

EU Customs Developments

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EU Customs Policy

Union Customs Code Developments

On 21 August 2015, the European Commission formally submitted its **draft Delegated Act** under the Union Customs Code (UCC) to the Council and the European Parliament (EP). This marked the start of a two month scrutiny period during which these two institutions check if the Commission has stayed within the limits of the powers delegated to it under the UCC. The scrutiny period can be extended by a further two months at the request of either the Council or the EP. However, on 8-9 October 2015, the Council decided that it will not object to the draft (and will therefore not extend the scrutiny period). As the EP had neither requested more time nor raised any objections by 21 October 2015, the Commission can proceed with publication of the Delegated Act.

The EP discussed the draft Act on 22 September 2015 in its Internal Market and Consumer Protection (IMCO) Committee and a number of concerns were raised. These concerns related, in particular, to the need to declare a 6-digit customs code in prior customs declarations, and on the elimination (except for postal operators) of the current *de minimis* threshold of EUR 22, below which no customs declaration is required. The IMCO chair asked the Commission to clarify how exactly the rules are bringing simplifications for businesses. The Commission representative present at the IMCO meeting noted that a special Project Group is being set up to ensure that, when the remaining IT systems are introduced in the next five years, a better balance will be sought between controls and trade facilitation. On 30 September 2015, the Commission provided detailed information to the IMCO Chair to explain which changes the UCC will bring, and this seems to have reassured the EP so as not to raise objections.

On 7-8 September 2015, the Customs Code Committee's General Legislation section held its initial discussion on the **draft UCC Implementing Act**. Based on that discussion, the European Commission revised certain parts and re-circulated further drafts to the Committee in October. Further meetings were then held on 8-9 and 29-30 October 2015. None of these drafts have been made publicly available. It is expected that the Committee will vote on the revised draft on 6 November 2015, when it should also be clear whether or not the EP has asked for two extra months to scrutinise the Delegated Act. The Commission hopes to be able to publish both Acts, which will apply from 1 May 2016, in the EU's Official Journal in November 2015.

Meanwhile, the Commission is also working on a draft of the so-called “**Transitional**” **Delegated Act** laying down provisions which will apply until the end of 2020. This is to take into account the fact that certain IT systems required under the UCC will be introduced gradually in that period, and will not be available from the start of the UCC in May 2016. The Commission is also coordinating a revision of the **UCC Work Programme** by March 2016, and in this context it is examining the impact which UCC-related IT requirements will have on existing national IT systems of the EU Member States.

Later this year, the Commission and Member State experts will also start drafting **guidelines** on specific UCC topics, which will apparently be made public (either on the Commission’s website or in the Official Journal) to assist economic operators and customs administrations in adjusting to the new rules. This will be a gradual process and priority will be given to areas where the rules will change substantially (e.g. on special procedures) and to the rules during the transitional period. Guidelines on the intended interpretation of the revised customs valuation rules are also foreseen, but the timing remains unclear. In October 2015, the Commission announced the first meeting of a special Project Group to start discussing future guidelines on “entry in the declarant’s records” (EIDR).

Mutual Assistance Regulation

After the EP endorsed the text agreed earlier with the Council, **Regulation (EU) 2015/1525** was formally adopted on 9 September 2015 to amend a 1997 Regulation on mutual assistance between the administrative authorities in the Member States, and cooperation between the latter and the Commission to ensure correct application of the law on customs and agricultural matters. As a result, new rules will apply from 1 September 2016, including a new electronic system for the collection of Container Status Messages (CSMs) (the “CSM Directory”), to complement the “transport directory” and the “import, export and transit directory”. The overall aim of the changed system is to make the detection of customs fraud easier and more efficient.

Customs Infringements and Sanctions

On 13 October 2015, a study ordered by the EP from an external consultant – entitled “**Study - Analysis and effects of different Member States’ customs sanctioning systems**” – was presented to the EP’s IMCO Committee. The aim of the study is to show how customs infringements are currently dealt with by the Member States, and to examine options for harmonisation at EU level (as proposed by the Commission in late 2013). The study shows many significant differences among the Member States. For example, while a majority of Member States have a combined system of criminal and non-criminal procedures (but with widely differing thresholds for applying criminal procedures), 8 countries only have a criminal system to address customs infringements. There are also great differences related to settlement options, and on how mitigating and aggravating factors are applied. Significantly, just over half of the EU Member States have a system that allows a legal person to be held liable for customs infringements. The study concludes that broader harmonisation of customs rules is needed, but also calls for a distinction to be made between illegitimate and legitimate trade. It proposes that only administrative penalties should be used in cases of legitimate trade, while intentional infringements should all be covered under a separate pending proposal for a Directive on the Fight against Fraud, which foresees severe criminal penalties.

