

EU Customs Practice Group

April 2014

EU CUSTOMS POLICY

UCC Developments

The European Commission has recently clarified applicable procedures with respect to the preparation and adoption of the draft Implementing and Delegated Acts for the Union Customs Code (UCC).

Only one expert group (with possible sub-groups) will cover consultations on the preparation of the UCC Delegated Act. Preparation of the UCC Implementing Act will be managed through joint meetings of the General Customs Legislation section of the Customs Code Committee, and the sections specialised in the matters to be examined.

Whilst the Commission has not excluded that it will seek the interim position of the Member States, it is expected that there will only be one formal vote on the whole text of the UCC Implementing Act after entry into force of the Delegated Act. There will be no vote on the UCC Delegated Act, but the Commission intends to consult the special expert group in the beginning of 2015 and, in any case, has to wait until the end of the deadline for the European Parliament (EP) and the Council to use their rights of objection.

EU Customs Commissioner Šemeta's legacy

On 7 April 2014, EU Customs and Taxation Commissioner Šemeta provided an overview to the EP's Internal Market and Consumer Protection (IMCO) Committee of the achievements made during his 2010-2014 term as a Commissioner in the area of EU customs policy. The Commissioner stated that the UCC is a "solid base for implementing a modern, truly pan-European electric customs environment".

Šemeta also referred to the cooperation between the EU institutions on the Customs 2020 Programme and on reconciling security with trade facilitation for reliable traders. He announced that the Commission will prepare a blueprint for the era beyond 2020 in the coming months. He further commented on the promotion of partnerships and cooperation with third countries in the customs area, referring specifically to the US, China and Japan, and confirmed that he expects to conclude a mutual recognition agreement with China on Authorised Economic Operator (AEO) programmes "very soon".

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This newsletter briefly describes EU customs developments. Due to the general nature of its content, this newsletter is not and should not be regarded as legal advice.

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Šemeta also referred to the new EU Regulation on customs enforcement of intellectual property rights (IPRs) which, according to the Commissioner, “*definitely settles*” the issue of access to medicines. He emphasised the successful implementation of systematic electronic risk assessment in all customs activity, but said a plan for further improving and enhancing risk management will be presented soon. He was also satisfied with the progress made on the proposed Directive on customs infringements and sanctions (see below) and the Commission’s proposal to enhance European anti-fraud capacity by amending a 1997 Regulation on mutual assistance in the area of customs and agriculture (see below).

Customs Infringements and Sanctions

Council Working Groups were scheduled to hold state-of-play discussions on the Commission’s proposal for an EU legal framework for customs infringements and sanctions in April 2014. Meanwhile, the EP did not proceed with the adoption of a resolution on the draft proposal during the April Plenary (after having adopted such resolution at Committee level in March). The EP will consequently only pick up the proposal after the European elections of May 2014.

Amendment of Regulation 515/97 on Mutual Assistance

On 15 April 2014, the EP adopted a resolution backing the European Commission’s proposal to amend **Regulation 515/97** on mutual assistance on the correct application of customs legislation. The trilogue discussions with the European Commission and the Council will therefore be taken up by the new EP following the May 2014 elections.

The aim of the Commission’s proposal is to eliminate certain loopholes in the existing system (in place in its current form since 2008). One of the changes proposed by the Commission concerns a requirement for operators to supply certain information directly to the European Commission rather than to the Member State authorities (which is the case at present), which should save time. The proposed Regulation would also allow the Commission to extract certain information from existing systems (e.g. the EU’s transit system, or NCTS) to create a supply chain “directory”, which should make it easier to detect origin fraud.

TARIFFS

Duty Suspensions and Tariff Quotas

The European Commission made an official announcement on 15 April 2014 that the applications for duty suspensions and tariff quotas for the January 2015 Round have now been posted on the EU’s dedicated webpage. The deadline for filing objections against these

new applications is 17 June 2014. The first Economic Tariff Questions Working Group (ETQG) meeting discussing these applications will be held by mid-May 2014, followed by the second one on 17 June 2014.

EU FTA Update

a) Japan

The 5th round of EU-Japan FTA negotiations took place from 31 March to 4 April 2014. During that round, the parties exchanged tariff offers and held discussions on, *inter alia*, trade facilitation.

