

## EU Customs Developments

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## EU Customs Policy

### Union Customs Code (UCC) Developments

On 1 February 2016, the European Commission met representatives of selected EU-level business organisations in the so-called 'Trade Contact Group' (TCG) to discuss the latest developments related to the Union Customs Code (UCC). **End-March 2016** was confirmed as the target date for the publication of various UCC guidelines. The Commission has also indicated that it is planning to post Frequently Asked Questions on its website prior to **1 May 2016**, but that it does not intend to offer a hotline helpdesk to take questions in the first weeks of May to assist companies in making the changeover.

With respect to the pending draft Transitional Delegated Act (TDA) to lay down rules and temporary suspensions of the UCC while IT systems are gradually being deployed (**by 2020**), the Commission has noted that it does not expect either the Council or the European Parliament (EP) to object. Official publication of the TDA in the Official Journal is therefore expected to occur in **March 2016**. In addition, a corrigendum to the Delegated Regulation published last December (which would otherwise require customs declarations in many more circumstances than previously foreseen) is being prepared.

Finally, the Commission has announced that it will carefully monitor any issues arising after **1 May 2016**. It will prepare for a review of the UCC Delegated Regulation, and as necessary strive to adopt amendments in **early 2017**.

### Proposed Directive on Sanctions for Customs Infringements

On 22 February 2016, the EP's Internal Market and Consumer Protection (IMCO) Committee discussed the draft report prepared by its rapporteur on the Commission proposed Directive for an EU legal framework for customs infringements and sanctions. Amendments proposed in the draft report relate to, among others, the requirement that infringements be intentional before imposing sanctions, the potential for Member States to impose criminal sanctions in certain cases, the possibility of mitigation, and the calculation of penalties. The deadline for IMCO members to table amendments to the discussed draft report is **16 March 2016**. The EP's International Trade (INTA) Committee also held an exchange of views on the Commission's proposal on 15

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February 2016. The opinion to be adopted by INTA in that respect will be used by IMCO – as the ‘lead’ EP Committee on this initiative – in discussions about its draft report.

## Tariffs

### GSP+ Hearing in the European Parliament

On 16 February 2016, the Subcommittee on Human Rights of the EP’s INTA Committee evaluated the recent Commission report on the new EU GSP+ regime that entered into force on 1 January 2014. Under the GSP+ special incentive regime, additional tariff preferences are granted to GSP beneficiary countries that have ratified and effectively implemented certain international conventions in relation to sustainable development and good governance.

### Informal Ministerial on Trade and Development

On 2 February 2016, the EU Presidency currently held by the Netherlands organised an informal meeting of Trade and Development Ministers of the Member States. The purpose of this first ever combined trade and development meeting was to discuss ways for related policies to be better aligned. The meeting also included follow-up discussions on the WTO Nairobi Ministerial, along with the ongoing international talks on the Environmental Goods Agreement (EGA) and the International agreement on Trade in Services (TiSA).

### EU FTA Update

#### a) Canada

On 29 February 2016, the EU and Canada finalised the legal review of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and published the text of the agreement, originally agreed in August 2014. The text now includes a revised investment protection chapter which reflects the main elements of the proposal made by the EU on a new investment dispute settlement mechanism in the context of the ongoing EU-US Transatlantic Trade and Investment Partnership (TTIP) negotiations. That mechanism is also reflected in the recently concluded EU-Vietnam FTA, and follows severe criticism from the EP and various Member States on investor-state dispute settlement in particular.

In a joint statement, the EU and Canada have expressed confidence that the bilateral CETA can be signed in **2016** and enter into force in **2017**. Most customs tariffs on industrial goods will be eliminated immediately from the date of application; for certain automotive products, elimination will be gradual over 3, 5 or 7 years. A number of sensitive agricultural products are excluded from tariff elimination.

#### b) United States

The 12<sup>th</sup> round of TTIP negotiations between the EU and US was held during the week of 22 February 2016 in Brussels. This round was said to mark the beginning of an intensified period in the negotiations. Discussions covered, among others, the major topics of market access and regulatory cooperation.

