

## EU Customs Practice Group

November 2014

### EU CUSTOMS POLICY

#### UCC Developments

Throughout November, the European Commission continued its discussions with the EU's Customs Code Committee on the draft Implementing Act for the Union Customs Code (UCC) in anticipation of further meetings in December. The Commission is aiming to produce a new consolidated version of the draft by late December or early January. In addition, a joint meeting with Member State experts and representatives of the business community to discuss outstanding controversial matters is scheduled to take place in mid-January 2015.

### TARIFFS

#### Duty suspensions and tariff quotas

##### *a) January 2015 Round*

The formal proposals for the EU's Duty Suspension and Tariff Quota Regulations that will apply as of 1 January 2015 were issued by the Commission on 19 November 2014. In the course of December, these proposals will be adopted by the EU Council, normally without further debate.

##### *b) July 2015 Round*

The discussions in the Economic Tariff Questions Group (ETQG) on applications for suspensions and tariff quotas for the July 2015 Round took place in November, and the ETQG will hold its second meeting during the week of 15 December. The third and final ETQG meeting will take place in January 2015.

##### *c) January 2016 Round*

Applications for the January 2016 Round will, as usual, have to be filed in early 2015, in line with the applicable deadline imposed by the relevant Member State. In some Member States, 1 February 2015 will be the cut-off date to receive new applications, but it could also be earlier or later – companies are advised to check this locally. The Member States then have until 15 March 2015 to examine the eligibility of the application and submit it to the European Commission for discussion by the ETQG.

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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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## GSP – Members of the INTA Committee oppose GSP+ status for the Philippines

After the Council cleared a Commission proposal to grant GSP+ status to the Philippines in October, the International Trade (INTA) Committee of the European Parliament (EP) on 5-6 November 2014 discussed this matter as well. Several Members of the European Parliament (MEPs) considered that no GSP+ status should be granted until the Commission has concluded its so-called 'yellow card procedure' against the Philippines on illegal fishing. The matter will be discussed further during the December plenary meeting of the EP. Although the granting of GSP+ status and illegal fishing issues are not really connected, political groups in the EP or 40 MEPs would theoretically be able to propose a resolution rejecting the Commission proposal.

## GSP – INTA welcomes proposal to maintain duty preferences for Ecuador after 1 January 2015

On 5-6 November 2014, the EP's INTA Committee welcomed the proposal of the European Commission to provide for an interim reciprocal arrangement granting duty preferences to Ecuador as of 1 January 2015. Ecuador will cease to be a GSP beneficiary country and will therefore also be removed from the list of GSP+ countries as of 1 January 2015. However, under the proposed arrangement, customs duties on products originating in Ecuador would remain at the level of the current GSP+ preferences until the date of application of the recently negotiated Free Trade Agreement with the EU.

## FTA update

### a) Japan

During the 24 November 2014 meeting of the EU Foreign Affairs Council, the Council took stock of the progress made in the negotiations with Japan and referred to the prospects for concluding these two negotiations in 2015. The 8<sup>th</sup> round of the negotiations is taking place during the second week of December.

### b) Vietnam

On 24 November, the Foreign Affairs Council also indicated that there are prospects for concluding the FTA talks with Vietnam next year.

The same week, a further round of meetings between EU and Vietnamese negotiators took place and a technical meeting is expected to take place before the end of December. After that, the 11<sup>th</sup> round of negotiations is scheduled to take place on 19-23 January 2015. Negotiators are currently expected to conclude negotiations in March 2015.

### c) US

On 16 November 2014, the EU and US released a joint statement, reaffirming their commitment to the Transatlantic Trade and Investment Partnership (TTIP) Agreement.

On 19 November 2014, the EU and US discussed ways of improving transparency in the TTIP talks. New EU Trade Commissioner Malmström also outlined her proposals for improving transparency, which involve extending access to TTIP texts to all MEPs, and publishing texts setting out the EU's specific negotiating proposals.

### d) Singapore

During an exchange of views in the EP INTA Committee on 5-6 November, the Commission said that the pending opinion sought from the Court of Justice of the EU (CJEU) on the precise division of EU versus Member State powers to sign and ratify the EU-Singapore FTA would likely delay the ratification process of the EU-Singapore FTA.