After this negotiation round, the European Commission stated that the EU and Japan “*made headway towards consolidating the chapters of the future agreement and putting on paper some new joint provisions*”. Negotiators also aimed to lay the groundwork for future cooperation, including on regulatory matters.

The Commission is now preparing a review report on FTA-related progress made by Japan since the start of negotiations, on the basis of which the EU Member States will decide to continue or suspend the negotiations under the suspension clause of the EU negotiation mandate. This report will be presented during the Foreign Affairs Council meeting focusing on trade issues scheduled to take place on 8 May 2014, a day after the EU-Japan Summit.

b) Ukraine

On 22 April 2014, the EU published its Regulation granting unilateral tariff preferences for products originating in Ukraine. The Regulation entered into force the next day and will apply until the EU-Ukraine Deep and Comprehensive Free Trade Area concluded between the EU and Ukraine enters (provisionally) into force, or until 1 November 2014 at the latest.

c) US

The European Commission announced on 29 April 2014 that the 5th round of negotiations between the EU and the US on a Transatlantic Trade and Investment Partnership (TTIP) will take place in the US on 19-23 May 2014. Discussions during this round will cover, amongst others, trade in goods.

The European Commission has further announced that the final Trade and Sustainability Impact Assessment (SIA) Report in support of TTIP negotiations is expected to be finalised by the end of the year/beginning of next year. Preliminary findings will be presented in the interim technical report due by the end of the summer.

d) Mercosur

On 22 April 2014, it was reported that Argentina, Brazil, Paraguay and Uruguay agreed on a joint tariff offer in the framework of the EU-Mercosur negotiations for a cooperation and trade agreement. The tariff offer is said to be presented to the EU in two months.

e) Malaysia

It was reported on 17 April 2014 that prospects remain uncertain as to whether the EU and Malaysia FTA negotiations will be concluded in the near future. Negotiations have been on hold since 2012, mainly due to the general elections in Malaysia and Malaysia's focus on Trans-Pacific Partnership (TPP) negotiations involving the US.

f) Philippines

On 23 April 2014, the Trade undersecretary of the Philippines government confirmed in the press that the Philippines aim to conclude the scoping exercise for a free trade agreement with the EU this year.

g) West Africa

Following a question from a member of the EP, EU Trade Commissioner De Gucht confirmed that the EU has closed negotiations for an Economic Partnership Agreement (EPA) with the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UEMOA) on behalf of 16 African states. De Gucht has further stated that wines and spirits will be excluded from EPA liberalisation.

h) Serbia

On 5 April 2014, the EU published a Regulation with procedures for the adoption of more detailed implementing rules for certain provisions of the EU-Serbia Stabilisation and Association Agreement on, *inter alia*, tariff reductions.

CLASSIFICATION

Classification Regulations

In April 2014, the following EU Classification Regulations were published or adopted:

- **Commission Implementing Regulation 336/2014** classifies a so-called 'wireless rear-view camera system' for use in cars, coaches or trailers, etc. which allows the driver to see what is behind the vehicle, under CN code 8528 72 40 as other colour reception apparatus for television with a screen of the LCD technology.