The Commission meanwhile has announced that it will hold a **Workshop** on 16 November 2015 on its draft proposal to hear stakeholder views and concerns. The proposed agenda is not publicly available and only selected stakeholders will be allowed to participate. It includes presentations by the Commission (including its anti-fraud office OLAF) and the EP, followed by the views of legal practitioners and companies. The discussions will likely cover the calculation of penalties, and the distinction between criminal and non-criminal cases.

Tariffs

Duty Suspensions and Tariff Quotas

The formal proposals for the Regulations updating the list of autonomous Duty Suspensions (DS) and Tariff Quotas (TQ) as from 1 January 2016 are not yet available, but the Commission’s dedicated webpage indicates that 230 DS applications and 34 TQ applications were discussed during the January 2016 round. The proposals are expected to be submitted to the Council in November 2015, for adoption – as usual – in late December 2015.

On 15 September 2015, the deadline for filing applications under the July 2016 round passed. Interested parties have until 11 December 2015 (i.e. the second meeting of the Economic Tariff Questions Group (ETQG) for this round) to raise objections to new requests, which can also be found on the Commission's dedicated webpage. Almost 250 DS and 30 TQ files will be discussed.

Moratorium on Customs Duties on Electronic Transmissions

On 6 October 2015, the Commission published a proposal for a Council Decision "on the position to be taken within the Ministerial Conference of the World Trade Organisation as regards the extension of the moratorium on customs duties on electronic transmissions and the moratorium on non-violation and situation complaints." The EU considers e-commerce to be a service and it should therefore not be subject to customs duties. With this proposal, the EU wishes to join other WTO members that wish to extend the so-called "e-commerce moratorium" on an indefinite basis or at every Ministerial Conference where the moratorium is proposed for adoption. The moratorium is based on a 1998 Declaration and Decision of the WTO Ministerial Conference, which has so far been renewed every two years.

GSP – Removal of Beneficiary Countries and New Graduation Thresholds

In late August 2015, the Commission submitted two draft Delegated Regulations to the Council and the EP for scrutiny. The first Regulation removes Fiji, Iraq, Marshall Islands and Tonga from the list of eligible countries under the EU's Generalised Scheme of Preferences (GSP) as from 1 January 2017 to take into account their development status. Georgia and Cameroon will also be eliminated from the list as they now benefit from other preferential arrangements with the EU. Samoa will be removed from the list of countries eligible for benefits of the special "Everything but Arms" regime from 1 January 2019, as it is no longer considered a "least-developed country". Samoa will from that date only have access to the standard GSP regime, unless it can qualify for the "GSP+" regime by then.

The second draft Regulation amends the threshold for "graduating" product/country combinations from the standard GSP regime when imports of a certain category of products originating in a particular GSP beneficiary country make up too much of GSP imports into the EU overall. The threshold is being amended retroactively as from 1 January 2015. At present, graduation is triggered when the average value of EU imports of products of one section from one country exceed either 14.5% for textiles/apparel/clothing accessories or 17.5% for all other GSP sections as compared to relevant product imports from all GSP countries. Because various countries (including China and Thailand) have been removed from the list of GSP beneficiaries in recent years, the Commission has decided to increase the threshold to 47.2% and 57%, respectively. However, for sections S-2a (live trees and other plants), S-3 (various products of Harmonised System (HS) Chapter 15) and S-5 (HS Chapter 27 products and certain products of HS Chapter 25), the threshold will remain at 17.5% as the GSP removal of the abovementioned countries has not had a significant effect on imports of products of those sections.

On 26 October, the Council decided not to object to these draft Regulations. The EP has not yet decided if it wants to ask for two extra months to examine the drafts. If the EP also refrains from raising objections, the Commission will formally publish these Regulations and allow them to enter into force.

