 29 April 2017. These guidelines define the framework for negotiations and set out overall EU positions and principles.

On 22 May 2017, the Council adopted a decision authorising the opening of Brexit negotiations and the directives for the first phase of negotiations, i.e. the Commission's negotiating “mandate”. The Brexit negotiations between the EU and the UK officially started on 19 June 2017, and initial focus is on ensuring a seamless border between Ireland and Northern Ireland, citizen's rights and financial aspects of Brexit.

Since the UK elections in early June, UK Brexit positions are increasingly shifting and divided, varying from support for a hard Brexit (“no deal is better than a bad deal”), to a softer Brexit (as advocated by the Confederation of British Industry (CBI) and certain industry sectors, including food & beverages and car manufacturing).

Specifically as regards future customs arrangements, the UK in August issued a paper in which it is proposing a transitional arrangement involving essentially an EU-UK customs union and a waiver from the standard EU requirement to submit pre-arrival and pre-departure summary declarations for imports and exports. For the longer-term, the UK is seeking what it calls a “highly streamlined customs arrangement” in which the existing Common Transit Convention could be used to simplify declarations for UK trade with third countries via the EU. It is also advocating less burdensome “fast-lane” procedures for Authorised Economic Operators (AEOs), using technical solutions such as number plate recognition cameras to avoid long queues at UK ports. Alternatively, the UK is suggesting a new EU-UK customs partnership under which the UK would impose EU rules and tariffs on all third country goods entering the EU via the UK. For third country goods which stay in the UK, the UK would however apply its own rules and tariffs. While such a solution could avoid payment of tariffs between the UK and the EU, it would require putting in place a tracking system to check where third country goods ultimately are consumed and extensive refund procedures for goods staying in the UK.

In relation to potential UK FTAs, the EP adopted a resolution on 5 April 2017 threatening to exclude the UK from EU trade discussions with third countries if it begins Free Trade Agreement (FTA) talks with non-EU countries or if it favours “its own interests” before formal withdrawal from the EU. The resolution also calls for making the Court of Justice of the EU (CJEU) the competent authority for interpretation and enforcement of the withdrawal agreement.

Meanwhile, Crawford Falconer, former New Zealand Ambassador to the WTO, has been hired to manage efforts relating to UK FTAs. Canada's International Trade Minister has confirmed several informal meetings on

this topic with the British counterpart. During a May visit by Australia's Prime Minister Turnbull, Prime Minister Theresa May announced that a UK-Australia FTA remains a priority for the UK. Turnbull, in turn, has confirmed that his country wants to conclude a bilateral UK-Australia deal speedily, but also that he hopes to conclude an FTA with the EU before Brexit.

In other UK FTA news, PM May met with Japanese Prime Minister Abe in late August with the aim to secure a swift bilateral FTA. However, it became clear that Japan is prioritising finalisation of its FTA with the EU, while also pushing for the UK to secure a soft Brexit with maintained access to the EU's Single Market after Brexit. The UK further confirmed in May that it wants to pursue stronger ties with China, laying the groundwork for a bilateral agreement with the country. In June, US and UK trade officials said they had discussed laying the groundwork for a future US-UK FTA. The UK has even created a Trade and Investment Working Group to do the preliminary scoping work in relation to a future US-UK FTA, which met for the first time on 24 July. Finally, Switzerland has reported that talks on a post-Brexit Swiss-UK trade relationship have also started.

The EU side has announced that by October 2017, it would like to present a joint EU-UK approach on how the current EU tariff rate quotas (TRQs) could be managed after Brexit. Other WTO members are indeed keen to know if and how these existing TRQs would be divided between the EU and UK. In late August, it was reported that the EU and the UK are close to an agreement under which the existing EU TRQs would be split among the UK and the EU27 based on import patterns in the last three years.

EU FTA Update

a) Future EU FTAs – globalisation and sustainable development

On 10 May 2017, the Commission presented its "Reflection Paper on Harnessing Globalisation". This paper states that future EU FTAs should include sections on tax cooperation, as well as binding social and environmental clauses (possibly allowing for trade sanctions in case of non-compliance) and lower tariffs on clean goods. The aim of the paper is to start an internal EU debate, and Commission President Juncker is expected to announce concrete related proposals later this year. On a related note, the Commission issued a non-paper on trade and sustainable development in EU trade agreements on 11 July 2017. In this non-paper, it proposes either a more assertive application of FTA provisions, or a sanctions-based system.

Meanwhile, there have been various related calls for enforcement mechanisms in EU FTAs. On 27 April 2017, the EP adopted a non-binding resolution urging the Commission and EU Member States to enforce labour rights and human rights standards for the textile sectors in trade agreements with developing countries. The EP also called for EU-wide labelling standards for "fair clothing". On 19 May 2017, the Council called for more efforts to strengthen environmental and social standards in the garment supply chain. On 28 June 2017, INTA chair Bernd Lange presented a model chapter to enforce labour rights in future FTAs, including a sanctions mechanism in the form of a "monetary assessment" (or even the suspension of obligations) if the partner country fails to implement basic labour standards. During a related discussion, EU Trade Commissioner Malmström expressed scepticism about sanctions clauses in FTAs due to difficulties with enforcement, referring to failed US attempts to have similar clauses in its FTAs.

b) Japan

Following intensive negotiations on an EU-Japan Economic Partnership Agreement (EPA) in April, May and June, a political agreement in principle was announced on 6 July 2017, just before the G-20 meeting on 7-8 July. Both sides must now finalise the details of the text and are aiming to complete the legal scrubbing of the agreement by **mid-2018**. The aim is to have the EPA start to apply from **early 2019**.