### e) Moldova

On 13 November 2014, the EP approved the EU-Moldova Association Agreement, which includes a Deep and Comprehensive Free Trade Agreement (DCFTA). Parts of the Association Agreement (including the DCFTA) have been provisionally applied since 1 September 2014.

## CLASSIFICATION

### Classification Regulations

During the month of November 2014, the European Commission published the following Classification Regulations:

- **Commission Implementing Regulation 1212/2014** classifies a solid, cylindrical, threaded product made of extra hard, colour finish titanium alloy for use in the field of trauma surgery for setting fractures under Combined Nomenclature (CN) code 8108 90 90 as other articles of titanium.
- **Commission Implementing Regulation 1213/2014** classifies a cannulated, cylindrical, threaded product made of extra hard titanium for use in the field of trauma surgery for setting fractures, under CN code 9021 10 90 as splints or other fracture appliances.
- **Commission Implementing Regulation 1214/2014** classifies a so called "pangea dual core screw" for use in trauma surgery as part of a system for posterior stabilisation of the spine, under CN code 9021 10 90 as splints or other fracture appliances.

- **Commission Implementing Regulation 1215/2014** classifies a solar panel used in solar water heating systems intended to be mounted on a roof, under CN code 8419 19 00 as other instantaneous or storage water heaters, non-electric.
- **Commission Implementing Regulation 1216/2014** determines the classification of an electronic apparatus that, when connected to a television set or a monitor, enables the user to access the internet (among other functions). The Commission reasoned that because it was not possible to determine the apparatus' principal function, it is classified under the heading which occurs last in numerical order among those which equally merit consideration. In this case, this means classification under CN code 8528 71 91 as apparatus with a microprocessor-based device incorporating a modem for gaining access to the internet, and having a function of interactive information exchange, capable of receiving television signals (so-called 'set top boxes with a communication function', including those incorporating a device performing a recording or reproducing function, provided that they retain the essential character of a set top box which has a communication function).
- **Commission Implementing Regulation 1217/2014** classifies one type of a so-called electrical filter under CN code 8532 24 00 as a ceramic dielectric, multilayer fixed capacitor, as it is only constituted by a capacitor. Another type of electrical filter that is constituted by a capacitor and two ferrite beads, is classified under CN code 8548 90 90 as other electrical parts of machinery or apparatus, not specified or included elsewhere in chapter 85.

## Nomenclature Committee Developments

### a) Mechanical/Miscellaneous/Textiles Sector

The report of the 140<sup>th</sup> meeting of the Mechanical/Miscellaneous/Textiles Sector of the Customs Code Committee that took place on 30 September – 3 October 2014, has been made available. Apart from delivering a positive opinion on the drafts of Classification Regulations described in the previous section (except on solar panels), the Committee concluded discussions on the classification of numerous products, including films with aerials/aerial arches, electric skateboards, gyroscopes, Hi-Fi systems, UV water sterilisers, multimedia players with touch-screen, toys with a built-in music module, smart watches, and retainer rings. The Committee also examined the classification of electronic money boxes, connectors, and car receivers/radio back panels, ductile iron versus malleable iron, door bottom sealings, trousers, cleaning gloves, luminous shoelaces, certain greenhouses, and mobile phone cases. It further

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discussed an update of the CN Explanatory Notes (ENs) to CN code 8525 80 30 (digital cameras) and 8525 80 91/99 (video camera recorders), and a proposal for a new CN code and a new CNEN to heading 6506 (motor cycle helmets). Various draft Regulations were also put to a written vote during the month of November, including on cartridges for game consoles, utility vehicles, remodelled cars, fittings for central heating and media servers.

### b) Agriculture/Chemistry Sector

The minutes of the meeting of the 141<sup>st</sup> meeting of the Agriculture/Chemistry Sector of the Customs Code Committee, that took place on 27-28 October 2014, have been made available. The Committee concluded discussions on, *inter alia*, the classification of artificial waxes and tobacco products (methods for determining particle size and a smoking test), and held a first discussion on the classification of essential amino acids/fatty acids, silicon dioxide (silica gel) in sachets or capsules, and a thinner, among other products. It also discussed two Chapter 27 Additional Notes relating to oil content of certain products and the definition of gasoils. The Committee further endorsed the results of the Project Groups on chemicals, waste, and food, and EU Regulations on ethyl alcohol mixtures.