EU FTA Update

a) Updated EU trade and investment strategy

On 14 October 2015, the Commission published its updated trade strategy, entitled "*Trade for all: Towards a more responsible trade and investment policy.*" As far as Free Trade Agreement (FTA) negotiations are concerned, the paper unsurprisingly places much emphasis on increasing transparency and focusing more on liberalising services (as these enable goods trade as well) and removing non-tariff barriers. Conclusion of negotiations with the United States on the Transatlantic Trade and Investment Partnership (TTIP) and the ongoing talks with Japan are listed as top priorities. The Commission also wants to resume negotiations with Malaysia, Thailand, India, Mercosur and the Gulf countries, and explore again a region-to-region FTA with ASEAN. In terms of new FTA projects, the Commission wants to seek a negotiating mandate for FTA talks with New Zealand (see below) and Australia, and with the Philippines and Indonesia when the conditions are right. Finally, the Commission is announcing that it wants to update existing FTAs with Mexico and Chile, and explore a review of the FTA with South Korea in order to include an investment chapter. Importantly, the EU

wants FTAs to be more “open” to third countries that are ready to take on ambitious obligations, and it indicates that it will consider more opportunities for cumulation of origin and simplification of customs rules and procedures. For more information on the new strategy, see our [alert](#) of 20 October 2015.

b) Japan

On 14-18 September 2015, the 12th round of negotiations was held in Tokyo between Japan and the EU on a bilateral Economic Integration Agreement (EIA). All areas of the agreement were discussed, except the investment chapter. The next round will be held in Brussels at the end of October 2015. Given Japan's intense involvement in the Trans-Pacific Partnership (TPP) negotiations, little progress was expected during the September 2015 round with the EU.

In response to an EP question on the topic, EU Trade Commissioner Cecilia Malmström has noted that “only an agreement with high level of ambition overall and especially in the areas of particular interest to the EU such as tariffs, non-tariff measures, public procurement, geographical indications and services, would be acceptable and therefore allow the conclusion of negotiations.”

c) US

On 16 September 2015, the Commission finally published its draft text for the Transatlantic Trade and Investment Partnership (TTIP) chapter on investment. It will now consult with EP and Council on this draft.

On 22 September 2015, Commissioner Malmström and Trade Representative Michael Froman took stock of the TTIP negotiations, and the Commission's press release afterwards acknowledges “*the need to accelerate the discussions and achieve progress in all areas under negotiation.*”

Over the Summer, the EP published a report entitled “TTIP: Opportunities and Challenges in the Area of Customs and Trade Facilitation”. Here, the EP concludes that TTIP will not lead to a major diversion from existing practice in this regard (given the robust customs cooperation which already exists between the EU and the US). However, it considers that TTIP could positively influence the pace of domestic reforms in the area of customs laws and procedures.

The 11th round of TTIP negotiations was held in the US (Miami, Florida) on 19-23 October 2015. Important progress was reported, with the exchange of a second tariff offer (under which duties would be eliminated on day one for 97% of all tariff lines), and discussion of the first proposals on product-specific origin rules noted as highlights. The US during this round also submitted its proposals for the customs and trade facilitation chapter (which the EU submitted already in March 2014). The important exchange of offers on public procurement will not take place until February 2016. The aim remains to agree on TTIP before President Obama leaves office in early 2017, and both sides acknowledge that the next four months are crucial.

It is not entirely clear when exactly the formal 12th round of negotiations will take place, but it is currently expected to take place in early 2016 in Brussels. Bilateral inter-sessional discussions will continue in the meantime.

d) Vietnam

On 4 August 2015, the EU and Vietnam announced their agreement in principle on a bilateral FTA that would remove almost all tariffs (99% of all tariff lines, over 7 and 10 years, respectively, with the EU eliminating all duties on day one for 84% of all tariff lines) and be used as a model for further EU FTAs with countries in South East Asia. However, certain technical details must still be addressed before the text can be finalised and this could take a few months. No text is publicly available yet, and it is unclear exactly when the draft will be submitted to the Council and EP. Senior EU officials have expressed their hope that the final conclusion of the talks can be announced before the end of 2015.

e) New Zealand

On 29 October 2015, the EU and New Zealand (in addition to welcoming the conclusion of their bilateral Partnership Agreement on Relations and Cooperation) announced in a joint statement the start of the process for FTA negotiations with the launch “as soon as possible” of the scoping exercise. On the basis of the results of such scoping, both sides will then seek a negotiating mandate.