At entry into force of the EPA, Japan will eliminate tariffs for more than 90% of the EU's exports, while the EU will eliminate tariffs on 96% of Japan's exports. Over time, 97% of EU goods (including all industrial goods) will enjoy duty free treatment in Japan, while a zero tariff will apply to almost 100% of Japanese goods after 15 years. The EU will eliminate tariffs on Japanese cars after 7 years (subject to a snap-back if Japan does not abide by commitments to eradicate certain non-tariff barriers in that sector). Tariff rate quotas have been established for sensitive agricultural items, and Japan will gradually phase out duties for certain industrial goods (leather and shoes). The agreed rules of origin reflect various sensitivities, in particular in the automotive sector.

The political agreement covers more than 90% of the ultimate agreement, but certain key issues such as data

flows and investment protection remain outstanding. On data protection, the EU and Japan have confirmed their intention to achieve “a simultaneous finding of an adequate level of protection by both sides” by early 2018. Japan is at this stage reluctant to accept the EU’s proposal on an Investment Court System, so this will require further talks. In related news, the EPA has been subject to increased attention and criticism from civil society as of late, with certain related MEP concerns over sustainable development, regulatory cooperation and public services.

c) United States

Following various related meetings in April and May, including with US Commerce Secretary Wilbur Ross, EU Trade Commissioner Malmström has stated that both sides need more time to decide on whether (and how) to resume negotiations on an EU-US Transatlantic Trade and Investment Partnership (TTIP) agreement. Both Ross and US Trade Representative Robert Lighthizer have stated that the US is open to resuming TTIP negotiations.

Meanwhile, the EU and US agreed to establish a “joint action plan on trade” during a meeting between President Trump, Council President Tusk and Commission President Juncker on 25 May. A joint task force will focus more on finding solutions to trade irritants and easing trade in food products, cars and other products, than on relaunching TTIP negotiations.

d) Canada

The EU-Canada Comprehensive Economic and Trade Agreement (CETA) was expected to enter provisionally into force in July, but there have been delays due to certain issues relating to new Canadian rules on drug patents flowing from the agreement. On 8 July 2017, EU Commission President Juncker and Canadian Prime Minister Trudeau announced in a joint statement that CETA will start to apply provisionally as from **21 September 2017**. (Definitive CETA application would require ratification on the EU side by all relevant parliaments of the 28 EU Member States, so this will require more time.)

As of the provisional application date, more than 85% of agreed tariff cuts will enter into force. EU traders wishing to export with tariff preferences under the agreement will not need to obtain origin certificates from relevant authorities, but rather be required to self-declare originating status and (for shipments above EUR 6000) register in the EU’s Registered Exporter System (“Rex”) after expiry of a transitional period ending on **31 December 2017**. Canada will introduce a similar self-certification system for companies exporting to the EU. EU companies that already have an “approved exporter” number (obtained under another EU FTA) can use that when trading under CETA until **1 January 2018**.

In late July, the French Constitutional Court dismissed a number of claims that CETA was not in line with French law, thus removing a hurdle for pending CETA ratification by France.

e) Singapore

In May 2017, the CJEU issued Opinion 2/15 clarifying the competence of the EU v. the EU Member States for concluding FTAs. In its Opinion, the Court ruled that almost all trade related areas of the EU-Singapore FTA, including in relation to transport services, foreign direct investment, intellectual property rights and sustainable development, lie within the exclusive competence of the EU. It also clarified that the FTA areas of shared EU and Member State competence are limited to non-direct investment, investor-state dispute settlement (ISDS), and certain related issues.

The EU and Singapore are currently discussing how to bring the draft agreement’s investment protection provisions in line with the Court’s Opinion. Singapore has signalled its readiness to split the FTA into a trade part and a separate investment agreement. The EU has further requested to introduce the new Investment Court System into the agreement.

The Commission is also in discussions with EU Member States and the EP as to whether EU trade agreements should in the future be treated separately to accelerate their ratification, but will not unveil its proposed way forward until later this year. Commission President Juncker is expected to reveal his proposal during his annual State of the Union at the EP Plenary Session of 13 September 2017. Various politicians have called for this EU strategy in order to avoid CETA-like situations in which a regional parliament of a Member State (in that case, the parliament of Wallonia) can block ratification due to the inclusion of certain investment protection provisions. In July, Commission Vice-President Jyrki Katainen suggested that

investment chapters should be excluded from FTAs, noting that an investment agreement is not of the utmost importance for many EU trading partners.

f) South Korea

In April, EU Trade Commissioner Malmström reportedly urged South Korea to implement key provisions of the Trade and Sustainable Development chapter of the EU-Korea FTA. These provisions pertain to ratification of ILO conventions and guaranteeing the freedom of association and the right to collective bargaining. On 17 May, Malmström further noted in a speech to the EP that the Commission will propose FTA amendments to the new Korean government. However, Korea's interest in an investment chapter is uncertain as it would be hesitant to accept the EU's new investment court proposal.