- **Commission Implementing Regulation 337/2014** classifies a so-called 'LED floodlight' used outdoors for illuminating landscapes, buildings, construction areas, gardens, etc., under CN code 9405 40 99 as other electric lamps and light fittings.
- **Commission Implementing Regulation 349/2014** classifies a soft stuffed textile basket for use by small pets that is made of woven fabric and knitted plush fabric, under CN code 6307 90 98 as other made-up textile articles.
- **Commission Implementing Regulation 350/2014** classifies an article consisting of a wooden box, tube and a platform covered on the inside and outside with a woven textile fabric, and a paperboard tube that is covered with a cord of sisal (e.g. for cats to scratch their claws on, sit on, sleep on and play with), under CN code 6307 90 98 as other made-up textile articles.
- **Commission Implementing Regulation 453/2014** classifies a so-called 'TV simulator' that simulates a television set that is switched on to give the impression that there are people present in the house with the purpose of deterring burglars, under CN code 9405 40 39 as other electric lamps and light fittings in plastic.
- **Commission Implementing Regulation 455/2014** classifies a so-called 'water cooler' that dispenses cold water under CN code 8418 69 00 as other refrigerating or freezing equipment. That same Regulation classifies a so-called 'water dispenser' that dispenses both hot and cold water as electric instantaneous water heaters under CN code 8516 10 11.
- **Commission Implementing Regulation 456/2014** classifies a so-called radio-controlled socket set that is used for switching on and off, by remote control, equipment connected to the sockets under CN code 8536 50 80 as other switches for a voltage exceeding 60 V.
- **Commission Implementing Regulation 457/2014** classifies a so-called active HDMI splitter and an active HDMI switch under CN code 8543 70 90 as an electrical apparatus having an individual function, not specified or included elsewhere in Chapter 85. The same Regulation classifies a so-called passive HDMI switch that includes a button for selecting the input under CN code 8536 50 80 as other switches.

- **Commission Implementing Regulation 458/2014** classifies a digital apparatus for capturing and recording still and video images onto an internal memory or memory card that is only able to record sound and images taken by the incorporated television camera and that has the design of a traditional video camera recorder, under CN code 8525 80 91 as a video camera recorder only able to record sound and images taken by the television camera. A similar product that is capable of recording video files from sources other than the incorporated television camera is classified under CN code 8525 80 99 as other video camera recorders.
- **Commission Implementing Regulation 459/2012** amends four existing Classification Regulations. It classifies a digital photo frame to display still images, a digital picture frame that can also display video images, and a portable DVD player under CN code 8528 59 70 as other monitors. Multi-media centres for motor vehicles, regardless of whether they can reproduce sound and images from a USB memory stick or from a memory card, are also classified under CN code 8528 59 70. So-called video glasses are classified in this Regulation under CN code 8528 59 31 as flat panel displays able to display signals from automatic data-processing machines with an acceptable level of functionality with an LCD screen.
- The Commission has also adopted **Regulation 454/2014** repealing, as a result of EU case law, existing **Regulation 1066/2010** (classifying an audio-frequency amplifier and a loudspeaker in a single housing under CN code 8518 40 80 as an audio-frequency electric amplifier).

CNEN for Egg Yolks

On 11 April 2014, the European Commission published a Regulation adding an Additional note to Chapter 4 of the Combined Nomenclature (dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included) to clarify the scope of subheadings 0408 11 and 0408 19, which cover 'egg yolks'.

CNEN Relating to Cod Fillets

On 16 April 2014, the European Commission published a Regulation introducing an Additional note to Chapter 3 of the CN (Fish and crustaceans, molluscs and other aquatic invertebrates) to clarify the classification of cod fillets in accordance with their total salt content.

CNEN for Coconut Products

On 16 April 2014, the European Commission published an Explanatory Note to heading 1101 00 (Wheat or meslin flour), clarifying the classification of coconut powder and shredded desiccated coconut.

CNEN Relating to Mixtures of Sugar

The Commission has adopted **Regulation 366/2014** to introduce a series of Additional notes intended to clarify the scope of a variety of tariff lines relating to mixtures of sugar (of Chapter 17) with small amounts of other substances: subheading 1302 20 (pectic substances, pectinates and pectates), Chapter 17 (sugars and sugar confectionery) and heading 2101 (Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof).

Nomenclature Committee Developments

a) CN Sector

The 134th meeting of the CN Sector of the Tariff and Statistical Nomenclature Section of the Customs Code Committee (the Nomenclature Committee) will take place on 23 May 2014. During that meeting the Committee is scheduled to examine, *inter alia*, the 2014 CNENs related to sanitary towels (pads) and tampons, napkins and napkin liners for babies, and similar articles; and creosote oils and other crude oils, as well as the possible tariff suspension for the latter for undergoing a specific process; a draft proposal to amend the CN and CN explanatory notes related to products of subheading 3824 90 ('other Mixtures and preparations containing oxirane (ethylene oxide), polybrominated biphenyls (PBBs), polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or tris (2,3-dibromopropyl) phosphate'); and the 2015 Combined Nomenclature.