f) India

In early August 2015, India postponed a scheduled discussion with the EU planned for early September 2015 which was to take stock of the bilateral FTA negotiations. This decision was apparently taken in light of the EU's plans to impose a ban on the sale of numerous Indian generic medicines (following a related recommendation by the European Medicines Agency earlier this year). It is unclear when the bilateral FTA discussions will now take place. In October, still no progress seemed to have been made.

g) Ukraine

High-level talks took place between the EU, Ukraine and Russia on 7 September 2015 to discuss Russian concerns about the EU-Ukraine Deep and Comprehensive FTA (DCFTA), which will be applied provisionally as from 1 January 2016. EU Trade Commissioner Malmström, Ukraine's Foreign Affairs Minister Pavlo Klimkin and Russia's Minister of Economic Development Alexei Ulyukayev acknowledged that the views continue to differ. They have mandated technical experts to continue earlier discussions and will convene again in November 2015 to see if a solution can be reached then.

Classification

Court Judgment – Kyowa Hakko Europe GmbH

On 17 September 2015, the Court of Justice of the EU (CJEU) delivered its judgment in Case C-344/14 between Kyowa Hakko Europe GmbH and the German customs authorities in a dispute over the classification of amino acid mixes used for the preparation of foodstuffs for infants and young children allergic to cow's milk proteins. Kyowa Hakko had applied for Binding Tariff Information (BTI) claiming the product was classifiable under Combined Nomenclature (CN) code 3003 90 (i.e. as a "medicament"), but the customs authorities issued BTI for CN code 2106 90 92 (i.e. as "protein concentrates and textured protein substances"). Kyowa Hakko appealed that decision and the matter went all the way through the German court system up to the Federal Finance Court, which referred to matter to the CJEU.

The CJEU sided with the local customs authorities by holding that the proper classification was in tariff heading 2106. It reasoned that the goods cannot be classified under heading 3003 as they *"do not have clearly defined therapeutic or prophylactic characteristics, with an effect concentrated on precise functions of the human organism, and, accordingly are not capable of being applied in the prevention or treatment of diseases or ailments and also are not naturally intended for medical use."*

Common Customs Tariff 2016

On 30 October 2015, the EU published the Regulation containing the updated Common Customs Tariff (CCT) applicable from 1 January 2016. The changes to CN codes are as always marked with "★" if a tariff code is new, while "■" means that the code is not new but the coverage will change.

Classification Regulations

In the period August-October 2015, the following Classification Regulations were adopted and published:

- **Commission Implementing Regulation 2015/1384** classifies a puzzle book under CN code 9503 00 69 as "other puzzles".
- **Commission Implementing Regulation 2015/1385** classifies an article to be used as an indoor greenhouse under CN code 6307 90 98 as "other made-up textile articles".
- **Commission Implementing Regulation 2015/1721** classifies whole clams in the shell having undergone heat treatment and subsequently being frozen under CN code 1605 56 00 as "prepared clams".
- **Commission Implementing Regulation 2015/1722** classifies a certain cream used for sensual massage and stimulation put up for retail sale under CN code 3307 90 00 as "other cosmetic preparations".

- **Commission Implementing Regulation 2015/1723** classifies spinels and “fused magnesia chrome” products used in the manufacture of refractory bricks and tiles by the steel industry under CN code 2841 90 85 (as “other salts of oxometallic or peroxometallic acids”) or 3824 90 96 (as “other chemical products and preparations of the chemical or allied industries, not elsewhere specified or included”).
- **Commission Implementing Regulation 2015/1785** classifies a so-called “mop head” under CN code 9603 90 99 (as a “mop”).
- **Commission Implementing Regulation 2015/1799** classifies a vitamin preparation used as a dietary supplement under CN code 2106 90 92 (as “other food preparation”).
- **Commission Implementing Regulation 2015/1800** classifies a portable electronic device allowing the user to connect to the Internet; to download, execute and modify software applications; to receive and send e-mails; to play games; and to download, record and reproduce music, video and photos under CN code 8471 30 00 (as “portable automatic data-processing machine, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display”).