On 18 May 2017, the EP adopted a non-binding resolution calling on the Commission to act on labour right violations in South Korea. The resolution further points to, *inter alia*, certain technical barriers to trade in Korea, such as issues relating to direct transport and repaired goods rules, certificate-related matters and restrictions on the shipping of beef and pork from the EU.

g) Vietnam

In August, it was reported that the EU and Vietnam have finalised legal scrubbing of the bilateral FTA on which they concluded negotiations over a year ago. Translation of the text into all official EU languages is expected to be completed in October. After that, the FTA will be submitted to the Council for signature as soon as possible, the aim being provisional FTA application in **2018**.

h) Mexico

Following the third round of negotiations on updating the existing EU-Mexico FTA on 3-7 April 2017, the EU published 16 proposals covering, *inter alia*, trade in goods and origin rules.

The fourth round of negotiations took place from 21 June through 5 July in Mexico City, and the Commission's report on this round confirmed "significant progress" on most of the key issues. In July, the EU and Mexico exchanged market access offers for agriculture, services and public procurement, which the Commission welcomed as "good offers". However, it noted sensitivities on beef and sugar access in particular, as well as with respect to access to sub-federal public procurement.

Both the EU and Mexico have stated that the FTA update agreement could be concluded before the end of this year. During the second half of the year, the negotiators are scheduled to meet every month. In light of the uncertainty over the NAFTA agreement (between Mexico, the US and Canada), an updated FTA with the EU is top priority for Mexico. Considering TTIP talks are stalled, it is among top FTA priorities for the EU too.

i) Mercosur

Despite a call recently made by 11 EU Member States (led by France), EU Agriculture Commissioner Hogan has ruled out suspending or postponing FTA negotiations with Mercosur to allow assessment of its expected impact on the EU's agricultural markets (and of the recent rotten meat scandal).

The latest round of EU-Mercosur FTA negotiations took place between 3 and 7 July 2017. The formal joint communique stated that the talks covered a wide range of negotiating texts, including trade in goods, rules of origin, customs and trade facilitation, technical barriers to trade, sanitary and phyto-sanitary matters, trade defense instruments, and trade and sustainable development. The Chief negotiators "noted with satisfaction that progress had been made towards agreement on a number of key issues across the various chapters".

The next formal round is scheduled for **2-6 October 2017**. In addition, the parties will continue working together during "intersessional" meetings in **September 2017**. Further market access offers are expected to be exchanged in the autumn, after the German elections on **24 September 2017**.

Argentina expects parties to reach an agreement by the end of the year, or **early 2018** at the latest; however, a government representative has reportedly suggested that the EU would have to reduce its FTA demands as a consequence of Brexit. The EU has repeatedly stated that agreement by the end of the year is "ambitious but feasible" as there is "strong political commitment on both sides and intense working rhythm". EU Agriculture Commissioner Phil Hogan has indicated that Mercosur will have to recognise the EU's sensitivities

with respect to beef and ethanol (which the EU did not include in its earlier market access offer).

j) Indonesia

In May 2017, a delegation of the EP INTA Committee met with Indonesian government representatives to discuss the scope of a future EU-Indonesia FTA. The next round of bilateral FTA negotiations is likely to take place in **September 2017**, following preparatory inter-sessional exchanges.

k) Ukraine

Following the Netherlands' ratification of the EU-Ukraine Association Agreement in May, the agreement entered into full force on 1 September 2017. The Deep and Comprehensive Free Trade Area (DCFTA) part of the agreement has been provisionally applied since 1 January 2016.

l) Australia

Following official finalisation of the scoping exercise on a future EU-Australia FTA in early April, the European Commission is now expected to seek a negotiating mandate and official authorisation to commence negotiations. Both sides aim at full tariff liberalisation in a deal covering all products (while possibly requesting special treatment for sensitive products). If the EU negotiation mandate is adopted swiftly in the autumn, negotiations could start in the **second half of 2017**. The Commission is conducting an impact assessment on the planned FTA.

m) New Zealand

In June 2017, New Zealand issued a document describing the outcome of scoping discussions on a future EU-New Zealand FTA; it confirms that the objective will be to eliminate most tariffs as quickly as possible while recognizing certain sensitivities for trade in agricultural goods. Formal negotiations are expected to be launched in **the second half of 2017**, as the Commission's draft negotiating mandate will most likely be presented to the Council along with the negotiating mandate for the EU-Australia FTA (see above).

Meanwhile, the EU and New Zealand signed an Agreement on Cooperation and Mutual Administrative Assistance in Customs Matters on 3 July 2017. This aim of this agreement is to create a more secure and trade-friendly environment at a bilateral level through exchanges of information, including on customs legislation and investigations of potential violations in this area.

n) Chile

In early May, Chile's ambassador to the EU told the EP INTA Committee that the modernisation of the EU-Chile FTA should be finalised by the end of current President Bachelet's term, i.e. by **March 2018**. The Commission presented a negotiating mandate proposal to the Council in late May (followed by the issue of an impact assessment and related report in June and July, respectively), but it is unclear when this will be adopted – making March 2018 a very ambitious target deadline.

Meanwhile, the EP's INTA Committee adopted a report with recommendations for the FTA negotiations on 11 July, asking the Commission to include a robust chapter on trade and sustainable development but not investment provisions (so as not to delay ratification). The EP Plenary is scheduled to debate, and possibly vote on, this report during its 11-14 September session.

o) India

Following recent calls by EU representatives for India to step up efforts on a bilateral FTA, India and Germany discussed ways to conclude the currently stalled EU-India FTA on 29 May 2017. The 14th bilateral EU-India summit is expected to take place later this year, and the agenda will surely cover the pending FTA.

