

# EU Customs Practice Group

July 2014

## EU CUSTOMS POLICY

### UCC Developments

In early July, the European Commission organised meetings bringing together representatives from the business community (the so-called 'Trade Contact Group') and from Member States to discuss various problematic issues that have emerged from a first round of consultations on the draft implementing and delegated acts for the Union Customs Code (UCC). The topics discussed included questions related to customs valuation, non-preferential origin rules, and various procedural aspects related to declarations and self-assessment.

A second round of consultations is now ongoing. The European Commission is aiming to finalise the texts in late 2014/early 2015 and have them adopted and published by May 2015, one year before the UCC should be implemented.

## TARIFFS

### Management of Tariff Quotas

The report of the meeting of the 'tariff measures' section of the Customs Code Committee held on 13 May 2014 has recently been made available. During this meeting, the Committee discussed statistics on the management of EU tariff quotas, including the increase in 2013 of the number of days without tariff quota allocation and the tariff quota for goods originating in Ukraine.

The Member States also discussed the installation of functionalities for automatic balance transfer and automatic redirection of tariff quota drawing and return requests, and a planned project on developing an identification card for each tariff quota.

### GSP – The Philippines' GSP Plus Application

On 21 July 2014, the Philippine Department for Trade and Industry issued an official press release stating that the European Commission has confirmed that the Philippines fulfils the eligibility criteria for the GSP Plus scheme (i.e. the special incentive arrangement for sustainable development and good governance for GSP beneficiary countries). The Philippines expects that the Commission will formally endorse its GSP Plus application in a delegated act, which it hopes will be adopted before the end of the year.

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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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## GSP – Annual Update of List of Beneficiary Countries

In late July, the European Commission submitted a draft delegated act to the Council and European Parliament (EP) to amend Annex II of the EU GSP Regulation which contains the GSP Beneficiary countries. The draft act seeks to add the following countries to Annex II from 1 October 2014: Botswana, Cameroon, Côte d'Ivoire, Fiji, Ghana, Kenya, Namibia, and Swaziland. At present, these countries are covered by special Market Access Regulation 1528/2007, and this is why they were not included in Annex II of the GSP Regulation. However, they will cease to be covered by Regulation 1528/2007 on 1 October 2014, hence their proposed inclusion in Annex II. At the same time, the draft act aims to remove Botswana and Namibia from Annex II as from 1 January 2016 to take account of their classification as upper-middle income countries in 2011, 2012 and 2013, meaning they no longer qualify for GSP preferences. The EP and Council now have 2 months (possibly extended by 2 months) to object to this act. Failing such objections, the Commission may adopt the act.

## FTA Update

### a) Japan

The 6<sup>th</sup> round of EU-Japan negotiations – the first round following the conclusion of the EU's one-year review of the negotiations – took place on 7-11 July 2014. Negotiators discussed, *inter alia*, tariffs, rules of origin, and trade facilitation. The next round of negotiations is tentatively scheduled to take place in the second half of October 2014.

### b) US

The 6<sup>th</sup> round of EU-US negotiations on a Transatlantic Trade and Investment Partnership (TTIP) Agreement took place on 14-18 July 2014 in Brussels. Before and after the 6<sup>th</sup> round, the European Commission published a summary of the state of play of negotiations in all negotiation areas. During the July round, negotiators focused on technical issues to prepare the ground for the political decisions that will need to be taken at a later stage of negotiations. The next round of TTIP negotiations is expected to take place in October 2014.

### c) Canada

In the first week of August 2014, the European Commission announced that negotiators have finalised the text of the EU-Canada FTA (also known as 'CETA'). The EU and Canada already reached political agreement on the FTA last October, but it has taken some time to resolve certain 'technical issues' and agree on a final text after that. The draft agreement text will now undergo a

legal review and translation before it can be signed and start to apply.

### d) South African Region

On 15 July 2014, the chief negotiators of the EU and certain members of the Southern African Development Community (SADC) (i.e. Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland) concluded negotiations for an Economic Partnership Agreement (EPA). Under the EPA, Botswana, Lesotho, Mozambique, Namibia and Swaziland would continue to receive their current EU duty- and quota-free access. South Africa would benefit from improved conditions building on its existing trade agreement with the EU. The EU would in turn obtain improved market access to these countries.

### e) Ecuador

On 17 July 2014, the EU and Ecuador concluded negotiations for Ecuador's accession to the existing agreement concluded between the EU on the one hand, and Colombia and Peru on the other (the so-called 'EU-Andean Agreement'). The EU-Andean Agreement includes, *inter alia*, rules on trade in goods. The agreement still needs to undergo legal 'scrubbing' and translation before it can be signed and start to apply.

