

EU Customs Practice Group

May 2014

EU CUSTOMS POLICY

UCC Developments

On 7 May 2014, the European Commission's work programme for the development and deployment of electronic systems under the Union Customs Code (UCC) was published. This work programme contains the list of 16 electronic systems which must be developed by the Member States and the European Commission by the end of 2020 in order for the UCC to become applicable in practice. These include the system for Customs Decisions (which should allow swifter and more coherent processing of applications for customs decisions), the Registered Exporter System, REX (which will be key in the EU movement towards only allowing self-declaration of preferential originating status by exporters), and the system allowing Centralised Clearance for Import (CCI). The Programme also lists other interesting upgrades of existing systems and foresees systems not required by the UCC, but planned beyond the UCC implementation date.

In the ongoing preparation of the UCC Implementing and Delegated Acts, a meeting between the Commission, the Member States and the business community on the draft texts is set to take place – as part of the first review cycle – in July 2014. Stakeholders were asked to send topics for discussion to the Commission by late May. The second review cycle will start in September. The Commission is planning to "finalise" the draft texts by the end of 2014, and to have them formally adopted by May 2015, in order to allow one full year for interested parties to become familiar with the changes to take effect on 1 May 2016.

Governance of the EU Customs Union

On 26 May 2014, the EU Council adopted conclusions on the governance reform of the EU Customs Union, calling for closer cooperation between the Member States and the Commission so as to increase efficiencies, and the development of a strategy on commonly-managed and operated IT systems in all customs areas, taking into account restraints on resources. In an effort to reconcile trade facilitation and security of the supply chain, the Council also wants more interaction and coordination between customs authorities and other agencies, as well as with the EU trading community.

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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.

The Council has further invited the Commission to rationalise the Commission-chaired expert groups involved in Customs Union implementation at EU level, and has asked it to endorse the terms of reference of the Customs Policy Group (consisting of the 28 Member States' Customs Directors-General and chaired by the Commission). The Commission has issued a statement expressing its regret with respect to this Council request, which it considers inconsistent with the Commission's prerogative to organise its own expert groups.

New EU Own Resources Package

On 26 May 2014, the EU Council adopted the EU's Own Resource Package for the period 2014-2020. The EU's 'Own Resources' constitute the EU's revenue and includes customs duties. Significantly, the Member States will, as a result of this new package, be allowed to retain only 20% (instead of the 25% applicable during the period 2007-2013) of the own resources they collect on imports. These so-called "collection costs" at national level are therefore being reduced at a time when the role of customs authorities continues to expand from the original revenue-collecting tasks to also cover product safety and other checks.

The full package will enter into force once the Own Resources Decision has been ratified by the national parliaments, and is scheduled to apply retroactively as from 1 January 2014.

TARIFFS

Duty Suspensions and Tariff Quotas

(a) July 2014 Round

On 19 May 2014, the EU published its formal proposals for the updating of the list of duty suspensions and tariff quotas as of 1 July 2014. A total of 98 new products will be added to the list of duty suspensions and 7 suspensions are set to disappear. In addition, the product description of 75 existing suspensions will be amended, and additional classification codes are being added or TARIC numbers changed. In addition, 6 new tariff quotas will be introduced for certain chemical products, aluminium alloy rods and spectacle frames, and 2 tariff quotas will be deleted. Also, 7 existing tariff quotas will be amended to change the product description (for tungsten trioxide and glass lenses), to increase the volume of the tariff quota (for refractory bricks, bicycle frames and front forks), or to remove a redundant additional CN code (aluminium telescopic handles). These proposals have been submitted to the EU Council for formal adoption.

(b) January 2015 Round

Objections against new requests for duty suspensions or tariff quotas that have been filed for the January 2015 Round must be submitted by 17 June 2014, which is the date of the second Economic Tariff Questions Group.