In late August, it was reported that the EU has proposed setting up a High Level Economic and Trade Dialogue to discuss trade issues in a broader context, not solely focusing on a potential FTA. A similar Dialogue is in place between the EU and China, which typically involves regular bilateral senior leadership meetings to discuss trade frictions at the highest political level. EU-Indian relations will also be discussed in the EP Plenary Session of September.

p) Philippines

While no further EU-Philippines FTA negotiation rounds are scheduled, the Commission has reportedly stated that no political decision has been taken to definitively suspend the talks in light of any human rights concerns relating to the Philippines. Meanwhile, President Duterte has declined EU aid worth EUR 250 million to emphasise his country's independence.

q) Malaysia

It has been reported that the Commission is considering submitting a proposal for relaunching trade talks with Malaysia in the near future. Negotiations for an EU-Malaysia FTA were launched in 2010, but put on hold in April 2012.

r) Turkey

EU Council discussions on the proposed Commission negotiating mandate to modernise the EU-Turkey customs union are progressing slowly and will continue after the summer break. It has been reported that EU Member States strongly oppose the Turkish demand for observer status in the Council's confidential trade briefings as part of the modernisation talks.

Meanwhile, the EP's INTA Committee has decided to postpone a vote on its own-initiative report on the topic. This is in order to allow for a debate in plenary on EU-Turkey relations in the aftermath of Turkey's constitutional referendum (which was held in April 2017).

Classification

Classification Regulations

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

- **Commission Implementing Regulation 2017/635** classifies an empty cartridge to be filled with an e-liquid for insertion into an e-cigarette under Combined Nomenclature (CN) code 8543 90 00 as a part of electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85.
- **Commission Implementing Regulation 2017/636** classifies a pair of buckles to be used as a locking mechanism for safety seat belts under CN code 8308 90 00 as buckles of base metal.
- **Commission Implementing Regulation 2017/960** classifies vanilla bean extracts used to improve the taste of dishes under CN code 2103 90 90 as a mixed condiment or seasoning.
- **Commission Implementing Regulation 2017/982** classifies a so-called bathtub step to assist persons in getting into and out of a bathtub under CN code 9403 20 80 as other metal furniture (other than beds).
- **Commission Implementing Regulation 2017/1166** classifies a so-called video converter under CN code 8543 70 90 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.
- **Commission Implementing Regulation 2017/1167** classifies a so-called mastectomy bra under CN code 6212 10 90 as a brassiere.
- **Commission Implementing Regulation 2017/1168** classifies a plastic steering wheel cover under CN code 3936 90 67 as other articles of plastics.
- **Commission Implementing Regulation 2017/1169** classifies a so-called paintball to be used with a paintball gun under CN code 9309 90 90 as a projectile.
- **Commission Implementing Regulation 2017/1170** classifies pulse oximeters used in professional medical practice, research and sports under CN code 9018 19 10 as instruments and apparatus used in medical science, monitoring apparatus for simultaneous monitoring of two or more parameters.

- **Commission Implementing Regulation 2017/1232** classifies sewer covers of ductile iron under CN code 7235 99 10 as other cast articles of malleable cast iron.
- **Commission Implementing Regulation 2017/1233** classifies certain van-type vehicles under CN code 8703 32 19 as new motor vehicles principally designed for the transport of persons.
- **Commission Implementing Regulation 2017/1234** classifies a combination of a trolley and a scooter under CN code 4202 12 50 as a suitcase with an outer surface of moulded plastic material.
- **Commission Implementing Regulation 2017/1267** classifies certain microspheres made of nepheline or nepheline syenite used as an additive for paints, coatings and films under CN code 2842 10 00 as double or complex silicates, including aluminosilicates whether or not chemically defined.
- **Commission Implementing Regulation 2017/1268** classifies a palm-oil product in the form of white wax beads used for candle manufacturing under CN code 3407 90 00 as other artificial waxes and prepared waxes.
- **Commission Implementing Regulation 2017/1465** classifies a so-called wireless charging plate, designed to charge apparatus wirelessly through “Qi” technology, under CN code 8504 40 90 as other static converters.
- **Commission Implementing Regulation 2017/1472** classifies an aluminium shower curtain rod under CN code 8302 41 90 as other base-metal mountings, fittings and similar articles suitable for buildings.
- **Commission Implementing Regulation 2017/1476** classifies an LED dental light on a pivoting arm for use in dental offices under CN code 9405 40 99 as other electric lamps and lighting fittings of other materials than plastics.

In addition, several regulations which either amend CN text or modify existing classification regulations have been published:

- **Commission Implementing Regulation 2017/705** amends as of 1 January 2018 the text of CN codes 1905 90 60 and 1905 90 90 (various bread, pastry, cakes and biscuits) where it refers to sweetening matters. The aim is to provide better clarity on which sweetening matters are to be considered in deciding where to classify these products.
- **Commission Implementing Regulation 2017/1343** adds a legally binding Additional Note to Chapter 19 with respect to the classification of certain food supplements, in order to implement a 2009 Court of Justice of the EU (CJEU) judgment.
- **Commission Implementing Regulation 2017/1344** amends certain Additional Notes to Chapters 17 and 21 (as of **1 October 2017**) with respect to the determination of sugar content of raw sugars and certain syrups.
- **Commission Implementing Regulation 2017/1266** repeals a 1996 classification regulation classifying certain rolls used to manufacture typewriter ribbons (see also new CNEN below).
- **Commission Implementing Regulation 2017/1477** deletes a provision in a 2009 classification regulation – which classified a four-wheeled vehicle under CN code 8701 90 90 – following a recent CJEU decision (holding that the subject product should be classified under CN codes 8701 90 11 to 8701 90 39 instead).

