

EU Customs Developments

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EU Customs Policy

Union Customs Code Developments

In January 2016, the draft Transitional Delegated Act (TDA) for the Union Customs Code (UCC) was discussed at committee/working party level in the European Parliament (EP) and the EU Council. The TDA was presented by the European Commission in December 2015 and contains temporary rules along with a suspension of certain UCC provisions pending the introduction of relevant IT systems under the UCC. The EP and Council have **two months** to scrutinise the draft Act (i.e. until **February 2016**), but could ask for **two extra months**.

Meanwhile, the latest version of the updated UCC Work Programme (UCC WP) for **2016** is expected to be put to a vote in **early March 2016**. This Work Programme sets the target dates by which all IT systems required under the UCC must be operational, and Member States and economic operators must start using them. The current final date for all relevant IT systems to be deployed or updated is set at the **end of 2020**.

It also appears that the Commission may be planning to produce a user-friendly compilation of the UCC and various related texts, so that companies and customs administrations can swiftly get an overview of all relevant provisions on a particular topic, rather than having to consult numerous documents.

Customs Infringements and Sanctions

As expected, on 14 January 2016, the EP's Internal Market and Consumer Protection (IMCO) Committee had a further exchange of views on the Commission proposed Directive for a legal EU framework on customs infringements and sanctions. The IMCO rapporteur on that occasion noted that all political groups in the EP agree that harmonisation at the EU level is necessary, but also that the Commission's proposal needs to be amended in various respects. Importantly, she posited that penalties should only be used as a last resort and only if negligence or intent can be proven. The rapporteur expects focus to be on facilitating customs compliance for companies and considering mitigation in the event of self-disclosure. IMCO is scheduled to continue discussions during its **22 February 2016** meeting, and a vote in this Committee is tentatively scheduled for **June 2016**.

On 15 January, IMCO also released the commissioned study on this topic on which a hearing was organised a few months ago. This external study analyses the effects of the significantly different customs sanctioning systems of the EU Member States, and the proposed Directive. Certain recommendations are made, including alignment with the overall modernisation and computerisation of customs under the UCC (which should lead to more uniform controls), focus on administrative non-criminal sanctions for infringements only (while criminal sanctions should be harmonised in separate legislation), and proportionate penalties based on the duties evaded (as opposed to the customs value of the goods to which the infringement relates).

Tariffs

Duty Suspensions and Tariff Quotas

a) July 2016 round

The Economic Tariff Questions Group (ETQG) meetings to discuss the **July 2016** update of the duty suspensions (DS) and tariff quotas (TQ) Regulations ended in January 2016. The Commission will now prepare its formal proposals and, as usual, submit these to the Council in **May** or **June 2016**.

b) January 2017 round

The deadline for the Member States to send eligible applications for the **January 2017** round to the Commission is set at **15 March 2016**. The first ETQG meeting to start discussing these applications will take place after that.

GSP+ Status for Kyrgyz Republic

As from 27 January 2016, the Kyrgyz Republic has been granted GSP+ status under the EU's Generalised Scheme of Preferences (GSP) which grants autonomous tariff preferences to developing countries. Under the GSP+ special incentive arrangement, additional tariff preferences are granted to GSP beneficiary countries that have ratified and effectively implemented certain international conventions in relation to sustainable development and good governance.

First Report on the EU's Reformed GSP Regime

On 28 January, the Commission published its first report on the reformed GSP regime that entered into force in January 2014. The report summarises progress and shortcomings in 14 countries which currently have or had GSP+ status in 2015 (Armenia, Bolivia, Cabo Verde, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Mongolia, Pakistan, Panama, Paraguay, Peru, and the Philippines). The Commission observes that full implementation of the relevant conventions is not yet achieved and that the EU will continue to provide practical support to achieve this goal. The 14 countries and EU stakeholders have been given the opportunity to comment on the report's findings. In the coming months, the Commission will update the individual "scorecards" for each of these countries on their compliance with GSP+ commitments.

As regards the standard GSP arrangement, the report analyses the use of the regime and notes that China's removal from the GSP beneficiary country list has had a major impact on the vulnerability threshold for removing countries from the list, for example. The report also discusses the use of the "Everything but Arms" (EBA) arrangement for least developed countries (LDCs), and provides statistics on the main users of the various regimes.