(c) Court action on suspension

A court action is pending in Luxembourg against the EU Council which could set an important precedent for the EU's regime of autonomous duty suspensions. In this case, a French company is seeking the annulment of three duty suspensions, alleging that a proper assessment was never carried out as to whether sufficient quantities of similar or substitutable products made in the EU were available. This latter test is supposed to be the key criterion for granting suspensions, to act as a safeguard against possible damage to EU production.

FTA Update

(a) Japan

The EU-Japan summit took place on 7 May 2014 with the Parties issuing a statement reaffirming the importance of an early conclusion of the EU-Japan FTA.

On 8 May 2014, the European Commission briefed the Foreign Affairs Ministers on the main elements of the draft review report it is preparing in the context of EU-Japan FTA negotiations (as part of the one-year review process included in the EU's negotiating mandate). Member State trade experts of the Trade Policy Committee discussed the report in more detail on 23 May 2014, but a final decision has not yet been taken on whether or not to continue or suspend the FTA talks. The EU's report is also expected to be discussed with Japan in the fringes of the G7 meeting of 4-5 June 2014.

(b) US

On 14 May 2014, the Commission published the EU's Transatlantic Trade and Investment Partnership (TTIP) negotiating positions for regulatory compatibility in the areas of motor vehicles, chemicals, cosmetics, pharmaceutical products, and textiles and clothing.

The 5th round of TTIP negotiations took place in the US on 19-23 May 2014. Negotiators held technical discussions on, *inter alia*, trade in goods, regulatory issues, SPS, government procurement, and electronic commerce. The Chief Negotiators reported afterwards that "good progress" had been made on these issues. The next round of negotiations is expected to take place in July 2014. No date has been set yet for the exchange of improved tariff offers (following the initial exchange of a few months ago).

On 20-21 May 2014, EU Trade Commissioner De Gucht stated at a Council meeting that no major progress in the negotiations was to be expected before the upcoming mid-term elections in the US.

(c) Canada

The EU and Canada made further attempts to resolve outstanding issues in their FTA negotiations in early May 2014, which were hoped to lead to conclusion before the EU's Foreign Affairs Council meeting of 8 May 2014. However, while the Commission claimed that good progress had been made, it was not possible to reach agreement. Another attempt to finalise the negotiations was reported to be planned in the fringes of the G7 meeting of 4-5 June 2014.

(d) Mercosur

The Mercosur countries participating in the bloc's FTA negotiations with the EU met in early May to finalise the Mercosur tariff offer. Household appliances and agricultural products are, reportedly, the most sensitive products on both sides. It has been reported that an exchange of tariff offers between the EU and Mercosur could take place in June 2014.

(e) Korea

On 14 May 2014, the EU published the Council Decision authorising the signature of the Additional Protocol to the EU-Korea FTA to take account of Croatia's accession to the EU, along with the Additional Protocol itself. This Protocol will take retroactive effect from 1 July 2013 (i.e. the date of Croatia's accession to the EU) and allows Croatian products to benefit from preferences at import into Korea.

(f) Singapore

According to recent press reports, the EU has entered into the final stages of the internal adoption process for the negotiated parts of the EU-Singapore FTA. The FTA could be implemented early next year if the European Parliament (EP) approves the FTA in the Autumn under the consent procedure (i.e. yes/no vote as no EP amendments are possible). The negotiations on the investment part intended to be incorporated into the FTA are still on-going.

(g) Kosovo

On 2 May 2014, the EU and Kosovo concluded their negotiations for a Stabilisation and Association Agreement. The Agreement provides for the full liberalisation of the EU market for products originating in Kosovo, while in Kosovo certain categories of domestic products will remain protected by tariffs. The Commission expects that the Agreement will be signed by the Summer

White & Case 3

of 2015. In the interim, Kosovo continues to enjoy certain tariff preferences under a special EU Regulation.

(h) Ukraine

On 29 May 2014, the EU published the Council Decision authorising the signature of the Association Agreement with Ukraine, along with the Agreement itself. The EU stated that this Agreement will be signed as soon as possible, and at the latest at the 26-27 June 2014 EU Summit.

