

## EU Customs Developments

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## EU Customs Policy

### Union Customs Code (UCC) Developments

On 15 March 2016, the European Commission published the so-called Union Customs Code (UCC) Transitional Delegated Act, which lays down the transitional measures under the UCC on the exchange and storage of data that will be applicable until all the electronic systems provided for in the UCC gradually become operational by **2020**.

On 8 March 2016, the General Customs Legislation Section of the Customs Code Committee also delivered a positive opinion on the Commission's proposed Work Programme (WP) on the electronic systems provided for in the UCC. This WP sets out the target dates by which the various electronic systems under the UCC must be deployed or updated.

Meanwhile, the Commission is still working on various UCC guiding tools, including a guidance document to explain the new definition of "exporter" under the UCC. In addition, the Commission has announced plans to issue a new version of the manual on transit in **April 2016** to reflect the UCC provisions.

The EU has finally also made available the first modules of an e-learning programme for customs officers and economic operators on the UCC. At present, it is foreseen that about 15 modules will be developed.

### Proposed Directive on Customs Infringements and Sanctions

On 15 March 2016, the International Trade (INTA) Committee of the European Parliament (EP) considered a draft opinion on the proposed Directive on customs infringements and sanctions (which sets out a uniform EU-wide legal framework for Member State treatment of customs law violations and related sanctions). The INTA opinion will be used by the Internal Market and Consumer Protection (IMCO) Committee of the EP, which is the lead committee on this dossier, to finalise the EP's position on this proposal.

## **Updated Rules to Fight Customs Fraud**

On 11 March 2016, the Commission published two Regulations aimed at enhancing the fight against customs fraud. They will apply as of **1 September 2016**.

One Regulation concerns the reporting of container status messages ("CSM") and sets out the frequency of CSM reporting, the format of the data and the method of transmission. Carriers are as a general rule required to submit the CSM data, which are then included in a special CSM directory managed by the Commission.

The second Regulation determines the information to be included in the so-called "Customs Information System" (CIS), which contains information on events such as seizure or detention of goods. The information to be included in the CIS will under this new Regulation also include, among others, data relating to the business and persons involved in (potentially) fraudulent activities, details on the means of transport, specifications related to the goods involved and risk assessment information.

The CSM and CIS systems are both aimed at assisting in the detection, prevention, investigation and prosecution of customs fraud.

## **Tariffs**

### **GSP – “Graduation” List for 2017-2019**

On 9 March 2016, the Commission published the new list of “graduated” products, for which benefits under the EU’s Generalised Scheme of Preferences (GSP) will be suspended from **1 January 2017** through **2019**. The graduation mechanism under the GSP provides for the suspension of standard GSP benefits if imports of a product from a certain beneficiary country during three consecutive years make up a large share of total EU imports of that product from all GSP beneficiary countries. The updated list includes pearls and precious metals, iron, steel and articles of iron and steel, and certain base metals and articles of base metals originating in India; live plants and floricultural products originating in Kenya; and animal or vegetable oils, fats and waxes originating in Ukraine.

The new graduation list also confirms that certain products will disappear from the list either because the GSP beneficiary country has lost GSP status, or will do so by **2017**.

### **Expansion of WTO Information Technology Agreement**

On 8 March 2016, the Commission issued a proposal on the conclusion by the EU of the WTO Declaration on the expansion of the WTO Information Technology Agreement (ITA). The expansion of the WTO ITA (known as “ITA II”) and the related schedules of commitments were agreed among 29 WTO members on 16 December 2015. ITA II foresees the staged elimination of customs duties on an additional list of 201 IT products by **mid-2019**.

### **WTO Environmental Goods Agreement**

The 12<sup>th</sup> round of WTO negotiations for an Environmental Goods Agreement (EGA) took place in March 2016. The EGA aims to remove barriers to trade in environmental or “green” goods that are crucial for environmental protection and climate change mitigation. During this latest round, a roadmap for the coming months was agreed, and the timing and transitional periods for tariff elimination of covered goods was discussed. Parties further agreed to continue discussions on the customs classification of 340 environmental goods to be covered in the future agreement. The US also made new proposals on the staging of tariff reductions, while China proposed the inclusion of a so-called “snapback” provision that would allow parties to withdraw automatically from the agreement in certain circumstances.