CN Explanatory Notes

The Commission has introduced new Explanatory Notes to the CN (CNENs) for:

- **orthopaedic appliances** (CN code 9021 10 10);
- **touch pens** for touch screens (CN code 9608 30 00);
- pasteurised liquid whole bird **eggs** (CN code 0408 99 80);
- plant-based concentrated **milk proteins** (CN code 3504 00 10);

- content of milk products, starch and starch degradation products in **animal feed** (CN heading 2309);
- **tricycles and scooters** (CN code 9503 00 10);
- **glue-laminated timber** (CN codes 4418 90 10 and 4418 99 90);
- **baskets and bags for laundry** (CN codes 4602, 6307; 7323); and
- **ready-to-use inked ribbons** (CN codes 9612 10 10 to 9612 10 80).

The EU has also deleted certain CNENs relating to heading 8529 (with respect to tripods for use with cameras) and the classification of paper and paperboards under heading 4805 (CN codes 4805 91 00, 4805 92 00 and 4805 93 20).

Court judgment on the classification of implant screws

On 26 April 2017, the CJEU delivered its judgment in Case C-51/16 (*Stryker EMEA Supply Chain Services BV v. Inspecteur van de Belastingdienst/Douane kantoor Rotterdam Rijnmond*) on the classification of implant screws to be inserted into the human body for treatment of fractures or stabilisation of prostheses.

The Court decided that the screws at issue were classified under tariff heading 9021 (covering orthopaedic or fracture appliances) as they have special characteristics – relating to the finish of materials, degree of precision, method of production and specificity of purpose – which distinguish them from ordinary screws of heading 7318. In addition, the CJEU considered crucial the fact that these screws can only be inserted into the human body by means of special medical tools.

EU endorses recent HS Explanatory Notes and Classification Opinions

On 22 April 2017, the Commission published a communication endorsing various Explanatory Notes and Classification Opinions approved by the Harmonized System (HS) Committee during its biannual session on September 2016. The HSEs concern headings 2009, 2202, 2203, 2939, 3304, 3926, 6902, 8415 and 9503, and the Chapter 29 Annex; the Classification Opinions relate to subheadings 2009.89, 2106.90, 2530.90, 2833.11, 3901.40, 3917.21, 3924.90, 3926.90, 8415.10, 8432.29, 8473.30, 8517.70, 8603.10, and 8701.10. This means that no EU Member State may issue Binding Tariff Information (BTI) conflicting with these HS tools, and that existing BTI which is not in line with them must be revoked.

Nomenclature Committee/Customs Expert Group Developments

a) Agriculture/Chemistry Sector

The summary report from the 179th meeting of the Agriculture/Chemistry Sub-section of the EU's Nomenclature Committee (NC) on 12-14 June 2017 shows that the Member State experts issued a positive opinion on draft Classification Regulations on palm wax and ceramic microspheres and on draft Additional Notes to Chapters 17 (sugar and sugar confectionary), 19 (preparations of cereals, flour, starch or milk and pastry cooks' products) and a draft CNEN to subheadings 9612 10 10 to 9612 10 80 (typewriter or similar ribbons). (See related developments above.) The Committee also discussed the classification of, among others, vitamins, medium oils, organic composite solvents, essential oils in encapsulated dispersions of ethylene-vinyl acetate or low density polyethylene, products with high alcohol content, and brown fused aluminium slag. The Commission also updated the Member States on the pending file for novel tobacco products, and noted that a planned discussion at the HS Sub-Review Committee in late May was postponed for lack of time.

b) Mechanical/Miscellaneous/Textiles Sector

The report from the 176th meeting of the Textiles and Mechanical/Miscellaneous Sub-section of the NC on 20-22 February 2017 has been made available. Apart from approving the draft Classification Regulations on empty cartridges for e-cigarettes and double buckle seatbelts and CNENs on touch pens and orthopaedic appliances (see above), the Commission and Member State experts also discussed, among others, the following products: laser devices to treat skin conditions/hair removal, wireless charging plates (see above), a van type of vehicle, electric scooters, CNENs for glue laminated timber and tripods, USB wall chargers, aluminium rails for wall tiles, cameras for drones, sticker books, storage seats, glass fibre fabric used for wind

turbine blades, video phone entry systems, and audio-video-radio transmission sets.

The report of the 178th session of this NC Sub-section of 3-5 May 2017 has also been released. It shows that the Member States issued a positive opinion on Classification Regulations on mastectomy brassieres, video converters, steering wheel covers, paintballs and pulse oximeters, and voted in favour of a number of CNENs, which have meanwhile all been published (see above). Files for discussion at a less advanced stage included aluminium rails, cameras for drones, storage seats, bathing boards, guy grip dead ends, printing plates, tourniquets, pencil toppers, massage/heating pads/mats, baskets for cats and dogs, sets of cards and books, head up displays, solid state drives, superluminescent diode modules, and manual spreaders. The Committee also reached agreement regarding the classification of 3D scanners (as an optical measuring appliance of CN code 9031 49 90), and the classification of figurines (under heading 3926). The Committee was able to close the files on LGBT modules with thermistor and virtual reality headsets (following a decision at the international level in the HS Committee), touchless soap dispensers and welding helmets.