CLASSIFICATION

Classification Regulations

On 23 May 2014, the European Commission adopted **Implementing Regulation 550/2014** classifying a so-called 'flame detector' that is a component of a fire alarm system, under Combined Nomenclature (CN) code 8536 50 19 as 'other switches of a voltage not exceeding 60 V'.

CNEN for TV Cabinets/cases

On 3 May 2014, the Commission published a new Explanatory Note to CN 8529 90 41 and CN 8529 90 49 (Cabinets and cases) to clarify the scope of the term 'cabinets and cases' for TVs.

Nomenclature Committee Developments

(a) Agriculture/Chemistry Sector

The 135th meeting of the Agriculture/Chemical Sector of the Nomenclature Committee was set to take place on 4-6 June 2014. During that meeting, the Committee was scheduled to vote on, or discuss the tariff classification of, a product for washing the hair and skin, products containing glucosamine, eye-wash products, artificial waxes, petroleum resin, a dental adhesive and tobacco (with respect to "expanded tobacco", the method for smoking test, and the distinction between tobacco dust and tobacco powder). The agenda also includes an amendment of the Explanatory Notes to heading 3301 (essential oils) and subheadings 2403 10 10 and 2403 10 90 (other manufactured tobacco and manufactured tobacco substitutes), and the possible creation of new CN codes under subheading 3825 10 (municipal waste).

EU Court Ruling on Components for Programming Systems

On 15 May 2014, the Court of Justice of the EU (CJEU) issued its judgment in Case C-297/13, *Data I/O GmbH v. Hauptzollamt Munchen* (the Munich customs authorities), concerning the tariff classification of motors, power supplies, lasers, cables, heat-sealers and generators used in automated programming systems. According to note 2(a) to Section XVI of the CN, 'parts which are goods included in any of the headings of Chapter 84 and 85

(other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are, in all cases, to be classified in their respective headings.’ The goods in this case appeared to be classifiable under several headings of Chapters 84 and 85, as well as under heading 8473.

The CJEU decided that the goods have to be classified under several headings of Chapters 84 and 85, and not under heading 8473 as a result of note 2(a) to Section XVI of the CN. It considered heading 8473 to be a generic heading intended to serve as the residual heading. Classification under heading 8473 would, in other words, only be possible where there was no tariff heading enabling the parts in question to be classified as individual goods.

ORIGIN

EU Origin Committee Developments

The report of the 210th meeting of the Origin Committee held on 3-4 March 2014 has been made available. It indicates that the Committee discussed certain Pan-Euro-Med (PEM) matters (including a de-brief on a related meeting with Turkey), and that the Commission provided a de-brief on FTA negotiations with, *inter alia*, the US (outlining the key differences in the general principles – product-specific rules have not yet been discussed and neither has the possibility of cumulation with other FTA partners), Japan (where similar differences are reported) and Vietnam (where negotiations are well underway, with the hope of concluding them by the end of 2014). Certain pending issues with Korean customs were also discussed again (in particular regarding the direct transport rule and the verification process), and the Commission encouraged Member States to report problems.

The Committee discussed the modification of certain Customs Code Implementing Provisions to distinguish proofs of origin issued or made out under a Deep and Comprehensive Free Trade Agreement (DCFTA) or Autonomous Trade Measures (ATM) in a single partner/beneficiary country; a proposal from Switzerland concerning diagonal cumulation for agricultural products; and the implementation of a Regulation on statistics in Algeria to benefit from trade preferences on the basis of the EU-Algeria Association Agreement.

The Commission further presented an action plan for monitoring the functioning of preferential trade arrangements, and a new simplified version of a spreadsheet for collecting statistics on post clearance verification of proofs of origin as of 2014. The Committee also discussed the procedure for the verification of proofs of origin issued by the authorities of an exporting Member State that is not the Member State of establishment of the

exporter; an amendment to the EU guidelines concerning the application of provisions concerning replacement certificates; and the determination of origin for bioethanol.