The Committee will also examine the possible creation of new CN codes for lubricants, succinic acid and 1, 4-butandiol; and the possible creation of new CN codes in subheading 3825 10 ('Wastes'). The agenda also includes a vote on new codes for phosphonates under CN heading 2931 90 contained in the draft CN 2015, and the deletion and creation of new codes under CN heading 3824 90 (other prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products)).

b) Mechanical/Miscellaneous Sector

The report of the 129th meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee that took place on 28-29 February 2014 has been made available.

During this meeting, the Committee delivered favourable opinions on the above-mentioned regulations on the classification of remote-controlled socket sets, TV simulators, water coolers and water dispensers, HDMI splitters and TV covers/frames; and agreed on the repeal of the above mentioned **Regulation 1066/2010** (see above).

The Committee further voted on the classification of the above mentioned apparatus with the design of a traditional video camera recorder, and on the updated classification regulations on monitors (but failed to adopt an opinion on certain products – meaning the Committee did not reach the qualified majority required to adopt a favourable or negative opinion).

Discussions on the classification of luminous Frisbees, turbine wheels and turbine housings, screws and implants for surgical use, and electric skateboards were concluded. The Committee also discussed the classification of, *inter alia*, shower doors, exhaust-gas turbochargers, fittings for central heating, LED tiles, action cameras, and single LEDs with protection diodes.

The 132nd meeting of the Textiles and Mechanical/Miscellaneous Sector will take place on 5-8 May 2014. During that meeting, parties are scheduled to vote on Draft Commission Regulations and CN Explanatory Notes with respect to small metal boxes, beach cleaning machines, bottle tops made of silicon, and oil lamps.

The Committee is also set to conclude examinations of the classification of turbine wheels, turbine housings and exhaust-gas turbochargers, pick-up trucks, surgical screws/implants, sub-assemblies for LCD televisions, articles used for coronary angioplasty, LED tiles, small cameras, single LEDs with protection diodes, media servers, snowmobiles, electrical filters, cartridges for game consoles, gardening kits and video wall monitors with built-in PC. The Committee will also start discussions on the classification of gyroscopes, utility vehicles, Hi-Fi systems, smart watches, nuts for furniture, multimedia equipment, remodelled cars, solar panels, films with aerials or aerial arches, wrist supports, wreaths, photo albums, fibreglass woven fabrics, horticultural tents, pot holders, slings of textiles, table legs, mobile phone cases, and musical clocks incorporated in a toy.

Consultation on BTI and Tariff Classification Issues

The European Commission has launched an external study on tariff classification and Binding Tariff Information (BTI) in the EU to analyse the economic and financial effects that any shortcomings in the current system (such as delays in issuing BTI) have on traders, and to identify possible solutions in order to improve the functioning of the system.

An on-line survey could be completed by interested parties until 25 April 2014.

EU Judgment on Tube-feeding Products

On 30 April 2014, the Court of Justice of the EU (CJEU) issued its judgment in Case C-267/13, *Nutricia NV v. Staatssecretaris van Financiën*, concerning the classification of tube-feeding products used for treatment of malnutrition connected with diseases or ailments, which may only be administered to patients under medical supervision by means of a stomach tube. The Court found that these mixtures should be classified under CN heading 3004 ('Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale') and not under CN heading 2202 ('Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages') as suggested by the Dutch customs authorities. The Court reasoned that as these products are intended to be used in the prevention or treatment of a disease or ailment and clearly intended for medical use, they should be classified under CN heading 3004.

ORIGIN

Application of PEM Protocols on Rules of Origin

The European Commission has published a notice with an updated table specifying the dates from which the rules of origin of the Pan-Euro-Med (PEM) Convention, or the protocols on rules of origin providing for diagonal cumulation between the PEM parties become applicable, and, as a result, activate the diagonal cumulation possibilities foreseen in the Convention.

The PEM entered into force in late 2012 and covers the EU, the EFTA States, the Faroe Islands, the Barcelona Process countries (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, West Bank and Gaza Strip, Syria and Tunisia), Turkey, and the participants in the EU's Stabilisation and Association Process (Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo).