The report of the 180th meeting of this NC subsection held on 3-6 July 2017 reveals that a positive opinion was adopted on a Classification Regulation on wireless charging plates (see above). The Committee also discussed the classification of some of the above-mentioned products again, as well as laser devices to treat skin conditions and remove hair, aluminium tubes as parts of coolers for motor vehicles, port replicators, GPS tracking systems, portable interactive electronic education devices and steel plates for windmills. The Committee further decided to close the discussion on the classification of plastic decoupling rings for parking sensors, and on an artist's brush for use with touch screen devices. The Committee also held a detailed discussion on the classification of cameras following talks in a special Project group meeting on the consequences of recent case law on GoPro-type cameras.

c) CN Sector

The report from the 177th meeting of the CN Sector of the NC which took place on 28 April 2017 shows that the Commission and Member State experts discussed in the context of the CN for 2018, *inter alia*, new subheadings for nicotine, cartridges and refills for electronic cigarettes. They also discussed subheadings relating to electronic products, vacuum pumps used for the manufacture of semiconductors or flat panel displays, and goods required for the production of improved explosive devices. The experts further started their first reading of the consolidated 2017 version of the CNENs, to replace the previous consolidated version from 2015.

The 181st meeting of the CN Sector took place on 19 July 2017. The report of this meeting reveals that the Committee gave a unanimous positive vote on the draft CN 2018, and examined a possible amendment to heading 7602 and the CNEN for aluminium waste and scrap. The experts also discussed a draft Regulation on temporary duty suspensions for certain goods imported with an "Authorised Release Certificate".

d) HS/WCO Coordination Sector

The 11th meeting of the Customs Expert Group's HS/WCO Coordination Sector took place on 12-13 July 2017. The meeting report reveals that the experts discussed possible amendments of, *inter alia*, headings 2518, 6815 and 6903 (refractory ceramics), 6815 (carbon fibres), 8462 (forging machines), 8701 and 8704 (electric vehicles), 5703 (synthetic turf), 7019 (glass fibres), and Notes to Chapter 29 (organic chemicals). The group was also briefed by the Commission on the 52nd meeting of the HS Sub-Review Committee of May 2017, and discussed an EU reservation concerning a so-called S-view cover for mobile phones (the classification of which was discussed during the 59th session of HS Committee in March 2017).

The report of the 9th Sector meeting of 22-24 May shows that apart from performing coordination relating to the March HS Committee meeting and May meeting of the HS Sub-Review Committee, the experts decided not to submit a proposal to amend Chapter 64 headings with respect to sports footwear to the World Customs Organization (WCO). The experts agreed on a proposal to the WCO on the classification of windscreen wiper blades (8512), and continued discussions on possible amendments relating to, *inter alia*, the Notes to Chapter 29 (e.g. to address the presence of emetic substances).

The agenda of the 12th meeting of the HS/WCO Coordination Sector scheduled to take place on 20-22 September 2017 indicates that the experts are due to discuss whether or not to endorse amendments to HSEs and HS Classification Opinions adopted by the HS Committee. They will also pre-coordinate on the upcoming 60th session of the HS Committee. In addition, the discussion on certain above-mentioned products will continue, as well as more systemic talks on a possible amendment of the General Rules for the

Interpretation of the HS.

Origin

PEM Convention – Ukraine and Moldova

On 11 May, the Council expressed its approval for inviting Ukraine to accede to the Pan-Euro-Mediterranean (PEM) Convention, pursuant to a request made in September 2012. On 16 May 2017, the Joint Committee of the PEM Convention formally decided to invite Ukraine to accede to the Convention.

Concerning the PEM Convention, the EU Council also agreed to introduce the possibility of duty drawback and full cumulation of origin in trade covered by the Central European Free Trade Agreement (CEFTA) involving the Republic of Moldova and the participants of the EU's Stabilisation and Association Process (in addition to Moldova, Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo).

Discussions in the Customs Expert Group on Origin

Several documents relating to meetings of the Customs Expert Group's Origin Section (i.e. the pre-UCC Origin Committee) have been released.

The minutes of the 7th meeting of 28 June 2017 shows that the Commission and Member States are preparing guidance for the origin rules in CETA, and discussed the status of pending origin negotiations with Japan, Mexico, and Mercosur. As always, various GSP and PEM-related origin matters were on the agenda. Recent and pending amendments of the UCC in the area of preferential origin rules were also discussed. In addition, the Commission and national experts were briefed on the results of a monitoring mission to Indonesia. They also discussed tolerances for Chapter 24 products (tobacco) and the origin of products transported through pipelines when originating and non-originating products are mixed.

The report of the 6th meeting which took place on 15 May 2017 contained similar topics, as well as implementation of the EU-Korea FTA (and notably allowing the use of third party documents for making out origin declarations, and joint verification visits). It also covered possible amendments of the non-preferential origin rules for certain products, guidance on Binding Origin Information, and the treatment of processed products obtained under inward processing from imported goods with preferential origin status.

The meeting report of the 5th meeting (14-15 March 2017) indicates that discussions were held, *inter alia*, on finalising guidance documents on approved exporters and supplier's declarations. The experts further discussed how to establish the origin of a 3D printer including software; they concluded that software is not a good and therefore origin rules cannot be applied to it, but also that the installation of software is not an "insufficient operation".