### EU judgment on the classification of loudspeakers

On 6 November 2014, the CJEU issued its judgment in Case C-546/13, *Agenzia delle Dogane, Ufficio di Verona dell'Agenzia delle Dogane v. ADL American Dataline Srl*, relating to loudspeakers designed for exclusive use as output peripheral units for Apple computers.

The importer argued that these goods are classifiable under CN code 8471 60 90 as computer peripherals (subject to 0% duty), but the Italian customs authorities opted for classification under CN code 8518 22 90 as loudspeakers (subject to 4.5% import duty). The CJEU considered that the independent function of the goods, namely to reproduce sound by transforming an electromagnetic signal into sound waves, is a different function from data processing. The fact that a loudspeaker must be connected to another apparatus (such as an automatic data processing machine) does not prevent it from being classified in accordance with its own function. The Court thus concluded that the products in this case must be classified as loudspeakers in subheading 8518 22 90.

### EU judgment on the classification of modules for short-range data transmission and reception

On 20 November 2014, the CJEU issued its judgment in Case C-666/13, *Rohm Semiconductor GmbH v Hauptzollamt Krefeld*. This case concerned the customs

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classification of modules for short-range data transmission and reception in interaction with other electronic tools using infrared light.

The applicant argued that these modules should be classified under tariff heading 8541, which includes, *inter alia*, diodes, transistors and similar semiconductor devices, as well as LEDs (subject to 0% duty). The German customs authorities, on the other hand, considered subheading 8543 89 95 (subject to 3.7% import duty) to be the proper code. The Court referred to the subsidiary nature of heading 8543: it held that since the modules at issue have an individual function, and the modules are not included in any heading of Chapter 85 of the CN other than heading 8543, the modules should fall under the latter heading rather than 8541. The Court also observed that incorporation is not necessary for the functioning of those machines, and, as a result, the modules cannot be regarded as parts within the meaning of CN subheading 8543 90 80. Instead, they must fall under the residual subheading 8543 89 95 (for other electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85 of the CN).

## ORIGIN

### Origin Committee Developments

The report of the 212<sup>th</sup> meeting of the Origin Section of the Customs Code Committee, that took place on 30 June – 1 July 2014, has been made available. During this meeting, the Committee delivered a favourable opinion on the draft Regulation granting a derogation to Cambodia allowing the use of Malaysian origin bicycle parts (even though Malaysia is no longer a GSP beneficiary country) until the end of 2016. The Committee also discussed the registered exporter (REX) system and other GSP matters, including non-manipulation/splitting of consignments in a transit country and derogations from certain GSP rules requested by Cape Verde and the Solomon Islands. The Committee also discussed statistics received from the Member States concerning verification of proofs of origin. The Member States were informed on origin-related discussions in the (then on-going) CETA negotiations, the FTA negotiations with Japan and Vietnam, TTIP, Economic Partnership Agreement (EPA) negotiations, the FTAs concluded with Ukraine and Moldova as well as the autonomous trade preferences granted to Ukraine. They were also debriefed on the 1<sup>st</sup> sub-committee meeting in the framework of the EU-Central America FTA, and the 3<sup>rd</sup> meeting of the Customs Committee under the EU-Korea FTA. The Committee further discussed certain Pan-Euro-Med (PEM) matters, cumulation possibilities in EPAs and the Market Access Regulation, and the import ban for goods from Crimea.

The summary report of the 213<sup>th</sup> meeting of the Origin Section of the Customs Code Committee, that took place on 25-26 September 2014, has also been published. During this meeting, the Committee discussed the above mentioned PEM and GSP matters again, as well as the publication of guidelines and the GSP user's guide on DG Taxud's website. The Committee also discussed an issue concerning preferences granted by New Caledonia (one of the EU's Overseas Countries and Territories) to EU exports and the refusal of certain Member States to issue the necessary proof of origin (EUR.1 movement certificate). The Commission further debriefed the Member States on origin-related discussions during the EU-Japan and the TTIP negotiations. The Committee also received information on additional duties imposed since August 2014 by Turkey on shoes originating in GSP beneficiaries which have been released for free circulation in the EU and which should therefore not be subject to customs duties when subsequently shipped to Turkey. The Commission has taken this up with Turkey.