The next round of negotiations is scheduled for the week of **18 April 2016**.

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## FTA Update

### a) United States

On 18 March 2016, EU Trade Commissioner Malmström met with US Trade Representative Froman to take stock of the Transatlantic Trade and Investment Partnership (TTIP) negotiations, with focus on market access issues (notably services) and industrial tariffs. Commissioner Malmström has previously indicated that if the TTIP talks are to lead to a deal by the **end of this year**, the EU and US should move to the final phase of TTIP negotiations by **this Summer**. The 13<sup>th</sup> TTIP negotiating round is tentatively scheduled for the week of **25 April 2016**, after another stocktaking meeting on **11-12 April 2016** by Malmström and Froman.

On 21 March 2016, the EU published further documents from the ongoing TTIP negotiations with the United States, including a textual proposal on customs and trade facilitation.

US Trade Representative Froman also stated on 18 March 2016 that in case of a possible UK exit from the EU, the UK would face the same tariffs and trade barriers as other countries outside the US free trade network.

### b) Canada

The EP's INTA Committee discussed the finalised text of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) with the European Commission on 14 March 2016. On that occasion, the Commission stated it would table the text for signature in **June 2016**, and that the text could be signed by the EU (after Council approval) in **October 2016**.

### c) Japan

The 16<sup>th</sup> round of EU-Japan FTA negotiations will be held in Tokyo during the week of **11 April 2016**. The EU has stated that negotiations could be concluded in **2016**, but only if the substance is right and that the level of ambition of the agreement is sufficiently high.

### d) Mercosur

EU High Representative Mogherini has stated that an exchange of tariff offers between the EU and Mercosur is expected to take place in **April 2016**. This timing has since then been firmed up and the exchange is due to take place during the **second week of May**.

### e) Philippines

The first round of EU-Philippines FTA negotiations has been scheduled to take place during the **last week of May 2016**.

### f) Turkey

On 10 March 2016, the EU launched a public consultation on the future of EU-Turkey trade and economic relations in the context of the impact assessment that the Commission must prepare on the potential modernisation of the EU-Turkey Customs Union. Comments can be submitted until **9 June 2016**. The Commission would like to complete its internal consultation process by the **end of 2016**. Meanwhile, on 17 March 2016, the EP's INTA Committee organised a workshop on EU-Turkey trade and investment relations.

### g) Australia and New Zealand

On 11 March 2016, the EU launched a public consultation on the future trade and economic relationship between the EU on the one hand, and Australia and New Zealand on the other. The online consultation will be open until **3 June 2016**. The results will be used for the pending impact assessment concerning potential FTAs between the EU and these two countries.

### h) India

The 13<sup>th</sup> EU-India Summit took place on 30 March 2016. During the summit, parties welcomed the re-engagement in discussions on how to advance the EU-India FTA negotiations, but no concrete target dates were mentioned in this respect.

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### i) ASEAN

During the 14<sup>th</sup> round of consultations on an EU-ASEAN FTA that took place on 3 March 2016, parties reaffirmed their commitment towards such an agreement. During this meeting, the parties instructed senior officials to intensify their work and to recommend the appropriate next steps towards an agreement by the next round of consultations.

### j) Malaysia

It has been reported that the EU and Malaysia agreed to resume bilateral FTA negotiations in the fringes of the March EU-ASEAN consultation round, possibly already in **April 2016**. EU-Malaysia FTA negotiations were launched in October 2010, but have been stalled since the 7<sup>th</sup> round of negotiations in 2012.

### k) Moldova and Georgia

On 23 March 2016, the EU published Regulations implementing the safeguard clause and the anti-circumvention mechanism provided for in the Association Agreements between the EU and Moldova and Georgia, respectively, which both include a Deep and Comprehensive Free Trade Area (DCFTA). These agreements were signed on 27 June 2014, and have been applied provisionally since 1 September 2014.