Court judgment on rejected remission of customs duties

On 19 July 2017, the CJEU issued its judgment in Case T-752/14 (*Combaro SA v. European Commission*), a case involving invalid preferential origin certificates for linen imported from Latvia (before its EU accession) under the EU-Latvian Association Agreement, where the real origin of the goods was Russian. An investigation of the EU's anti-fraud office (OLAF) had unveiled after a joint investigation with the Latvian customs authorities that the relevant origin certificates – while apparently bearing the signature of a (possibly corrupt) Latvian customs official – had not been entered into the registers of Latvian customs and were therefore invalid.

When the German customs authorities sought to recover the customs duties as a result, the importer filed an appeal on the basis that it did not know the certificates were issued fraudulently and had not been obviously negligent. The German court agreed with the company, and a request for a so-called remission (i.e. non-recovery) decision was filed with the European Commission. The Commission rejected the request on the basis that it could not be shown that Latvian customs had committed an irregularity (and the Commission itself had been diligent in ensuring that the Latvian authorities respected their legal obligations under the EU-Latvia agreement), and the company had been negligent. The CJEU disagreed; it ruled that the Commission had not used its prerogatives under the bilateral agreement to check if Latvia had properly abided by its obligations, and that the Commission had furthermore not really investigated if the company had been obviously negligent.

Accordingly, the CJEU annulled the Commission decision rejecting the request for remission of duties.

CARIFORUM-EU Decision on derogation for textiles

In July, the CARIFORUM-EU Special Committee on Customs Cooperation and Trade Facilitation adopted a Decision on derogation from the rules of origin under the Economic Partnership Agreement (EPA) between the Cariforum States (including Antigua & Barbuda, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Jamaica, Saint Christopher & Nevis, Saint Lucia, Saint Vincent & the Grenadines, Suriname and Trinidad & Tobago) and the EU.

The derogation concerns certain textile products and is intended to take into account the special situation of the Dominican Republic, where producers typically have certain operations carried out in Haiti (which has signed but not yet ratified the EPA). This would generally mean that the final product does not qualify under the normal preferential origin rules as having Cariforum origin (and hence is not entitled to tariff preferences when imported into the EU). As efforts are underway in Haiti to ratify the EPA, a derogation has been granted for a specified quantity of men's and boys' denim trousers until July 2018 (i.e. within an origin quota).

Valuation

Court judgment on the cost of transport

On 11 May 2017, the CJEU delivered a judgment in Case C-59/16 (*The Shirtmakers BV v. Staatssecretaris van Financiën*). The Dutch Supreme Court had referred the question at issue on whether the cost of transport up to the EU border (which must be included in the customs value of imported goods) should also include amounts charged by intermediaries for arranging such transport.

The CJEU confirmed a broad interpretation of the concept "cost of transport" and decided that such amounts, corresponding to agent profit margin and costs in respect of that service, must indeed be added to the customs value as they are "connected" to the transport. The Court considered it irrelevant whether or not those costs are inherent in or necessary for the actual transport. In response to a referring court question whether the conclusion would be different if the freight forwarding contract states that a third party will be engaged to carry out the actual transport, the Court stated that the concept "cost of transport" cannot depend on the type of contract concluded between the importer and the forwarding agent.

Procedures

Neum Corridor waiver threshold amount increased

On 25 April 2017, Council Regulation 2017/762 was adopted to amend a 2013 regulation on the waiver from the standard requirement to submit entry and exit summary declarations for EU goods moved across the Neum corridor. The Neum corridor is where the territory of Bosnia and Herzegovina reaches the Adriatic coast, separating the area of Dubrovnik from the rest of Croatia (and hence movement across it officially entails physical export out of, and import back into, the EU). As of 23 May 2017, the threshold below which this waiver applies was increased from EUR 10,000 to EUR 15,000 to ensure UCC alignment.

Court judgment on liability under the transit procedure

On 18 May 2017, the CJEU delivered its judgment in Case C-154/16 (*Latvijas Dzelzceļš' VAS v. Valsts ienemumu dienests*) on a number of questions in relation to whether customs duty and import VAT were payable for solvents leaked from a tank while in transit. Questions also related to whether the carrier should be held jointly and severally liable with the principal – the applicant in this case – for any debt resulting from the "unlawful removal" of goods (as the product was not presented at the office of destination intact, i.e. the quantity was less than when the tank was declared into the transit procedure). While the amounts at stake were minimal, the judgment makes important clarifications:

- The Court held that the "unlawful removal" of goods results in a customs debt unless the leak can be considered the result of "force majeure" or an "unforeseeable circumstance". The CJEU observed that normally, the carrier would take appropriate measures to avoid leaks (so a leak may not be unforeseeable). However, it is not wholly inconceivable that despite the exercise of care ordinarily due

with respect to transport and storage of solvents, certain circumstances could constitute force majeure or an unforeseeable circumstance; this is for the national court to decide in light of the facts. In other words, even if solvent was leaked and irretrievably lost, and thus not entering the EU market, customs duties could be payable.

- With respect to import VAT, however, the CJEU held that it is not payable on goods which are irretrievably lost while in transit, as such goods are not considered “imported” under EU VAT legislation; notably, the CJEU held that import VAT is a tax on consumption and applies to goods and services that enter the economic network of the EU, which the leaked solvent clearly did not. There is therefore an inconsistency between EU customs and EU VAT rules as regards irretrievably lost goods.
- As to the joint liability of the carrier and the principal, the CJEU ruled that the carrier clearly has the obligation under EU transit rules to produce the goods he is carrying for a principal intact. Accordingly, in theory the carrier could be held jointly and severally liable for any customs debt resulting from the unlawful removal of goods (as was the case here). However, the CJEU clarified that the Member State authorities have the option, and not the obligation, to declare the carrier liable in addition to the principal.