## PROCEDURES

### EU judgment on duty relief for lab animals

On 20 November 2014, the CJEU issued its judgment in Case C-40/14, *Direction générale des douanes et droit indirects, Chef de l'Agence de poursuites de la Direction nationale du renseignement et des enquêtes douanières, Direction régionale des douanes et droits indirects de Lyon v Utopia SARL* concerning duty relief for animals specially prepared for laboratory use.

The EU rules on duty relief allow relief of import duties for animals specially prepared for laboratory use by public or specially authorised private establishments. The CJEU in this case clarified that even if the import is made by a party that is not itself an authorised establishment, duty relief can still be granted and thus sided with the applicant company on this. The Court further held that cages that are repeatedly used for the transportation of live animals intended for laboratory research should not be classified as packing materials or packing containers which are to be classified with the goods to which they relate.

### EU determines cases of exemption from transmission of data as regards EU-Swiss trade

On 18 November 2014, the EU published a Decision of the EU-Switzerland Joint Committee defining cases where the transmission of information is not necessary when goods destined for a third country leave the customs territory of the EU or Switzerland through the customs territory of the other trade partner (i.e. Switzerland or the EU). As a condition, the level of security in the Agreement between the EU and Switzerland on the simplification of inspections and formalities in respect of the carriage of

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goods and on customs security measures must be respected.

#### **EU extends simplification in the discharge of the inward processing procedure regarding civil aircraft**

On 15 November 2014, the EU published an amendment to the Customs Code Implementing Provisions as regards simplified discharge of the inward processing procedure. As a result, the existing simplification in relation to civil aircraft is now also available for military aircraft. This means that imported goods are regarded as having been re-exported or exported, even if they are actually put on the EU market without a subsequent customs declaration and payment of import duties.

#### **EU publishes EU-China MRA on AEO status**

On 1 November 2014, the mutual recognition agreement (MRA) on Authorised Economic Operator (AEO) status that was signed between the EU and China on 16 May 2014 was published. Under this MRA, the two sides commit to recognising each other's certified safe traders. This should allow faster controls and release of goods, and reduce the administrative burden for the customs authorities.

### **MISCELLANEOUS**

#### **Commission report on potentially trade restrictive measures**

On 17 November 2014, the European Commission presented its 11<sup>th</sup> report on potentially trade restrictive measures (covering the period 1 June 2013 – 30 June 2014). Russia, China, India and Indonesia were identified as the countries adopting the most restrictive measures. This report refers to various potentially trade restrictive measures in the area of customs, including the partial cancellation of the use of TIR Carnets in Russia, electronic customs requirements in Argentina, and increased customs duties imposed by Russia, Mexico, Turkey and India on several products.

#### **Commission launches EU Customs Competency Framework**

The European Commission has published on its website a European Union Customs Competency Framework (EU Customs CFW) for use by national customs services and businesses. The EU Customs CFW sets out a consensus view of knowledge, skills and behaviours required from customs professionals, and defines public and private customs roles. This initiative aims to help harmonise and raise customs performance standards in the EU.

#### **WTO Members adopt Trade Facilitation Agreement Protocol**

Following an agreement between the US and India on India's food stockholding programme (seemingly breaking the impasse that obstructed implementation of the WTO Trade Facilitation Agreement), the WTO Members on 27 November 2014 adopted the Protocol of Amendment (agreed at a WTO Ministerial meeting in Bali last year) that will enable implementation of the Trade Facilitation Agreement.

#### **WTO ITA talks resume**

At the fringes of the APEC meeting on 11 November 2014, the US and China announced progress in solving their outstanding issues concerning the negotiations to expand the Information Technology Agreement (ITA). According to a fact sheet issued by the US, the parties have agreed on tariff reductions on, among others, MRI machines, GPS devices, video game consoles, solid-state drives, and pink cartridges. Discussions between the ITA negotiators are expected to continue in December. EU Trade Commissioner Malmström welcomed the progress made and announced to "take all the necessary steps to finalise the agreement in the coming weeks".

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