### l) South Africa

On 1 March 2016, the Additional Protocol to the Agreement on Trade, Development and Cooperation between the EU and South Africa to take account of Croatia's accession to the EU entered into force.

### m) Morocco

In early March 2016, EU High Representative Mogherini travelled to Morocco to address the latter's concerns about a December 2015 ruling of the General Court of the EU which partially annulled the 2012 EU-Morocco FTA. The Court did this because the EU had not undertaken an *ex ante* assessment of the potential negative human rights effects of the agreement on the population of the contested Western Sahara region. The Council, supported by the Commission, has appealed the Court's decision.

### n) Kosovo

On 16 March 2016, the EU Council published a Decision on the conclusion of the Stabilisation and Association Agreement between the EU and Kosovo which will enter into force on **1 April 2016**. This agreement foresees the creation of a free trade area between the EU and Kosovo over a period of ten years, and also provides for cooperation in customs matters, among other things.

## Classification

### Court Judgment on Combined Video-Audio System Sets

On 10 March 2016, the Court of Justice of the EU (CJEU) issued its judgment in Case C-499/14 (*VAD BVBA, Johannes Josephus Maria van Aert v. Belgische Staat*) on the customs classification of a combined video-audio system with loudspeakers. This device is composed of an audio/video system (including a DVD player, an FM tuner, etc.) and removable loudspeakers. The product was presented to customs in disassembled form and the components were declared separately (i.e. under CN code 8518 10 95 90 (subject to a 2.5% import duty) and under CN code 8518 22 00 90 (attracting a 4.5% import duty)).

The Belgian customs authorities disagreed and this led to legal proceedings. A preliminary question was ultimately raised before the CJEU by the Belgian Court of Cassation as to whether such disassembled goods should be classified together in accordance with Rule 3(b) of the general rules of interpretation of the Harmonised System (HS) on the classification of 'goods put up in sets for retail sale'. The CJEU held that the fact that the goods were presented to customs in separate packages and were not packed together until *after* their customs clearance cannot, in itself, preclude those goods from being classified together as 'goods put up in sets for retail sale'. It noted that this is especially the case if it is clear that the goods belong together as a unit and are **intended** to be sold as such in the retail trade.

## Court Judgment on Streaming Devices

On 17 March 2016, the CJEU rendered a judgment in Case C-84/15 (*Sonos Europe BV v. Staatssecretaris van Financiën*) as regards the classification of a so-called 'Zoneplayer'. This device is used to retrieve, receive and stream digital audio files and consists of a resonance box containing five loudspeakers. It is equipped with an audio input and various other components. The device can be connected to a modem or a router and allows users to listen to streamed music and stream music to other Zoneplayers. Sonos Europe claimed that the device should be declared under CN code 8517 62 00 as a transmission/reception device (subject to 0% duty), but the customs authorities considered classification under CN code 8519 89 19 as a sound reproducing device (with 4.5% duty) to be appropriate here.

Upon referral of a preliminary question, the CJEU held that the Zoneplayer does not generate sound but only fulfils a sound *reproduction* function, and that this function merits classification under CN heading 8519. The Court also stated that the fact that the source of the sound does not come from an internal storage device does not exclude classification of the product under that heading.

## Court Judgment on Soya Protein Concentrate

On 3 March 2016, the CJEU issued a judgment in Case C-144/15 (*Staatssecretaris van Financiën v. Customs Support Holland BV*) on the tariff classification of a soya protein concentrate called 'Imcosoy 62', which is used as an ingredient in feed compounds for calves. Dutch Customs had issued Binding Tariff Information (BTI) classifying it under CN code 2309 90 31 (other preparations used in animal feeding containing no milk products or containing less than 10% by weight of such products), attracting a duty of 23 EUR/t.