### f) Fiji

On 18 July 2014, the European Commission announced that the interim EPA concluded between the EU and Fiji is ready for implementation and that Fiji will apply the EPA as from 28 July 2014. The interim EPA provides, *inter alia*, for duty-free and quota-free market access into the EU for all exports originating in Fiji (and Papua New Guinea).

### g) Ukraine

On 11 July 2014, the EU, Ukraine and Russia confirmed their agreement to initiate a consultation mechanism to discuss the potential economic risks for Russia of the EU-Ukraine Deep and Comprehensive Free Trade Agreement (DCFTA) that was signed on 27 June 2014. A report of the discussions between the parties is scheduled to be issued by 1 September 2014. A high-level meeting between the parties is currently scheduled to take place on 12 September 2014.

### h) Mercosur

At the annual Mercosur Summit and Common Market Council that took place on 29 July 2014, Mercosur leaders announced that they have established a common market access offer involving tariff liberalisation for free trade negotiations with the EU. Mercosur members also noted their readiness to exchange the market access offers with

the EU and otherwise advance EU-Mercosur FTA negotiations.

#### *i) Cameroon*

On 28 July 2014, the European Commission announced that the EU-Central Africa EPA for trade and development between the EU and Cameroon will start to apply on 4 August 2014. The interim EPA was already concluded in 2007 and signed by the EU and Cameroon in 2009, but has been ratified by Cameroon only on 25 July 2014. The agreement provides, *inter alia*, for duty- and quota-free access to the EU market for exports from Cameroon, and Cameroon will gradually open its market to EU exports (save certain sensitive agricultural products) over a transitional period (ending in 2023).

## CLASSIFICATION

### Classification Regulations

In July 2014, the European Commission adopted the following Classification Regulations:

- **Implementing Regulation 757/2014** classifies a small box of steel with a closing system and a handle under CN code 7326 90 98 as other articles of iron and steel.
- **Implementing Regulation 758/2014** classifies a circular product made of silicone that is used together with a screw-on cap with a lid to prevent a semi-liquid substance flowing out of a bottle when turned upside down under CN code 3926 90 97 as other articles of plastics.
- **Implementing Regulation 759/2014** classifies a so-called non-self-propelled beach rake machine for cleaning sand beaches as machinery for public works, building or the like under CN code 8479 10 00.
- **Implementing Regulation 760/2014** classifies a cylindrical container covered by a metal seal with a plastic cap containing paraffin-based lamp oil and a wick that is used as a mood light under CN code 9405 50 00 as non-electrical lamps and lighting fittings.
- **Implementing Regulation 761/2014** classifies a surface-active preparation in the form of a gel for washing the skin and hair that is presented in a plastic bottle for retail sale under CN code 3401 30 00 as a preparation for washing only the skin, put up for retail sale.
- **Implementing Regulation 764/2014** classifies a glucosamine food supplement in the form of capsules filled with a yellowish powder put up for retail sale, as a food preparation, not elsewhere specified or included under CN code 2106 90 92.

- **Implementing Regulation 765/2014** classifies a mixture of frozen fruits to be blended in a blender (containing strawberries, bananas, pineapples and blueberries) under CN code 0811 10 90 as strawberries.
- **Implementing Regulation 766/2014** classifies two products used to rinse eyes put up for retail sale under CN code 3307 90 00 as other cosmetic or toiletry preparations not elsewhere specified or included.
- **Implementing Regulation 767/2014** classifies a set of dried pre-cooked noodles, a sachet of seasoning, a sachet of edible oil and a sachet of dried vegetables that is put up for retail sale for the preparation of a noodle dish under CN code 1902 30 10 as pasta, whether or not cooked or stuffed or otherwise prepared.

### Amendment of the CN Explanatory Notes on Tobacco Products

On 26 July 2014, the EU published an amendment to the Combined Nomenclature Explanatory Notes (CNENs) to subheadings 2403 10 10 and 2403 10 90 to clarify that waste resulting from the manipulation of tobacco leaves or from the manufacture of tobacco products which is capable of being smoked is considered as smoking tobacco, if it does not meet the description of cigars, cigarillos or cigarettes.

### Deletion of CNENs Regarding Fish Fillets

On 17 July 2014, the EU published an amendment to the ENs to CN codes 0304 11 10; 0304 19 01 and 0304 19 39 in order to partially delete these ENs.

### EU Replaces CNEN for Essential Oils of Citrus Fruits

On 16 July 2014, the EU replaced the existing Explanatory Note to CN subheadings 3301 12 10 to 3301 19 80 (essential oils of citrus fruits). This Explanatory Note clarifies the understanding of the term 'essential oil'.

### EU Judgment on a Liquid for Blood Analysis

On 17 July 2014, the Court of Justice of the EU (CJEU) issued its judgment in Case C-480/13, *Sysmex Europe GmbH v Hauptzollamt Hamburg-Hafen*, concerning the customs classification of a transparent liquid that is put up for retail sale for the analysis of white blood cells in order to determine the existence of a possible pathology.