The next review of the GSP regime is due by **November 2017**.

EU FTA Update

a) Dutch Presidency Trade Priorities

On 25 January 2016, the Dutch Minister for Foreign Trade and Development Cooperation presented the priorities of the Council Presidency in the field of international trade for the **first half of 2016** to the EP's International Trade (INTA) Committee. The Dutch Presidency aims to facilitate efficient continuation of FTA negotiations with Japan and the US, to launch FTA negotiations with Australia, New Zealand, and Mexico, and to conclude the trilogue negotiations on conflict minerals. The Presidency also aims to reflect on China's Market Economy Status and to advance the post-Nairobi multilateral trade debate.

b) Vietnam

On 1 February 2016, the EU released the final version of the text of the EU-Vietnam Free Trade Agreement (FTA), on which negotiations were concluded in December 2015. This text will now be subject to legal review and translation into all official EU languages, and will thereafter be transmitted to the Council and the EP for their approval. It is expected that this FTA will not start to apply provisionally until **after 2017**.

c) South Korea

On 1 January 2016, the Additional Protocol to the EU-Korea FTA to take into account Croatia's accession to the EU entered into force. It was signed already in March 2014.

d) Ukraine

As planned, the EU-Ukraine Deep and Comprehensive Free Trade Area (DCFTA) started to apply provisionally on 1 January 2016. The DCFTA forms part of the Association Agreement between the EU and Ukraine and was signed in June 2014. The political and cooperation provisions of the Association Agreement have already applied provisionally since November 2014, while the trade provisions were delayed to allow time to find pragmatic solutions to certain concerns expressed by Russia.

Also in January 2016, Members of the European Parliament (MEPs) adopted a Resolution pointing out the remaining reform tasks for each of the countries with which the EU has concluded Association Agreements and DCFTAs (i.e. Ukraine, Georgia and Moldova). The resolution further highlights that Georgia's exports to the EU rose by 15% and those of Moldova by 62% in the first year of each Agreement, and that similar growth is expected for Ukraine. MEPs also took note of the upcoming Dutch (advisory) referendum on the EU-Ukraine AA/DCFTA which is scheduled to take place on **6 April 2016**.

e) United States

The 12th round of TTIP negotiations is scheduled to take place during the week of **22 February 2016**. Additional negotiation rounds are also scheduled for **April** and **July 2016**.

Meanwhile, in a paper issued by the World Trade Institute of the University of Bern, it is stated that Lithuania, Ireland, Belgium and Austria stand to get the biggest economic boost from TTIP, as a result of expected increases in output in manufacturing, water transport, insurance services, processed foods, chemicals and pharmaceuticals, and the motor vehicles sectors. Estonia, Hungary and the Czech Republic, on the other hand, would, according to this paper, see the lowest GDP growth as a result of TTIP. Sectors expected to decline in output include electrical machinery, metals and metal products, and transport equipment.

f) Canada

The Dutch Presidency indicated in an EP Committee meeting in January 2016 that, due to the recent change of government in Canada, the legal fine-tuning of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) will "need some more time". The CETA negotiations were concluded in September 2014.

g) India

On 18 January 2016, representatives of the EU and India reportedly met to discuss the resumption of FTA negotiations. These negotiations were launched in 2007, but the last formal FTA related meeting between the two parties was in October 2014. A planned resumption of negotiations in August 2015 apparently failed over a dispute on pharmaceuticals.

h) Indonesia

In late January 2016, Indonesia's Minister of Trade stated that Indonesia is aiming to negotiate a Comprehensive Economic Partnership Agreement (CEPA) with the EU within the **next two years**. No statements have so far been issued on the EU side as to upcoming launch meetings or target dates.

i) South African Development Community EPA States

On 22 January 2016, the European Commission issued a proposal for a Decision on the conclusion of an Economic Partnership Agreement (EPA) between the EU and the South African Development Community (SADC) EPA States (Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa). Negotiations for this EPA were already concluded on 15 July 2014. It contains provisions on, *inter alia*, trade in goods, customs and trade facilitation, and rules of origin.