Customs Support Holland challenged this classification, and the matter was ultimately referred to the CJEU. The Court excluded possible classification under HS heading 2304 (Oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil) as the product at issue was not a residue, but a derivative of that residue. The Court agreed with Dutch customs that the product should be classified under heading 2309 as this was the most specific heading under which such a preparation could be classified. The Court referred in that context to the characteristics and objective properties of Imcosoy 62, in particular the elimination or deliberate reduction of certain components of the soya meal in order to make the product suitable for inclusion in the feed for a particular type of animal (i.e. young calves). The Court further also referred to the Explanatory Note (EN) to HS heading 2309, which states that the heading specifically covers preparations intended to remedy the lack of protein in basic animal feeds.

## Nomenclature Committee Developments

### a) Textiles and Mechanical/Miscellaneous Sector

The minutes of the 164<sup>th</sup> meeting of the Textiles and Mechanical/Miscellaneous Sub-section of the Tariff and Nomenclature Section of the Customs Code Committee (the Nomenclature Committee) held on 22-25 February 2016 are now available. The Committee delivered a positive opinion on Classification Regulations concerning mini greenhouses (7326 90 98), monitor arms (7616 99 90), and smartphone docking stations (8537 10 99). It further discussed, *inter alia*, the classification of banknote readers (8472 90 70), stands for cash display registers (8473 29 90), luer lock connectors (3917 33 00), memory card games (9504 40 00), child seats for bicycles (8714 99 90), certain screws turned from bars, rods, profiles or wire, control units for gas discharge lamps, and temperature controllers. The experts also considered the classification of a wide range of products, including double-buckle seatbelts, "Hexbug beetles", undercarriage parts, 3D printers, heat sinks, tapping screws, adjustable screws/spindles, radial shaft seals, power distribution units, decorative car interior fittings, massage apparatus, digital microscopes, layered wood, LED lamp and solar power chargers.

During the final "tour de table", questions relating to the classification of certain footwear, pipe fittings, optical units, and drones came up. It was also reported that certain cases, including on acceleration sensors, Bluetooth head sets and car receiver/radio back panels, were closed. Finally, the Committee was also briefed on progress of the "Future BTI" project, which foresees the creation of "Expert Teams pooling expertise to resolve complex cases of divergent tariff classification" when considering a BTI request. Future BTI foresees two types of Expert Teams: a preventive "Referee Team" to act as Referees for cases submitted by Member States subject to bilateral consultation, and a corrective "Joint EU-team" to propose concrete solutions in cases of divergent classification. These Expert Teams would be expected to deal with 20 cases per year.

### b) Combined Nomenclature Sector

The minutes of the 166<sup>th</sup> meeting of the Combined Nomenclature Sector of the Nomenclature Committee which took place on 14 March 2016 have been made available. During this meeting, the Committee discussed the transposition of the HS to the CN for 2017 with respect to tripods (Chapter 96), motor vehicles (Chapter 87), wine (Chapter 22), and wood (Chapter 44), but the planned discussion on Chapter 85 monitors was postponed. The Committee also accepted the Commission proposal on the rewording of hydraulic oils in subheading 2710 19 83 (liquids for hydraulic purposes). It discussed a proposal to create a new subheading for blind rivet nuts (Chapter 73), and a proposal to simplify the subheading on thermostats (subheading 9032 10). The Commission further presented its draft proposals for possible amendments to the CN 2016 as from **July 2016** (and amendments to the CN 2017) to implement the ITA II agreement. Member States were given until late March 2016 to submit comments and will in **May 2016** discuss possible simplifications of Chapters 84, 85 and 90 (where the duty in all subdivisions of a heading is 0% anyway). The Commission further announced that the regulation implementing the agreement reached between the EU and China to take account of the accession of Croatia entailing a reduction of tariffs for certain air-conditioners classified under CN code 8415 10 90 is likely to enter into force in **September or October 2016**.