The Court held that that in light of its objective characteristics and properties, the product should be classified under heading 3822 ('Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of

heading 3002 or 3006; certified reference materials'), which is subject to zero duty, and not as a colouring matter under heading 3212.

### EU Judgment on Plasma Screens

On 17 July 2014, the CJEU issued its judgment in Case C-472/12, *Panasonic Italia SpA, Panasonic Marketing Europe GmbH, Scerni Logistics Srl v Agenzia della Dogane di Milano*, concerning the customs classification of certain plasma screens that are only capable of reproducing data generated by an automatic data-processing system at importation, but can receive television signals if a video card is inserted. The CJEU indicated that such screens should be classified under CN code 8741 60 90 (with zero duty) if they are used 'solely or mainly' in an automatic data-processing system, or under CN code 8528 21 90 if that is not the case. The Court pointed out that monitors principally used in an automatic data-processing system have certain technical characteristics, such as intended use for viewing close up and smaller display pitch.

The Court further confirmed that Regulation 754/2004 which provides for classification under CN code 8528 21 90 of colour plasma screens, but which entered into force after the relevant products were imported, should not be applied retroactively.

### Nomenclature Committee Developments

#### a) HS/WCO Coordination Sector

The 137<sup>th</sup> meeting of the HS/WCO coordination sector of the Customs Code Committee took place on 10 July 2014. The report for that meeting has been made available and indicates that the Committee discussed the possible acceleration of the publication of Commission Communications endorsing Harmonised System (HS) Committee guidance (i.e. 3 months after the decision taken by the HS Committee has been deemed adopted by the WCO Council). The Committee also discussed, *inter alia*, certain proposed amendments to several subheadings of heading 73.18 (fasteners) and a possible amendment of the ENs to Chapter 41 (leather). The next meeting of this sector will take place on 10-12 September 2014.

#### b) Textiles and Mechanical/Miscellaneous Sector

The 136<sup>th</sup> meeting of the Textiles and Mechanical/Miscellaneous Sector of the Customs Code Committee took place on 2-4 July 2014. During that meeting, the Committee adopted a positive opinion on various draft Commission Regulations regarding the classification of a mini pump and a pillow pump (both classified under CN code 8414 20 80), a textile snow chain (classified under CN code 6307 90 98), LED tiles

(classified under CN code 8529 90 92), small 'action' cameras (classified under CN code 8525 80 99), and a video wall monitor with built-in PC (classified under CN code 8528 59 31). Discussions on the classification of media servers, cartridges for game consoles, gyroscopes, steel pipe nipples, electrical filters, utility vehicles, multimedia equipment, remodelled cars, solar panels and fittings for central heating were concluded. The Committee also discussed the classification of films with aerials or aerial arches, Hi-Fi systems, metal fastening fittings, accupacks and toys with a built-in music module, a multimedia device with touch screen and network analysers, and the CNENs for digital cameras and video camera recorders.

In late July, draft classification regulations for turbine wheels and turbine housings, pickup trucks, sub-assemblies for LCD televisions, articles used for coronary angioplasty, and single LEDs with protection diodes were presented to the Committee for a vote by written procedure.

#### c) CN Sector

The 138<sup>th</sup> meeting of the Combined Nomenclature Sector of the Customs Code Committee took place on 17 July 2014. The report of that meeting shows that the Committee examined, *inter alia*, a proposal to create new CN codes for lubricants, succinic acid and 1,4-butanediol, the possible tariff suspension for products of subheading 2707 99 (other oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents for undergoing a specific process), and the possible creation of new CN codes in subheading 3825 10 (wastes). The Committee also delivered a positive opinion on the draft CN2015, and the draft CNENs for 2014.

## ORIGIN

### GSP – Derogation for Bicycles Produced in Cambodia

On 26 July 2014, the EU published a derogation to the Customs Code Implementing Provisions for the GSP rules of origin. The derogation concerns regional cumulation of origin for bicycles produced in Cambodia from parts originating in Malaysia and Singapore. Normally, since 1 January 2014, regional cumulation is only possible with countries of the group that are themselves GSP beneficiaries, which Singapore and Malaysia are not. As a result of the derogation, the Cambodian bicycle industry can now consider parts originating in Malaysia and Singapore as materials originating in Cambodia by virtue of regional cumulation under the EU GSP scheme until the end of 2016 and only within fixed annual quotas.



## Origin Protocols in Agreements with Norway, Iceland and Switzerland Amended to Refer to PEM Convention

On 3 July 2014, three decisions on the positions to be taken in the EU-Norway, the EU-Iceland and the EU-Switzerland Joint Committees were published by the EU. In these decisions, the EU supports the replacement of the existing rules of origin in the trade agreements concluded with these countries with the Regional Convention on pan-Euro-Mediterranean (PEM) preferential rules of origin. This process should allow for a swifter update of the origin rules in the PEM region, and related regional cumulation of origin.