In light of the above, the principal may in cases involving goods irretrievably lost while in transit due to a lack of care by the carrier only have recourse by bringing an action for damages against the carrier (depending on the terms of the contract between the parties).

Miscellaneous

Conflict Minerals Regulation formally adopted and published

On 17 May 2017, the so-called Conflict Minerals Regulation was formally adopted by the EP and Council, and published in the EU’s Official Journal two days later. Regulation 2017/821 lays down supply chain due diligence obligations for EU importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. The new obligations will start to apply from **1 January 2021**.

New EU Mercury Regulation

On 24 May 2017, Regulation 2017/852 was published in the EU’s Official Journal to lay down various rules on mercury and mercury products, including import and export rules. This new Regulation repeals a 2008 Regulation (which imposed an export ban), and also features import restrictions depending on the source, intended use and origin.

EU ivory trade guidance

On 17 May 2017, the Commission published a new Guidance Document on the EU regime governing intra-EU trade and re-export of ivory. The guidelines aim to clarify interpretation of a 1997 Regulation recommending that the EU Member States suspend (re-)export of raw ivory items and ensure strict interpretation of EU law authorising intra-EU trade in ivory and (re-)export of worked ivory. More specifically, the Commission is now recommending that Member States as from 1 July 2017 stop issuing export licences for raw ivory, except for scientific/educational specimens.

EU proposal on illegal import of cultural goods

On 13 July 2017, the Commission formally submitted a proposal for a new Regulation on the import of cultural goods. If adopted as currently written by the Council and the EP, this Regulation would introduce a new import licencing system for cultural goods that are at least 250 years old and known to be most at risk, such as archaeological objects, parts of monuments and ancient manuscripts and books. Other cultural items within the scope of the draft Regulation (e.g. certain artwork, collections of fauna or flora, archives, furniture, musical instruments, and antiques) would be subject to a more rigorous certification system. Transit of cultural goods would not be within the scope of the draft Regulation. It must be adopted by the Council and EP before it can enter into force.

EU removes Kazakhstan from list of countries subject to special import rules

As of 19 May 2017, Kazakhstan was officially removed from the list of non-WTO countries (in Regulation 2015/755) subject to special common rules for import surveillance and possible safeguard measures related to non-textile products. This is the result of the country's formal accession to the WTO. Remaining countries under this regime are Azerbaijan, Belarus, North Korea, Turkmenistan and Uzbekistan.

EU-China Strategic Framework for Customs Cooperation

On 2 June 2017, the EU and China signed the Strategic Framework for Customs Cooperation for 2018-2020, setting out future priorities and objectives for bilateral customs cooperation. This Framework agreement follows similar Frameworks adopted in 2010 and 2014.

The new framework takes into account new challenges and opportunities in order to enhance EU-China trade security and facilitation. It focuses on, *inter alia*, supply chain security, facilitation for reliable traders, strengthened enforcement of IPRs, and customs cooperation in cross-border e-commerce.

EP Resolution on the phase-out of palm oil in biofuels

On 4 April 2017, the EP adopted a (non-binding) resolution calling for a phase-out of vegetable oils as a component of biofuels by 2020. In this Resolution, the EP recommends introduction of sustainability criteria for palm oil and products containing palm oil when entering the EU market. The EP also requests the Commission to consider non-discriminatory tariff consequences and non-tariff barriers based on the carbon footprint of palm oil. This development is expected to complicate EU FTA negotiations with Indonesia and Malaysia, as the European Commission would most likely need to somehow push back on EU market access for palm oil in order to appease the EP (which would need to consent to the FTAs as part of EU ratification procedures).

Commission 2016 Report on trade and investment barriers

On 23 June 2017, the Commission presented the 7th edition of its report on third country trade and investment barriers identified in 2016, focusing on foreign barriers directly affecting EU economic operators. In this report, the Commission finds that 36 new trade and investment barriers were put in place in 2016, with Russia having imposed the highest number of new trade restrictions (followed by India). Of all the new barriers, 13 involved border measures in the form of increased tariffs, quotas, bans or burdensome licencing procedures.

Commission examines Turkish import surveillance system for paper

On 7 July 2017, the Commission launched an examination into Turkey's import surveillance system for uncoated wood free paper. It has been alleged that under this system, only producers and not importers are able to obtain the required import licence.

Commission report on 2016 seizures of fake items

On 20 July 2017, the Commission released its annual statistics on the number of counterfeit goods caught at the EU borders. The top three types of products seized are cigarettes, foodstuffs and packaging material. Overall, China was the main source (80% of seized items), while other important sources were Vietnam/Pakistan (cigarettes), Singapore (alcoholic beverages), Iran (clothing accessories), Hong Kong (leather) and India (mobile phones).

Commission launches public consultation on exchange of customs related information

On 18 July 2017, the Commission launched a public consultation (which will be open until **16 October 2017**) on the exchange of customs related information. The consultation aims to gather stakeholder views on the need for EU introduction of an effective tool allowing for systematic exchange of customs related information with third countries, and how such tool could be designed.

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