“Made-In” Origin Labelling

On 15 April 2014, the EP adopted a resolution backing the Commission’s proposal for mandatory “made-in” labelling rules for non-food products in a Consumer Safety Regulation that is part of the so-called Product Safety Package. The EP proposed certain amendments, including that the country of origin could be indicated in English only.

The EU Member States have not yet agreed on a common position on the issue of “made-in” labelling, and the new EU Product Safety Regulation is not expected to be adopted in the near future.

EU Origin Committee Agenda

The 211th meeting of the Origin Section of the Customs Code Committee is scheduled to take place on 20 May 2014. The agenda for that meeting includes discussions on certain Pan-Euro-Med (PEM) matters, as well as the temporary tariff reductions for goods originating in Ukraine (see above), a Swiss proposal on diagonal cumulation for agricultural products, and various issues in relation to the GSP regime. The Commission will also debrief the Member States on the state-of-play of on-going FTA negotiations with Vietnam, Thailand and various Economic Partnership Agreement (EPA) countries. The agenda further includes the Registered Exporter System (REX), the draft Implementing Act for the Union Customs Code and origin determination of bio ethanol.

EU Withdraws Notice on Sugar Products

On 29 April 2014, the European Commission announced the withdrawal of a 2007 warning notice issued for importers of high-sugar content products of headings CN 1704 90 99, 1806 10 30, 1806 20 95, 1901 90 99, 2101 20 98, 2106 90 98 and 3302 10 29 under preferential treatment, which stated that the release of these goods for free circulation could give rise to a customs debt and lead to fraud based on doubts with respect to the origin of the products (meaning importers could no longer rely on the “good faith” clause of the Customs Code, available in certain circumstances, when proof of preferential origin is rejected at import and higher duties become payable). The Commission has now concluded that it can no longer confirm these doubts as to the origin of the products. The withdrawal of the notice means that invoking the good faith clause is no longer impossible *per se*.

VALUATION

EU Valuation Committee Report

The Report of the Valuation section of the Customs Code Committee that was held on 14 October 2013 has finally been made available. During this meeting, the Committee discussed the application of Article 32(1)(b) of the

Customs Code (relating to assists) with respect to licence agreements and MPEG-2 technology, and the application of Article 32(1)(b) and (c) as regards the valuation of know-how. The Committee also discussed the treatment of bulk discounts and prepared for the meeting of the WCO’s Technical Committee on Customs Valuation (TCCV) that took place later that same month. One of the TCCV cases relates to whether or not fees paid for unlocking certain functions of a product after import should be included in the customs value. The Commission also reported to the Member States that the external study it has commissioned on customs undervaluation was not yet ready, and that a first draft submitted by the contractor regrettably “*was judged not yet satisfactory.*”

PROCEDURES

EU Judgment on the Seizure of Goods

On 9 April 2014, the CJEU issued its judgment in Case C-583/12, *Syntax Trading OÜ* (an importer of bath products) *v. Maksu-ja Tolliamet* (the Estonian customs authorities), concerning the seizure of goods suspected of infringing intellectual property rights. The CJEU found that **Regulation 1383/2003** concerning customs action against goods suspected of infringing certain IPRs does not preclude the EU Member States from adopting measures allowing their customs authorities to initiate proceedings to determine whether an IPR has been infringed where the IPR right holder himself fails to do so. The Court further held that the Member States can allow customs authorities to adopt a decision on the merits of a case, provided that such decisions can be appealed.

MISCELLANEOUS

EU Judgment on Member State Financial Liability

On 3 April 2014, the CJEU delivered its judgment in Case C-60/13, between the European Commission and the UK regarding the UK’s financial liability for the loss of the EU’s so-called “own resources” (i.e. money collected to be used as the EU’s budget) as a consequence of the issue of erroneous BTIs for imports of garlic originating in China. The Court repeated its established case-law that if it is found that a Member State has issued erroneous BTIs, that Member State is obliged to pay the amount of the correct duties that should have been levied on the importer.

US Report Addresses EU Customs Matters

The United States Trade Representative (USTR) has issued its 2014 National Trade Estimate Report on Foreign Trade Barriers, in which certain EU customs matters are addressed, including market access for information technology products and the lack of a single customs administration.

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