CNEN Amendments

On 14 August 2015, an amendment was published to the CN Explanatory Notes (CNENs) related to tariff heading 7304 (“Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel”). The aim is to clarify that this heading also covers articles which are threaded, regardless of the ratio of the threaded part as compared to the overall length of the article.

On 26 September 2015, a CNEN was introduced for tariff lines 3824 90 92 and 3824 90 93 (“Chemical products or preparations, predominantly composed of organic compounds, not elsewhere specified or included”). This CNEN notes that the amount of water is not to be taken into account when determining the classification of chemicals of these subheadings, and clarifies that the term “organic compounds” applies to all organic products, wherever they are classified. Endorsement of Harmonised System Opinions and ENs.

On 16 October 2015, the Commission published a Communication in which it endorses various amendments adopted by the Harmonized System (HS) Committee in March 2015 to the HS Explanatory Notes (related to headings 29.30, 25.01, 30.02, 33.07, 35.06, 61.10 and to Chapter 39) and HS Classification Opinions (relating to various products of HS Chapters 15, 19, 20, 21, 23, 37, 61, 62, 63, 85, 87 and 90). As a result of this publication, Binding Tariff Information (BTI) that is incompatible with these HS tools ceases to be valid, and EU Member States can no longer issue BTI that is not in line with these tools.

Nomenclature Committee Developments

a) Combined Nomenclature Sector

The report of the 154th meeting of the CN Sector of the EU’s Nomenclature Committee of 16 July 2015 has been published. The Committee held a final reading of the CN2016 and also discussed the possible creation of new CN codes for lubricants, succinic acid and 1,4-butanediol. It also examined the transposition of the HS/CN2017 for Chapters 3, 22, 84 and 87. The Committee experts were asked to vote on a number of drafts, including amendments to the CN for rare-earths.

b) Textiles and Mechanical/Miscellaneous Sector

The agenda of the 156th meeting of the Textiles and Mechanical/Miscellaneous Sector scheduled for 5-6 October 2015 shows that the Committee is expected to vote on draft Classification Regulations on vibration engines, photo books, gardening kits, door bottom sealing, free wheel sprocket wheels, junction boxes, electronic money boxes, arm sleeves for smartphones, adapters/cables for game consoles, sewing machines and curtains. In addition, the group will discuss the classification of shower doors, decorative articles, hammocks, STB power supply, play/drawing mats, Bluetooth wireless speaker adaptors, video inspection scopes/endoscopes, video camcorders, drones, acceleration sensors, layered wood, drawer dividers, seat comforters for toddlers, bathtub steps, cleaning cloth, children’s book and toy sets, “Hexbug” beetles and Luer lock connectors. The experts will also discuss updating of the CNEN to tariff subheading 8525 80 (TV cameras, digital cameras and video camera recorders).

c) HS/WCO Sector

On 7-9 September 2015, the HS/WCO Sector met. The report of the meeting is not yet available, but the agenda indicated that the experts were due to discuss endorsing HS Committee amendments to the HSENs and new HS Classification Opinions, as well as a possible amendment to the HS nomenclature for LED products and transducers. In addition, the group was set to prepare for the upcoming 56th HS Committee meeting.

d) Agricultural/Chemistry Sub-Section

On 20 November 2015, the 159th meeting of the Sub-Section Agriculture/Chemistry will meet. The agenda for that meeting indicates that the Committee will discuss, *inter alia*, an amendment to the CNEN to Chapter 24 (tobacco), and the classification of certain lubricants, metallised PET film, and products with high alcohol content.

Origin

Origin Committee Developments

The report of the 218th meeting of the EU's Origin Committee (held on 22-23 April 2015) shows that the Committee discussed a number of matters related to the GSP rules (including the Registered Exporter (REX) system, collaboration with Norway, Switzerland and Turkey, and administrative cooperation with Bangladesh). As always, matters related to the Pan-Euro-Med (PEM) Convention were also discussed. The Commission further debriefed the national experts on bilateral discussions on origin rules with Vietnam, Chile, Egypt, Georgia, Turkey and Moldova. Other topics included the verification of origin for imported goods and supplier's declarations.