At the end of the 12<sup>th</sup> round, the EU Chief Negotiator noted that discussions on certain areas, such as rules of origin and public procurement, will take place in the next couple of weeks. Two additional rounds will be held before the summer break and the aim is to conclude the negotiations on a ‘high standard’ TTIP agreement in **2016**, “provided that the substance is right”. This **2016** deadline was also emphasised by EU trade ministers during the informal trade ministerial on 2 February 2016 (see above). Meanwhile, the US Chief Negotiator has reportedly said that TTIP negotiations may not conclude in **2016**, and that substance prevails over any desired timeframe.

The EU’s second tariff offer in the TTIP talks (discussed on 21 October 2015 during the 11<sup>th</sup> round of negotiations) has been leaked, and it shows that the EU has made adjustments mainly for chemicals and certain wood products. Under the revised offer, more tariff lines will be frontloaded – meaning that tariffs will be removed from the outset – rather than incrementally removed over a 7-year period. In addition, the EU is said to be making tariff elimination for certain products conditional upon the US agreeing to protect certain of the EU’s Geographical Indications (GIs).

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### c) Japan

The 15<sup>th</sup> round of EU-Japan FTA negotiations took place during the week of 29 February 2016 in Brussels. No EU press release or statement had yet been issued when this newsletter was written.

The Customs and Trade Facilitation chapter currently being negotiated as part of this bilateral FTA was discussed in February 2016 in the Council's Working Party on Customs Union, and with representatives of certain European business organisations in the Commission's Trade Contact Group.

### d) Australia/New Zealand

On 25 February 2016, the EP adopted a resolution supporting the launch of EU-Australia/New Zealand FTA negotiations, and setting out the EP's wishes for such agreement.

### e) Colombia/Peru

On 10 February 2016, the European Commission issued its second annual report on the implementation of the FTA between the EU on the one part and Colombia and Peru on the other, which started to apply provisionally in 2013 (and for which accession by Ecuador is currently pending). This report finds that the economic slowdown in Latin America and the fall in commodity prices have affected EU trade flows with both Colombia and Peru. The report also provides a summary of a discussion within the Sub-Committee on Customs Procedures, Trade Facilitation and Rules of Origin set up under the FTA on the direct transport rule and on possible extended cumulation with Chile and Mexico.

### f) Malaysia

On 31 January 2016, Malaysia's Second Trade Minister stated that he expects to finalise FTA negotiations with the EU in the **first quarter of 2016**. Subsequently, the Malaysian Minister for International Trade and Industry has confirmed in a media interview that bilateral FTA negotiations will be resumed in **April 2016**. At the same time, no such predictions or statements have been made on the EU side, so some uncertainty remains over a possible resumption of the talks. The negotiations have been stalled since the 7<sup>th</sup> round of negotiations held in April 2012, and many issues remain outstanding.

### g) Kazakhstan

On 4 February 2016, the EU Council authorised the signing and provisional application of the Enhanced Partnership and Cooperation Agreement initialled between the EU and Kazakhstan on 20 January 2015. This agreement includes rules on, *inter alia*, trade in goods and customs.

## Classification

### Court Judgment on the Classification of Video Multiplexers

On 25 February 2016, the Court of Justice of the EU (CJEU) handed down its judgment in Case C-143/15 (*G.E.Security BV v. Staatssecretaris van Financiën*) on the classification of so-called "video multiplexers". The subject products are sold as protection systems to be used in the installation of security installations. They are part of a closed circuit video-surveillance system connected to external cameras and/or external sensors (such as motion and fire detectors), and they have three functions: (i) to record/reproduce video and sound; (ii) to produce alarms; and (iii) to transmit and receive network data (e.g. sending emails to system users).

Dutch customs had classified the multiplexers as video recording/reproducing apparatus under Combined Nomenclature (CN) code 8521 90 00, while the applicant considered that they fell under CN code 8543 70 90 (electrical machines and apparatus having individual functions not specified elsewhere in Chapter 85) or 8531 10 30 (burglar or fire alarms).

The CJEU found that the principal function of the video multiplexer is recording and reproducing video within a security and surveillance system. Accordingly, the other functions are merely ancillary functions to improve the functioning of the system in which the multiplexer is incorporated. The Court therefore ruled that the product should be classified as video recording/reproducing apparatus under CN heading 8521.

