

## EU Customs Developments

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## EU Customs Policy

### Union Customs Code Developments

On 19 July 2016, the European Commission published a proposal to amend Article 136 of the Union Customs Code (UCC). This Article UCC exempts goods that have temporarily left the EU's customs territory by sea or air from certain UCC provisions relating to the lodging of an entry summary declaration, notification of aircraft or vessel arrival, and presentation of goods to customs upon unloading or transhipment. The draft amendment aims to ensure that a distinction is made between EU and non-EU goods, so as to ensure more effective customs supervision.

A Regulation was adopted on 29 July 2016 to organise the transmission of trade statistics information relating to customs simplification involving centralised clearance between Member State customs authorities. These procedures will function as transitional measures until the necessary electronic systems have been developed under the UCC.

### EU Revises Electronic Customs Multi-Annual Strategic Plan

The EU Commission has again revised the Electronic Customs Multi-Annual Strategic Plan (MASP), a planning tool to ensure the effective management of electronic customs projects. It gives an overview of all future customs projects and envisaged IT requirements. It also reflects progress in diverse policy domains such as the Union Customs Code, Authorised Economic Operators Mutual Recognition, Safety and Security and Single Window.

### Customs Infringements and Sanctions

On 14 July 2016, the European Parliament (EP)'s Internal Market and Consumer Protection (IMCO) Committee adopted its draft legislative report on the proposed EU Directive on customs infringements and sanctions, proposing numerous changes. This report will now go to the EP Plenary Session for a vote, most likely in **November 2016**.

## Tariffs

### Duty Suspensions and Tariff Quotas

#### a) January 2017 round

In mid-July 2016, the Economic Tariff Questions Group (ETQG) held its third discussion on the applications for Duty Suspension (DS) and Tariff Quota (TQ) for the **January 2017** round. The Commission is expected to issue the formal proposals for the updating regulations on DS and TQ for this round in the **Autumn**.

#### b) July 2017 round

As always, the deadline for the Member States for sending DS and TQ applications for the **July 2017** round to the European Commission is **15 September 2016**.

### Environmental Goods Agreement

On 10 July 2016, the G20 Trade Ministers confirmed their aim to conclude "an ambitious, future-oriented" WTO Environmental Goods Agreement (EGA) by the **end of 2016**.

From 25 to 29 July 2016, the EU and other parties held the 15<sup>th</sup> round of negotiations on an EGA. The EU also released a report on the previous negotiation round which took place in June 2016. In that report, the Commission states that good progress has been made so far, and that recent discussions have focussed on staging offers for tariff liberalisation, noting that China recently tabled a revised staging offer.

### EU FTA Update

#### a) Brexit

Following the UK's Brexit referendum on 23 June 2016, and awaiting the UK's formal notification of its intent to withdraw from the EU, discussions have started in the UK on the future EU-UK trade relationship. UK Secretary of State for International Trade Liam Fox stated on 26 July 2016 that his country would probably seek a free trade deal with the EU rather than a customs union. UK Minister for Brexit David Davis meanwhile has stated his preferred model for the UK's future relationship with the EU would be the EU-Canada Comprehensive Economic Trade Agreement (CETA). The Canadian trade minister has confirmed in that context that Canada has had "technical exchanges" with the UK about the functioning of CETA.

In the meantime, US Trade Representative Michael Froman further stated that it may be possible for the UK to join the Trans-Pacific Partnership (TPP) at some point in the future. He also said that it would be difficult for the US to negotiate a trade deal with the UK until the framework of its future relationship with the EU has been established.

UK Chancellor Philip Hammond has suggested that the UK is exploring a free trade deal with China.

#### b) Canada

On 15 July 2016, Canada's trade minister confirmed that the entry into force of CETA will not be delayed by the protracted ratification process or by Brexit, and that 90-95 percent of the agreement will be provisionally applicable soon.

The EU and Canada aim to sign CETA during the next bilateral summit, scheduled to take place in **October 2016**. The current Slovak Presidency of the EU Council has confirmed that it is working towards swift ratification of the agreement, while emphasising that the new controversial investment rules will not be provisionally applied.

The Commission meanwhile has indicated that unresolved visa disputes with Canada could harm the trade agenda between the parties. Also, it has been reported that a German left-wing party has filed a lawsuit in Germany's Constitutional Court claiming that certain CETA provisions are unconstitutional under German law. In the context of the various issues surrounding CETA, EU officials have warned that the EU's trade policy will be "close to death" if the CETA deal were to fail.

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### c) United States

On 8 July 2016, the EU and US reaffirmed their commitment to conclude the negotiations on the Trade and Transatlantic Partnership (TTIP) by the **end of the year**. Nevertheless, government officials in France and Germany have recently again indicated that they did not think this is realistic.

The 14<sup>th</sup> round of TTIP negotiations took place on 11-15 July 2016 in Brussels. Parties announced they now have “a good sense” about the outline of the future agreement, and proposals are on the table for almost all of the expected 30 chapters.

In efforts to be transparent, the Commission has meanwhile published a new factsheet and nine EU TTIP proposals, covering, among others, regulatory and institutional cooperation. A partially declassified version of the 2013 negotiating mandate granted to the Commission for TTIP negotiations is now also in the public domain.

The next TTIP round may take place in **September or October 2016**.