The report of the 219th meeting which took place on 9 June 2015 again reports on PEM Convention matters (including on exports from the EU to the West Bank and Gaza Strip via Israel, and the preparation of the 22nd meeting of the PEM Working Group on updating product-specific rules of the Convention). The Member State experts were also debriefed on discussions on origin rules with Japan and Central America. The Committee discussed the EU's position in the TTIP negotiations (and noted it is consulting EU producer federations on a suggestion to propose a 50% value added rule for all industrial products). Finally, a derogation under GSP origin rules for bicycles produced in Cambodia using parts originating in Malaysia was examined and GSP collaboration with Turkey, Norway and Switzerland was on the agenda again as well.

Finally, the 220th meeting of the Origin Committee was set to take place on 30 September 2015. The agenda again included matters relating to the PEM Convention (including as regards Turkey, origin declarations for low value exports to Switzerland, and pre-coordination for a seminar to be held on 7-9 October 2015 on the revision of the PEM Convention) and a debrief on the origin rule discussions with Japan, Vietnam, and South Korea was on the agenda. In addition, the group was due to discuss the verification of proofs of origin by the authorities of an EU Member State other than where the exporter is established, and the types of documents on which an origin declaration can be made out. Aluminium imports from Turkey were also on the agenda.

GSP Warning Notice for Open Mesh Fabrics of Glass Fibres

On 23 September 2015, the Commission published a warning notice to importers stating that there is reasonable doubt about the true origin of open-mesh fabrics of glass fibres of tariff lines 7019 40, 7019 51 and 7019 59 imported from Cambodia, Indonesia, Laos, Philippines, Vietnam, Myanmar/Burma, Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka. It did so after an investigation revealed that significant quantities of these products consigned from Singapore were wrongfully declared as having the origin of one of these countries. Following publication of a warning notice, importers can no longer rely on the so-called "good faith" clause of the EU Customs Code (which could otherwise in certain cases allow them not to pay import duties for shipments for which proof of preferential origin is denied at the EU border).

EU Plans on Labelling Products from Israel Settlements

In a resolution adopted on 10 September 2015, the EP called for labelling of goods made in Israeli settlements in the West Bank and Gaza Strip, so as to prevent these products from benefiting from preferential duty access under the EU-Palestine FTA. This request has also been made by certain EU Member States.

Mogherini's statements on the Israel-Palestine conflict in the EP debate on 27 October 2015 did not suggest that the Commission would act by introducing labelling requirements in the short term, as it instead wanted to focus on getting the two sides to the negotiating table. However, in early November (see our next issue), the Commission did proceed with the publication of an interpretative notice in the Official Journal on correct origin labelling of products from Israeli-occupied territories.

Valuation

Valuation Committee Developments

The report of the meeting of the EU's Valuation Committee of 5-6 March 2015 was published in September 2015. It shows that the Committee discussed Operation "Snake" (involving EU-China cooperation in identifying cases of undervaluation) and how to handle currency conversion when the price is invoiced in foreign currencies with a pre-fixed exchange rate. Price increases following release for free circulation and the valuation of know-how were also discussed. In addition, the EU valuation experts prepared the EU's position for the WCO's May 2015 Technical Committee on Customs Valuation (TCCV) meeting on related party transactions and transfer pricing, distribution fees, goods in global value chains, fees for unlocking certain functions after importation of goods, and various royalties and licence fee situations. Under Any Other Business, the Commission provided a brief update on the UCC preparations, and WCO guidance on advance rulings was flagged by the Commission. An exchange of views on end-year adjustments and data elements in customs declarations concluded the meeting.

The following meeting of the Valuation Committee took place on 1-2 October 2015, with the agenda featuring WCO coordination for the October 2015 TCCV meeting, the valuation of know-how, end-year price adjustments, price adjustments in sales between non-related parties, and the treatment of transport costs ("kickback incentives"). The Committee was also due to discuss the UCC again, and in particular the preparation of valuation guidelines. The report of the meeting is not yet available.

UCC Draft Implementing Act – Changes to Draft Valuation Provisions Unlikely

During the Customs Code Committee discussion in early September 2015 on the draft UCC Implementing Act (see above), the provisions on customs valuation (including the provision eliminating the possibility to use an earlier sale in a chain of sales and the clause risking dutiability of practically all royalties and licence fees) apparently did not trigger much opposition from Member State experts, but in subsequent meetings on 8-9 October and 29-30 October, a revised version of the relevant provisions was discussed. As indicated above, the expectation is that the Implementing Act will receive a positive vote in early November 2015 and be published later that month in the Official Journal. It is understood that the Commission will then draft guidelines on how to interpret and apply the new valuation provisions at some point. Such guidelines should, for example, reiterate that the "condition of sale" test must be satisfied before royalties and licence fees can be included in the customs value.