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## Court Judgment on the Classification of Effervescent Tablets

On 17 February 2016, the CJEU issued its judgment in Case C-124/15 (*Salutas Pharma GmbH v. Hauptzollamt Hanover*) on the classification of effervescent tablets containing 500mg of calcium. These tablets are used for the prevention and treatment of calcium deficiency and to support a special therapy for the prevention and treatment of osteoporosis. The product is distributed by the applicant solely through pharmacies.

The applicant in this case had applied for binding tariff information (BTI) for 'Calcium-Sandoz Forte 500 mg' tablets, proposing that the product should be classified under CN code 3004 90 00 (as other medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale). The German Customs Office, however, issued BTI classifying the product under CN code 2106 90 92 (as other food preparations not elsewhere specified or included containing no milkfats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5% milkfat, 5% sucrose or isoglucose, 5% glucose or starch). Referring to additional note 1 to CN Chapter 30 (aimed at clarifying the classification of certain preparations), German customs considered that heading 3004 was not appropriate, as the relevant dose does not correspond to a level of calcium consumption that is 'significantly higher' than the recommended daily allowance. The applicant appealed, and the Hauptzollamt Hanover referred the matter to the CJEU.

Importantly, the CJEU considered an Explanatory Note adopted by the EU to the additional note to Chapter 30 in this case. This EU specific Explanatory Note aims to clarify the meaning of 'significantly higher', and states that it covers a vitamin or mineral content which is 'much higher, generally at least three times higher than the recommended daily allowance'. The CJEU held that this Explanatory Note does not exclude products from Chapter 30 solely because the dose is not three times higher, and that such a high dose may actually be harmful to health. In other words, the CJEU ignored the specific criteria in the Explanatory Note in this case and agreed with the applicant: it found that the calcium content is 'significantly higher' than necessary or recommended for general dietary purposes in the subject products.

## Classification Regulations

The following relevant EU Classification Regulations have been published since our last issue:

- **Commission Implementing Regulation 2016/137** classifies a rectangular piece of transparent textile material made of synthetic fibres, a plastic rail and a roller mechanism, designed to be fixed into the door panel of a motor vehicle providing protection against the sun under CN code 6303 12 00 as knitted interior blinds of synthetic fibres (attracting an MFN rate of 12%).
- **Commission Implementing Regulation 2016/283** classifies a so-called 'LED glitter lamp' under CN code 3926 40 00 as other ornamental articles of plastics (attracting an MFN rate of 6.5%).
- **Commission Implementing Regulation 2016/302** classifies a plastic drawing board for drawing and erasing with a drawing pen and magnetic stamps designed for the entertainment of children under CN code 9503 00 95 as other toys of plastics (attracting an MFN rate of 4.7%).

## Nomenclature Committee Developments

### a) Textiles and Mechanical/Miscellaneous Sector

The agenda of the 164<sup>th</sup> meeting of the Textiles and Mechanical/Miscellaneous Sub-section of the Nomenclature Committee (from 22 to 25 February 2016) has been published. During that meeting, the Committee was scheduled to discuss draft Classification Regulations for mini greenhouses, monitor arms, and smartphone docking stations. In addition, an examination was due of draft regulations for banknote readers, stands for cash register display, luer lock connectors, bathtub steps, memory card games, temperature controllers, and control units for gas discharge lamps. Draft explanatory notes for screws turned from bars, rods, and profiles or wire, and for child seats to be used on bicycles were also on the agenda. A first discussion was planned on the classification of double-buckle seatbelts, gloves, "Hexbug beetles", undercarriage parts (rollers, track chain), 3D printers for articles of plastering materials, heat sinks, screws (tapping), video capturing cards, lanterns/table lights, adjustable screws/spindles, bedspreads, radial shaft seals, power distribution units, decorative trims/mouldings/covers used for car interior fittings, massage apparatus, digital microscopes, layered wood, LED lamps and solar power chargers, and glass holders for

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tea-lights.