### c) Agriculture/Chemistry Sector

The summary report of the 163<sup>rd</sup> meeting of the Agriculture/Chemistry sub-section of the Nomenclature Committee that took place on 15-17 February 2016 has been made public. It reveals that the Committee delivered a positive opinion on an amendment of the ENs to Chapter 24 (tobacco and manufactured tobacco substitutes) and to subheading 3403 19 90 (synthetic lubricants), for example. The Committee also concluded discussions on the calculation of fructose, and on the classification of metallised PET film and mazut undergoing a specific process. The Committee held a first discussion on, among others, the tariff classification of modified phenolic resins, three-dimensional stickers, a preparation to reduce gastrointestinal discomfort, a flavoured whey protein isolate in powder form, self-heating patches and belts to relieve pain. The Committee further concluded that stabilised zirconium dioxide should be classified under heading 3824. The Committee was also briefed on the progress of the “Future BTI” project (see above).

### d) BTI Sector

The 167<sup>th</sup> meeting of the BTI Sector of the Nomenclature Committee took place on 22 March 2016. The report of that meeting has not yet been made available, but the agenda included, *inter alia*, a discussion on the revision of the administrative guidelines on the European Binding Tariff Information (EBTI) system and its operation, and on the state-of-play of the “Future BTI” project (see above).

## Origin

### Amendment of the Rules of Origin between the EU and Norway/Iceland

On 17 March 2016, the EU published two Decisions amending the Protocols on rules of origin and methods of administrative cooperation in the Agreements concluded between the EU and Norway and Iceland, respectively. These amendments replace the existing origin protocols by a simple reference to the pan-Euro-Mediterranean preferential rules of origin, the so-called “PEM Convention”. This should allow swifter updating of these rules across the PEM region.

### Relaxation of EU-Jordan Rules of Origin

On 17 March 2016, the EU announced its offer to relax the rules of origin for certain preferential exports from Jordan to the EU. As a result, the relevant rules of origin between the EU and Jordan could be equivalent to the treatment offered to least-developed countries under the “Everything But Arms” arrangement under the EU’s GSP regime. These benefits would apply to industrial goods manufactured in preselected development zones, and would require Syrian refugees to be employed in the production of such goods. Up to 70% non-originating materials would be allowed in this process. If Jordan accepts the EU offer, it could come into force in the **Summer of 2016** and apply for ten years.

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## Origin Committee Developments

The agenda of the 222<sup>nd</sup> meeting of the Origin Section of the Customs Code Committee of 15 March 2016 included the usual discussion on developments related to the PEM Convention, a debrief from the Commission on origin-related discussions in the 15<sup>th</sup> round of FTA negotiations with Japan, and an update on the interpretative note on the Origin Protocol in the EU-Korea FTA. The Committee was also scheduled to discuss the administrative guidelines on preferential origin and Binding Origin Information (BOI). The agenda further included GSP matters, the calculation of the amount of duty in case of inward processing and a no-drawback rule, and compliance with a no-drawback rule of an FTA in the absence of a proof of origin.

## Procedures

### Special Procedures Section

The report of the 48<sup>th</sup> session of the Special Procedures Section of the Customs Code Committee which took place on 22 February 2016 is now available. It reveals that the Committee again discussed applications for Processing under Customs Control (PCC) for solar glass processed into solar panels. It considered that the economic conditions were not met (as PCC could undermine EU anti-dumping measures taken on Chinese solar glass since 2014), but would allow the relevant company the right to be heard before a final decision is taken in **April 2016**. The Committee further discussed progress on the UCC guidance related to special procedures, and a number of questions related to the calculation of import duties under inward processing authorisations, imports of aircraft, and usual forms of handling in customs warehouses and free zones.

## Miscellaneous

### EU Expands Sanctions Against North Korea

On 31 March 2016, the EU Council expanded its existing sanctions targeting North Korea to implement a recent United Nations Security Council Resolution. As a result, new import/export prohibitions are now in place for products that could contribute to development of the operational capabilities of the country's armed forces. Cargo to and from North Korea will be inspected by the Member States authorities. In addition, certain mineral products (including coal, iron and gold) can no longer be imported from North Korea, and exports of aviation fuel to North Korea are also prohibited.

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