

EU Customs Practice Group

January 2015

EU CUSTOMS POLICY

UCC Developments

On 13-15 January 2015, the European Commission, the EU Member States and business organisations represented in the Trade Contact Group held joint meetings to discuss outstanding issues raised by stakeholders as regards the draft Implementing and Delegated Acts for the Union Customs Code (UCC).

The European Parliament (EP) organised a separate meeting on 19 January 2015 to assess, in the context of the UCC, whether the Commission is adhering to its implementing and delegated powers. The topics raised by business for this meeting included non-preferential origin rules, customs valuation, self-assessment, Binding Tariff Information and Binding Origin Information, and requirements related to entry summary declarations.

The Commission has now also started “inter-service” consultations on these two draft Acts, seeking formal comments from relevant departments, including its Legal Service. These consultations are expected to last approximately one month and should result in final drafts.

The Commission is aiming to organise the vote on the draft Implementing Act by the Customs Code Committee in March or April. As soon as the Commission formally submits the draft Delegated Act, the Council and EP will have 2 months to decide if they wish to object to it (this period can be extended by a further 2 months). The aim is to publish these two Acts by the end of May, so that stakeholders can start preparing for their application from 1 May 2016. If that is not feasible, stable texts should be publicly available by then.

EP hearing on customs sanctions

On 22 January 2015, the Internal Market and Consumer Protection (IMCO) Committee of the EP held a hearing on the need for a legal framework for customs penalties and sanctions, in the context of the examination of a pending 2013 Commission proposal for a harmonised EU framework for customs infringements and sanctions. During this hearing, the members of the EP, together with lawyers and experts in the field of customs, held discussions on the 28 Member States’ customs sanction systems and the impact of the lack of an EU legal framework on the Single Market and economic operators.

The current Latvian Presidency has meanwhile stated that the Council will give due consideration “to the thematic examination” of this proposal. This suggests that a Council common position on this matter is probably not forthcoming in the first half of 2015.

In this issue

EU CUSTOMS POLICY

UCC Developments

EP hearing on customs sanctions

TARIFFS

FTA update

CLASSIFICATION

Classification Regulations

Nomenclature Committee Developments

ORIGIN

Diagonal PEM Cumulation of Origin

Origin Committee Developments

MISCELLANEOUS

WTO Appellate Body rules against Argentine import measures

World Customs Day

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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TARIFFS

FTA update

a) US

On 7 January 2015, the Commission published a number of textual proposals the EU has submitted to the United States in the TTIP negotiations (covering, *inter alia*, customs issues and technical barriers to trade), as well as various position papers and brief reader guides and factsheets. These publications are part of the new so-called transparency initiative for TTIP negotiations announced by new EU Trade Commissioner Cecilia Malmström.

The 8th round of TTIP negotiations will be held in Brussels on 2-6 February 2015.

The Latvian Presidency has stated that the current aim is to conclude TTIP negotiations by the end of 2015.

b) Japan

On 19 January 2015, Japanese Foreign Minister Fumio Kishida met with EU Trade Commissioner Malmström to discuss the ongoing EU-Japan FTA negotiations. Japan reportedly expects the EU to table a better tariff offer after Japan has made concessions towards deregulation, notably in the Japanese rail procurement market.

The 9th round of trade negotiations is scheduled to take place in Brussels on 23-27 February 2015. Japan aims to conclude the talks by the end of 2015, which the EU supports, provided that a high level of ambition of the agreement is achieved by then. The current Latvian Presidency has identified the EU-Japan FTA as one of its top FTA priorities.

c) Vietnam

The 11th round of EU-Vietnam FTA negotiations took place on 19-23 January 2015. The next negotiation round is scheduled for March 2015 and the Commission has announced that contacts between the negotiating teams will be intensified in preparation for that round. Meanwhile, it has been reported that the EU is refusing to discuss tariffs as long as Vietnam has not improved its offer on public procurement and services, but Vietnam has apparently stated that disagreements on these issues were resolved during the latest round and that tariff offers are therefore back on the negotiating table.

The EU-Vietnam FTA negotiations are among the Latvian Presidency's top priorities.

d) Turkey

On 9 January 2015, EU Trade Commissioner Malmström met with her Turkish counterpart. The two parties agreed to explore possible modernisation and extension of the existing bilateral Association

Agreement, including by broadening the scope to cover all agricultural products. Working groups have been tasked to explore the feasibility of such exercise.

CLASSIFICATION

Classification Regulations

The following four classification regulations were published in January 2015:

- **Commission Implementing Regulation 2015/20** classifies a so-called 'media server' used by cable or internet providers for distributing ("streaming") on-demand multimedia products to consumers under Combined Nomenclature (CN) code 8525 60 00, as transmission apparatus incorporating reception apparatus.
- **Commission Implementing Regulation 2015/21** classifies a game cartridge that can be used only in a specific brand and type of video game console under CN code 9504 50 00, as a video game console.
- **Commission Implementing Regulation 2015/22** classifies a used sports utility vehicle (SUV) adapted for the transport of goods under CN code 8703 32 90 as a used motor vehicle principally designed for the transport of persons.
- **Commission Implementing Regulation 2015/23** classifies a T-shaped article of steel suitable for butt welding in radiator panels under CN code 7307 93 19, as other butt welding tube or pipe fittings of steel with the greatest external diameter not exceeding 609,6 mm.