## b) CN Sector

The agenda of the 166<sup>th</sup> meeting of the Tariff and Statistical Nomenclature Section of the Customs Code Committee of **14 March 2016** includes the transposition of the Harmonised System (HS) into the CN 2017 for wine, wood, monitors, multicomponent semiconductors (MCOs), motor vehicles and tripods. The Committee was also due to discuss the rewording and linguistic alignment of hydraulic oils in CN subheading 2710 19 83 ('Liquids for hydraulic purposes') and 'blind rivet nuts' (under heading 7318). The Committee would further discuss amendments of the CN to reflect the expansion of the WTO Information Technology Agreement (ITA).

## Origin

### Diagonal PEM Cumulation of Origin

On 20 February 2016, the Commission published an updated notice on the dates 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, which ultimately provides for diagonal cumulation of origin between all participating countries. PEM covers the EU, the EFTA States (Iceland, Switzerland/Liechtenstein and Norway), the Faroe Islands, the Barcelona Process countries (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, West Bank and Gaza Strip, Syria and Tunisia), Turkey, the participants in the EU's Stabilisation and Association Process (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo), and Moldova.

## Valuation

### EU Valuation Committee Developments

The minutes of the 19<sup>th</sup> meeting of the Valuation Section of the Customs Code Committee (the Valuation Committee) that took place on 1-2 October 2015 have been made available. They show that the Committee coordinated the October 2015 meeting of the World Customs Organisation (WCO)'s Technical Committee on Customs Valuation (TCCV Committee), and discussed various topics on the agenda of that meeting. Such topics included the net margin method and resale price method used for related parties transaction and transfer pricing, the valuation treatment of goods in Global Value Chains, the treatment of fees for unlocking a function of imported goods after importation, the treatment of advertising and promotion costs, the payment of royalties stemming from franchise contracts, and the applicability of the transaction value method, where goods bought in one transaction are fractioned and imported in two different countries at the same price but in different quantities. The Commission also noted that discussions are ongoing in the WTO with respect to pen-drives (USB keys).

The Committee also discussed the valuation of know-how, end-year price adjustments, price adjustments in sales between non-related parties, and the assessment of so-called 'kickback incentives' such as transport costs. The Commission further gave an overview of the most significant changes in customs legislation as a result of the UCC, which will become applicable on **1 May 2016** (see above), while also noting that EU-wide binding valuation rulings comparable to BTI or Binding Origin Information will not be possible at this stage (as the Commission has chosen not to use the empowerment given to it to make this happen). The Commission further noted that guidance is being prepared on changes to the valuation rules under the UCC, and that the Member States would shortly be consulted on these. Finally, the Committee started a discussion as to whether the cost of storage before loading and transport to the EU to allow certain treatments to make loading possible (e.g. heat treatment) should be considered as part of the transport cost.

The 20<sup>th</sup> meeting of the Valuation Committee took place on **3-4 March 2016**. The agenda for that meeting confirms that discussions on various topics of the 19<sup>th</sup> meeting will continue then. The Committee was, for example, scheduled to discuss the treatment of intermediate storage costs for valuation purposes and carrier media, and to consider how to update the EU's Compendium on Customs Valuation to reflect the new UCC valuation rules.

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## Procedures

### Customs Code Committee 'Special Procedures' Section Developments

The 48<sup>th</sup> meeting of the Special Procedures Section of the Customs Code Committee took place on 22 February 2016. During that meeting, the Committee was scheduled to continue its discussions on the economic conditions for processing under customs control (PCC) of solar glass into solar panels, and high-quality grain-oriented electrical steel (GOES) and grain-oriented electrical steel into high-quality GOES coils. The Committee was also due to exchange views on the guidelines concerning the changes resulting from the UCC. The agenda further included discussions on the calculation of import duties under the inward processing regime, the use of equivalent goods in case of temporary admission by means of rail transport, and the application of the end-use procedure for imports of aircraft.

## Miscellaneous

### Commission Proposal on New Rules for the Import, Export and Use of Mercury

On 2 February 2016, the Commission proposed a Regulation consolidating EU rules and filling certain regulatory gaps on mercury. It includes an export prohibition on mercury, several mercury compounds, and mixtures of mercury, along with an import prohibition in relation to mercury for certain uses. In addition, the proposal foresees a ban on the manufacturing and placing on the market of a range of mercury-added products. The proposal must now be discussed and co-decided by both the Council and the EP before it can enter into force.

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