Procedures

Transit Procedures

In September and October 2015, the Commission proposed Decisions to the Council on the position to be taken by the EU on the following international initiatives:

- a proposal of the Administrative Committee of the TIR Convention to amend the Convention on the international transport of goods under cover of TIR carnets;
- a draft Decision of the EU-EFTA Joint Committee on common transit as regards invitations to the Republic of Serbia to accede to the Convention on the simplification of formalities in trade in goods and the Convention on a common transit procedures; and
- a draft EU-EFTA Decision to amend the Convention on a common transit procedure.

Court Judgment in B&S Global Transit Center BV case

On 29 October 2015, the CJEU delivered its judgment in Case C-319/14 (*B&S Global Transit Center BV v. Staatssecretaris van Financiën*), involving a Dutch dispute relating to an external transit operation which had not been ended properly. The external transit procedure allows non-EU goods to enter the EU for ultimate shipping to a third country without being made subject to normal customs duties or commercial policy measures. To ensure that the products actually leave the EU territory, the procedure must normally be ended (“discharged”) by presenting certain documents as well as the goods to the “office of destination”. Under Article 203 of the Customs Code, failure to present the goods is considered to be unlawful removal of the goods from customs supervision and this entails a customs debt (as if the goods were placed into free circulation in the EU). Under Article 204, the non-fulfilment of obligations (here, the presentation of certain documents prior to the goods leaving the EU again) also incurs a customs debt in cases other than those caught by Article 203, unless it is established that those failures had no significant effect on the correct application of the transit procedure.

In this case, the goods and the required documents were not submitted to the customs office of destination prior to the goods being shipped outside the EU again, but evidence that the goods had reached their non-EU destination was submitted later when the applicant was asked to pay customs duties. After a successful appeal by B&S before the Dutch District Court to annul the decision seeking recovery of customs duties (on the basis of Article 204), the customs authorities in turn appealed successfully to the Dutch Court of Appeal, after which B&S appealed to the Supreme Court. The latter court referred the matter to the CJEU while asking if the incurrance of a customs debt is precluded where it is established that the goods did not enter the economic network of the EU. The CJEU held that it must first be established whether or not there was unlawful removal under Article 203, and that the exception under Article 204 can only be invoked if that is not the case. In other words, the CJEU ruled against B&S by confirming that there had been unlawful removal and that a customs debt was therefore incurred.

Miscellaneous

WTO Trade Facilitation Agreement

On 9 September 2015, the EP gave its consent to the EU's ratification of the WTO Agreement on Trade Facilitation, and on 1 October 2015, the Council also approved the conclusion of the agreement. On 5 October 2015, the EU completed its ratification process by formally submitting the EU's ratification instruments to the WTO.

Trade in Seal Products

In October 2015, the EU adopted various legal instruments to amend and further implement a 2009 Regulation on trade in seal products in order to allow the Inuit and other indigenous communities to continue seal hunting.

EU Dual-Use Export Controls

In October 2015, the Commission announced the adoption of two Delegated Acts to amend the **EU Dual-Use Regulation 428/2009** in order to implement changes made in 2014 to the international control lists on which the EU list is based. A Commission summary note of the changes shows that controls will in the future apply to certain fibre laser components, rare-earth doped fibres, software for the alignment of mirrors and for spacecraft payload and telemetry equipment, technology for fly-by-wire systems, surface-effect vehicles, hydrofoil vessels, small waterplane area vessels and wing-folding systems, as well as for combustion chambers and nozzles and UAVs. At the same time, a number of items will be de-controlled as they will be removed from the EU list.

The Fight Against Counterfeit

On 27 October 2015, the Commission published its 2014 report on EU customs enforcement of intellectual property rights. The report shows that there were over 95,000 cases of detention in 2014 (mostly in postal and courier traffic) and that most counterfeit goods continue to come from China, although Thailand is the main “supplier” of counterfeit ink cartridges/toner, for example. Cigarettes continue to be the top category in this context, followed by toys, medicines, clothing and food.

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