Classification

Explanatory Notes for Glass Fibres

On 27 January 2016, the Commission replaced the Explanatory Note to the EU's Combined Nomenclature (CNEN) for tariff heading 7019 ("Glass fibres (including glass wool) and articles thereof (for example, yarn, woven fabrics)") to clarify its scope.

Nomenclature Committee Developments

a) Textiles and Mechanical/Miscellaneous Sector

The report of the 161st meeting of the Textiles and Mechanical/Miscellaneous Sub-section of the Tariff and Statistical Nomenclature Committee (the "Nomenclature Committee"), which took place on 9-10 December 2015, has been made available. During this meeting, the Committee delivered a positive opinion on a draft regulation determining the classification of drawing boards (classified under CN code 9503 00 95 as toys of plastic), but failed to deliver an opinion on the proposed classification of an LED glitter lamp (for which the Commission proposed to use CN code 3926 40 00 as other ornamental articles of plastic). The Committee also examined the classification of video inspection scopes/endoscopes, child seats for bicycles, keyrings attached to a toy, toner cartridges, long-pile fabric, layered wood, drawer dividers, seat comforters for toddlers, bathtub steps, children's book and toy sets, cleaning cloths, memory card games, glass holders for tea-lights, temperature controllers, and video camcorders. The Committee finally also examined a Draft Additional Note and the CNENs as regards heading 9505 for decorative articles. Under any other business, an issue was raised relating to an IGBT with thermistor (on which the Commission said it is consulting its Legal Service) and relating to the classification of an aluminium bracket for an engine.

b) Agriculture/Chemistry Sector

The 163rd meeting of the Agriculture/Chemistry sub-section of the Nomenclature Committee will take place on **15-17 February 2016**. The agenda for this meeting includes votes on, among others, proposed amendments of the ENs for Chapter 24 products (tobacco) and subheading 3403 19 90 (lubricating preparations). An examination is also foreseen of the tariff classification of mazut, metallised PET film, modified phenolic resins, three-dimensional stickers, stabilised zirconium dioxide, heat-sensitive ink ribbon in rolls, self-heating pain relief patches and belts, and food supplements produced from vegetable meal. In addition, the Member States and Commission are set to discuss the future Binding Tariff Information (BTI) regime.

c) HS/WCO Coordination Sector

The 165th meeting of the HS/WCO Coordination Sector is scheduled to take place from **29 February** until **2 March 2016**. The agenda includes a discussion and vote on the regular Commission Communication endorsing amendments to the Harmonised System (HS) Explanatory Notes and classification opinions of the WCO Customs Cooperation Council, and a pre-coordination for the 57th HS Committee meeting. The Committee is further scheduled to discuss the classification of, among others, ceramic inks for inkjet technology and a chili stew.

Origin

Origin Committee Developments

The 221st meeting of the Origin Section of the Customs Code Committee took place on **3-4 February 2016**. The report for that meeting has not yet been made available, but the agenda includes a discussion on preferential origin rules for goods from Ukraine and Moldova, a complaint made by Egypt on the readability of approved exporters and origin declarations, and the usual discussion on the Pan-Euro-Med (PEM) Convention developments. The Commission was also set to debrief the Committee on the pending origin rules negotiations with Japan, the bilateral Customs Committee meeting with Korea of November 2015, and a January 2016 meeting of the EU-Chile Committee on Customs Cooperation and Rules of Origin. The Committee was further scheduled to receive an overview of the Commission's monitoring activities in 2015, the work of a special project group on preparing guidelines on preferential origin, and the state-of-play of the registered exporter (REX) project. Under any other business, the agenda included discussions on, among others, the creation of a TARIC code for the REX statement of origin, and the making of invoice declarations by approved exporters not being the person declaring the goods for export.

Labelling of Israeli Settlement Products

Despite continued tensions with Israel over the issue, on 18 January 2016 EU foreign ministers confirmed the EU's position laid down in its Interpretative Notice on indication of origin of goods from the Palestinian territories occupied by Israel. The Notice was published in November 2015. It clarifies that, in accordance with EU legislation in place, products originating from land occupied by Israel (such as the Gaza Strip, the Golan Heights and the West Bank (including East Jerusalem)) cannot be labelled "Made in Israel" but should be labelled as coming from Israeli settlements.