## Rules of Procedure of the Joint Committee on PEM Preferential Rules of Origin Published

The Decision of the Joint Committee of the Regional Convention on PEM Preferential Rules of Origin outlining its rules of procedure was published by the EU on 26 July 2014.

## PROCEDURES

### EU Judgment on Rights of Defence at Post-Clearance Recovery of Customs Duties

On 3 July 2014, the CJEU issued its judgment in Joined Cases C-129/13 and C-130/13, *Kamino International Logistics BV, Datema Hellmann Worldwide Logistics BV v Staatssecretaris van Financiën*, concerning the right to be heard as regards a request for recovery of customs debt. The case related to the question whether the tax authorities should grant an importer the right to be heard before they issue a demand for payment in the context of proceedings for post-clearance recovery of customs duties.

The Court held that even though the Customs Code or national legislation does not provide for a right to be heard, the customs authority must respect this fundamental right (which it had not in this case).

The Court also clarified that even when national legislation provides for the right to be heard at a later stage of the proceedings for post-clearance recovery of customs duties but does not allow for suspension of implementation of the demand for payment, the rights of defence are still infringed. The Court finally also held that in cases where the rights of defence have been infringed, the national court may decide to annul the relevant administrative decision only if the outcome of the administrative procedure might have been different (which was not the case here).

## MISCELLANEOUS

### EU Annual Report on Protection of the EU's Financial

## Interests

On 17 July 2014, the European Commission presented its 2013 Annual Report on Protection of the EU's financial interests. This report concerns Commission and Member State measures adopted in the fight against fraud and related results. The report also covers anti-fraud policy and provisions in the area of customs and international agreements. The achievements made by the current Commission over the last five years are also outlined in this report.

## Implementation of WTO Trade Facilitation Agreement

On 22 July 2014, the European Commission in a press release welcomed the WTO's announcement that it will set up a 'Trade Facilitation Agreement Facility' to help developing and least developed countries to implement the Trade Facilitation Agreement (TFA) that was approved in December 2013 as part of the so-called 'Bali Package'. This new fund aims to ensure coherence and transparency in existing customs-related technical assistance.

In the meantime, WTO members failed to meet the 31 July deadline to adopt the Protocol of Amendment required to incorporate the TFA into Annex 1A of the WTO Agreement and render the TFA applicable to all WTO Members.

## EU Welcomes Opening of WTO Negotiations for 'Green Goods Agreement'

On 9 July 2014, the European Commission issued a statement welcoming the formal opening by 14 WTO Members of plurilateral negotiations to liberalise trade in green goods. This 'Green Goods Initiative' was launched in January 2014.

## 2013 EU Report on Customs Enforcement of IPR

On 31 July 2014, the European Commission presented its annual report regarding EU customs actions to enforce intellectual property rights (IPR). This report provides statistics on the type, provenance and transport methods of counterfeit products detained at the EU's external borders. The report shows that in 2013, the customs authorities in the EU detained almost 36 million items suspected of violating IPR. China remains the main country of provenance.

## EU Reports Seizure of More Than 70,000 Counterfeit Goods

On 7 July 2014, the European Commission reported that during a major Joint Customs Operation that was carried out in March 2014, more than 70,000 counterfeit goods were seized in 634 different seizures. The operation focused on postal and courier mail traffic. The goods that were seized included mobile phones, small vehicle spare

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parts, sunglasses, medicines and pharmaceutical products. Most of the goods seized originated in the Far East.

### **EU Adopts Further Sanctions against Russia**

On 31 July 2014, the EU adopted targeted sanctions against Russia which entered into force on 1 August 2014. As part of these new sanctions measures, the EU has made the provision of key energy-related equipment and technology (such as line and drill pipe, and rock-drilling or earth-boring tools) to parties in Russia or for use in Russia subject to prior authorisation by the competent EU Member State authorities. Authorisations will not be granted if these items are intended for use in deep water oil exploration and production, Arctic oil exploration and production and shale projects (although Member States may grant authorisations for shipments related to prior contracts). Other sanctions measures covering trade of goods involve dual-use goods intended for military use, and an arms embargo.

### **EU Adopts Further Trade and Investment Restrictions for Crimea/Sevastopol**

On 30 July 2014, the EU adopted further trade and investment restrictions against Crimea and Sevastopol. The EU has imposed a ban on new investments specifically relating to infrastructure in the sectors of transport, telecommunications, and energy, as well as to the exploitation of oil, gas, or mineral resources in Crimea and Sevastopol. The direct or indirect sale, supply, transfer, or export of specified key equipment and technology in relation to these sectors in Crimea and Sevastopol is also, as a general rule, prohibited.

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