In the course of January, the Tariff and Statistical Nomenclature Sector of the Customs Code Committee was further scheduled to adopt an opinion by written procedure on the classification of, *inter alia*, silica gel (classification under CN code 3824 90 96), and artificial waxes (classification under CN code 3404 90 00). The Committee was further set to adopt an opinion on the repeal of the Regulation classifying fluorescent dye under heading 3212.

Nomenclature Committee Developments

a) Agriculture/Chemistry Sector

The 145th meeting of the Agriculture/Chemistry Sub-Section of the Nomenclature Committee took place on 2-3 February 2015. The agenda for that meeting indicates that the Committee was scheduled to examine draft opinions on, *inter alia*, an amendment of the Explanatory Notes to Chapter 24 (tobacco and manufactured tobacco substitutes), an amendment of Additional note 4(a) to Chapter 27 (mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes), the definition of the term 'crude' in

subheadings 2712 90 31 and 2712 90 39, and an amendment of Additional Note 1 to Chapter 30 (pharmaceutical products). The Committee was further expected to conclude examination of a draft amendment of Additional Note 2(e) to Chapter 27 on the definition of 'gas oils', and on the tariff classification of glucomannan and a thinner. A first discussion on the tariff classification of WEEE (waste of electric and/or electronic equipment) and on a possible amendment of Note 4 to Chapter 40 (as regards synthetic rubber) was also on the agenda.

b) HS/WCO Sector

The 147th meeting of the HS/WCO Coordination Sector of the Nomenclature Committee is due to take place on 4-6 March 2015. The agenda includes, *inter alia*, a vote on a Commission Communication to endorse recent guidance adopted by the Harmonised System (HS) Committee, a possible amendment of heading 73.18 (fasteners), a possible amendment of the Explanatory Notes to heading 38.24 "anti-scaling preparations" and to Chapter 41 (leather), the classification of IGBT modules, and a possible amendment of the HS Nomenclature for LED products.

ORIGIN

Diagonal PEM Cumulation of Origin

On 23 January 2015, an updated notice on the date of application of the Regional Convention on pan-Euro-Mediterranean (PEM) preferential rules of origin or the Origin Protocols between Contracting Parties to this Convention providing for diagonal cumulation of origin was published by the Commission.

The Commission further issued various proposals for Council Decisions on the replacement of the origin protocols in the EU preferential trade agreements with Israel, Jordan, Turkey, Bosnia and Herzegovina and the Palestine Liberation Organisation (PLO) with a new protocol which, as regards the rules of origin, refers to the Regional Convention on PEM preferential rules of origin. This process should allow for a swifter update of the origin rules in the PEM region, and related regional cumulation of origin.

Origin Committee Developments

In January, the report of the 214th meeting of the Origin Section of the Customs Code Committee that took place on 21 October 2014 was made available. It shows that the Committee prepared for the 21st meeting of the PEM Working Group and discussed the report of a recent EU-Switzerland Customs Committee meeting. The Committee further discussed the origin provisions in the EU Association Agreements with Georgia, Moldova and Ukraine and in the Agreement between the EU and Andorra, and was updated on origin-related discussions in FTA negotiations with Vietnam, and under the existing agreements in place with Korea, Chile, Mexico, and Cameroon. The Committee finally discussed the

monitoring of the management and administration rules of origin for preferential arrangements, the issuing of replacement movement/origin certificates, and third party documents for making out the origin declaration.

The 216th meeting of the Origin Section of the Customs Code Committee was held on 20-21 January 2015. The agenda included, *inter alia*, discussions on certain PEM matters, the rules of origin applicable to trade with Cameroon, and the re-inclusion of Kenya in the EU's Market Access Regulation. The Committee was also due to discuss a request from Cape Verde for a prolongation of a special EU Generalised Scheme of Preferences (GSP) origin rule, and legislative amendments needed in order to implement the registered exporter system (REX). A discussion was also scheduled on the approach to be followed for the certification of origin in case of re-consignment to the EU, Norway, or Switzerland due to the differences between the lists of GSP beneficiary countries among the EU, Norway and Switzerland.

The Committee also discussed a proposal to draft guidelines on Binding Origin Information, and the application of preferential and non-preferential rules of origin under the UCC.

MISCELLANEOUS

WTO Appellate Body rules against Argentine import measures

On 15 January 2015, the WTO released the Appellate Body (AB) report in the EU, US, Japan complaint against Argentina against certain Argentinian measures affecting goods imports. The EU issued a statement on the report saying that the AB upheld the main findings of the panel report, which concluded that the Argentinean Advance Sworn Import Statement procedure and the Argentinean Trade-Related Requirement Measures were in violation of WTO rules. The AB also clarified the scope and application of the GATT prohibition on quantitative restrictions on imports and exports (Article XI:1 of the GATT).

World Customs Day

On the occasion of World Customs Day on 26 January 2015, EU Director-General of the Commission's Directorate-General for Customs and Taxation, Heinz Zourek (who is also Vice-Chair of the Europe Region of the WCO) issued a statement emphasising the importance of coordinated border management (CBM) as a way to facilitate the flow of legitimate trade as well as ensuring the security and safety of citizens. CBM is this year's theme, and it is aimed at connecting authorities and businesses to expedite border processing by avoiding duplication of controls and increasing the efficiency of controls.

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