EU-Switzerland Origin Protocol Updated

On 20 May 2014, the EU published a Decision of the EU-Switzerland Joint Committee amending the origin protocol of the FTA between the EU and Switzerland, to reflect Croatia’s accession to the EU, applicable retroactively as of 1 July 2013.

Proofs of origin issued under the now defunct FTA between Croatia and Switzerland for goods declared for importation before Croatia’s EU accession had to be submitted to the customs authorities by 1 November 2013. Croatian “approved exporter” authorisations granted under the Croatia-Switzerland FTA will have to be replaced before 1 July 2014.

EU Origin Protocols with 5 PEM Countries

The EU has published proposals to amend the Origin Protocols under its FTAs with 5 PEM countries (Switzerland, Norway, Montenegro, Serbia, and FYR Macedonia) to refer to the Regional Convention on Pan-Euro-Med origin rules, which these countries have all signed. Once all PEM countries have amended the Origin Protocols in FTAs with other PEM countries, this should allow for a swifter update of the origin rules in the PEM region, and related possibilities of regional cumulation of origin, as only the Convention itself would have to be amended.

ECA Report on Preferential Trade Arrangements

On 21 May 2014, the European Court of Auditors (ECA) published a report assessing the effects of preferential trade arrangements (PTAs) in the EU. The report states that, due to weak Member State customs controls and weak supervision by the Commission of PTA partners, some imports wrongly benefit from preferential tariffs, resulting in the loss of EU revenue. The report further states that the legal provisions of the PTAs do not contain sufficient safeguards to protect the EU’s financial interests. Finally, the ECA also found that the EU’s Generalised System of Preferences (GSP) instrument has not yet fully delivered its intended benefits.

The ECA makes recommendations on how to improve the protection of the EU’s financial interests.

PROCEDURES

EU Judgment on the External Transit Procedure

On 15 May 2014, the CJEU issued its judgment in Case C-480/12, *Minister van Financiën v. X BV*. This case concerned customs debt due in a situation involving the presentation of goods placed under the external Community transit procedure at the office of destination after the time allowed for such presentation has elapsed.

The Court ruled that merely exceeding the time-limit for presentation does not lead to a customs debt being incurred for 'unlawful removal' from customs supervision, but can lead to a customs debt being incurred on the basis of the 'failure to fulfil obligations' and non-compliance with the conditions of the various customs schemes.

The Court clarified that the unlawful removal clause is intended to cover acts aimed at preventing customs controls, and its application is only justified if there is a risk that the goods could disappear into the EU's economic networks. The Court further reasoned that the late presentation of goods is not a reason to incur a customs debt if the goods are presented "within a reasonable time".

Proposed Codification/recast of EU Import and Export Rules

On 28 May 2014, the Commission issued two proposals to codify the EU's common rules on imports and exports, and one proposal to recast the EU's common rules for imports from certain non-WTO third countries. These new Regulations incorporate various existing acts, without changing the substance of these acts (except to reflect the accession of certain countries to the WTO, meaning they now fall under the general import rules).

EU-China Customs Agreements

On 16 May 2014, the EU and China signed the EU-China mutual recognition agreement (MRA) on Authorised Economic Operator (AEO) status. Parties committed to recognising each other's certified safe traders, which should allow faster controls and reduced administration for the customs authorities.

The EU and China also signed a new Strategic Framework for EU-China Customs Cooperation that defines the priorities and objectives for the coming years, focussing on trade facilitation, supply chain security and the fight against counterfeit goods and illicit trade. The EU and China have also identified tackling illegal waste shipments as a new priority.

The Parties further signed an EU-China Action Plan on Intellectual Property Rights, aimed at intensifying cooperation, communication and coordination in the fight against counterfeit goods.

On 13 May 2014, the EU Council adopted conclusions on EU-China customs cooperation to endorse the Strategic Framework and invited the Commission to ensure practical follow-up in close cooperation with the EU Member States.

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