EU-Switzerland FTA Origin Protocol

On 29 January 2016, the EU published **Decision No 2/2016** of the EU-Switzerland Joint Committee replacing the existing detailed Origin Protocol with a mere reference to the PEM Convention. The process of replacing the Origin Protocols of the EU FTAs with PEM countries has been ongoing for quite some time and will – when this process is completed – result in a much swifter and simultaneous updating of the relevant origin rules.

Valuation

Court Judgment on the Definition of 'Related Persons'

On 21 January 2016, the Court of Justice of the European Union (CJEU) delivered its judgment in Case C-430/14 (*Valsts ieņēmumu dienests v Artūrs Stretinskis*) as regards the definition of 'related persons' when determining customs value for imported goods. Pursuant to the EU Customs Code Implementing Provisions, when the buyer and seller are considered to be 'related' (e.g. involving family members), the so-called transaction value method can only be used for determining the customs value if that relationship did not influence the sale price. In this case, the Latvian importer and the director of the U.S. company selling the imported goods were brothers. The Latvian revenue authority held that the two parties (i.e. 1) a natural person, and 2) a legal person where a director is related to the former) should be considered related under these rules, even though the relevant provision assumes that the two parties are natural persons.

The CJEU agreed that where the seller is a legal person, it could nevertheless be considered related to a natural person if the subject relative within the company has the power to influence the sales price. The Court left it for the competent authorities to decide in the present case whether the company director had indeed such power, and if so, whether his relationship with the Latvian importer had influenced the sales price of the imported goods.

Procedures

Customs Code Committee ‘Special Procedures’ Section Developments

The report of the 46th meeting of the ‘Special Procedures’ Section of the Customs Code Committee, that took place on 23 November 2015, has recently been made available. During this meeting, the Committee prepared for the examination of the economic conditions for processing under customs control (PCC) of solar glass into solar panels. The Committee also held an exchange of views on a working document on the repair of means of transport under the temporary importation procedure, and agreed on the drafting of guidelines in that respect.

The Committee further discussed the method of calculating import duty under the UCC in cases of inward processing; an extension of the period of discharge for inward processing to end use; the possibility to use equivalent goods when certain authorisations for temporary admission are granted; and the use of equivalent goods for inward processing. The Commission also informed the Member States of its intention to propose an article on temporary admission and the use of ATA Carnets in the ongoing EU-Japan FTA negotiations.

The above-mentioned discussions on PCC for solar glass were further scheduled to be discussed during the 47th meeting of the ‘Special Procedures’ Section that took place on 29 January 2016. The agenda for that meeting also included a similar discussion on processing high-quality grain-oriented electrical steel (GOES) into high-quality GOES coils, the continuation of discussions on the use of equivalent goods for inward processing under the UCC, and the planned UCC guidelines.

EU-New Zealand Customs Cooperation Agreement

On 21 January 2016, the European Commission issued proposals for Council Decisions on the conclusion and signing of the EU-New Zealand Agreement on Cooperation and Mutual Administrative Assistance in Customs Matters. This bilateral agreement focusses on cooperation in the fight against fraud, securing supply chains, and it also establishes a bilateral Joint Customs Cooperation Committee.

Miscellaneous

Implementation Day Marks First Phase of Iran Sanctions Relief

On “Implementation Day” (i.e. 16 January 2016), the EU (along with the UN and US) implemented the first phase of Iran sanctions relief as part of its commitments under the so-called “Joint Comprehensive Plan of Action” agreed in July 2015 with Iran. The majority of the EU sanctions in relation to Iran’s nuclear programme have now been lifted, leaving only certain limited nuclear-related and human-rights related sanctions in place.

EU Requests WTO Consultations on Colombian Measures on Imported Spirits

On 13 January 2016, the EU requested consultations with Colombia under the WTO’s Dispute Settlement mechanism in relation to Colombia’s tax and regulatory measures applicable to imported spirits. According to the EU, EU spirits are subject to a higher national consumption tax and higher local charges than Colombia’s local brands, and Colombia’s regional authorities in addition impose market access restrictions for imported spirits. The EU argues that these measures are in violation of the 2013 FTA concluded between the EU and Colombia, in which Colombia committed itself to end discrimination on its spirits market by 1 August 2015.

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