### d) Indonesia

On 18 July 2016, the EU and Indonesia agreed to launch FTA negotiations. The future FTA should cover, among others, customs duties and barriers to trade. The first round of EU-Indonesia FTA negotiations will be held **later this year**.

### e) South Korea

The Commission has issued its latest annual report on the implementation of the EU-Korea FTA. The report shows that EU exports to South Korea have increased by 55% since the FTA entered into force provisionally in the middle of 2011. The preference utilisation rate, however, has decreased slightly compared to the previous year. The Commission concluded that the FTA has helped turn the EU's trade deficit with South Korea into a trade surplus, and has turned Korea into one of the EU's top ten export markets.

Meanwhile, it has been reported that the EU and South Korea may next year start negotiations to amend the FTA, including with respect to the direct shipment rule in order to allow products passing through a third country without loss of preferential status under certain circumstances.

### f) Japan

The Slovak Presidency of the EU Council, which started on 1 July 2016, affirmed the EU's commitment to finalise the EU-Japan negotiations by the **end of this year**, as agreed during the EU-Japan Summit a few months ago.

### g) Ukraine

It has been reported in the press that the EU is planning to announce in **September 2016** new trade preferences for Ukraine covering aluminium, electrical appliances and agricultural products.

### h) Mexico

The European Commission has published a report on the first round of negotiations with Mexico on the modernisation of the EU-Mexico Global Agreement, which took place on 13-14 June 2016. During that round, Parties organised the work for future rounds and discussed the content of the updated agreement. The next round of talks is expected to take place in the **Autumn of 2016**.

The EP's International Trade (INTA) Committee further requested and obtained from the Council the trade part of the negotiating directives for these negotiations.

### i) Australia

On 5 July 2016, the EU published a proposal for a Council Decision to sign the EU-Australia Framework Agreement. Negotiations for this agreement were concluded in March 2015. The Framework Agreement contains provisions on, among others, customs cooperation and trade.

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## j) ACP Countries

On 8 July 2016, the EU published amended arrangements on the application of the agreements establishing, or leading to the establishment of, Economic Partnership Agreements (EPAs) with the African, Caribbean and Pacific (ACP) group of countries. These arrangements will apply before the provisional application of the EPAs on a mutual basis.

## k) East African Community

On 6 July 2016, the Commission issued a draft Decision on the conclusion of the EPA between the EU and the East African Community (Burundi, Kenya, Rwanda, Tanzania, and Uganda). The negotiations for this region-to-region EPA were concluded in October 2014. The text of the agreement is currently undergoing translation.

# Classification

## Court Judgment on Classification of Screenplays

On 14 July 2016, the Court of Justice of the EU (CJEU) issued its judgment in Case C-97/15 (*Sprengen/Pakweg Douane BV v. Staatssecretaris van Financiën*) on the customs classification of screenplays (i.e., hard disk devices which can store and play multimedia files transferred from a computer on a television or video monitor). The question raised with the Court was whether these products should be classified under Combined Nomenclature (CN) code 8471 70 50 as a 'hard disk drive' (carrying 0% import duty), or under CN code 8521 90 00 as 'video reproducing apparatus' (subject to 13.9% duty).

The Court referred to Note 3 to Section XVI of the CN (which contains CN Chapters 84 and 85) according to which composite machines designed to perform two or more functions are to be classified in accordance with their principal function. The CJEU considered that the principal function of the screenplays is video reproduction and that the product should therefore be classified under CN heading 8521.

## Classification Regulations

Since our previous newsletter, the following EU Classification Regulations have been published:

- **Commission Implementing Regulation 2016/1140** classifies a self-heating patch and a self-heating belt to relieve pain under CN code 3824 90 96 as other chemical products and preparations of the chemical or allied industries.
- **Commission Implementing Regulation 2016/1211** classifies a hammock with a wooden stand under CN code 9403 60 90 as other wooden furniture.
- **Commission Implementing Regulation 2016/1320** classifies a mat consisting of two layers of textile fabric, and a 'special pen' for writing on the mat through wetting the surface coating with its wet point, under CN code 9503 00 70 as 'other toys, put up in sets'.
- **Commission Implementing Regulation 2016/1321** classifies a hammock with a frame and a stand made of metal (steel) bars suitable for outdoor use under CN code 9403 20 80 as other metal furniture.

## CN Explanatory Notes regarding Keyrings and Child seats

On 27 July 2016, the EU published an Explanatory Note (EN) to CN heading 9503 00 ("Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ('scale') models and similar recreational models, working or not; puzzles of all kinds"), clarifying the scope of that heading with respect to combinations consisting of a keyring and a toy.

On the same day, a CNEN to CN code 8741 99 90 (the residual parts subheading for, among other, bicycles) was published, clarifying that this subheading includes child seats for adult bicycles as well.

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## Nomenclature Committee Developments

### a) Agriculture/Chemistry sector

The minutes of the 170<sup>th</sup> meeting of the Agriculture/Chemistry sub-section of the Tariff and Nomenclature Section of the Customs Code Committee (Nomenclature Committee) that took place on 20-21 June 2016 have been made available. During this meeting, the Committee approved the Regulation implementing the expanded international Information Technology Agreement (ITA-II) which was formally adopted and published in late June 2016. The group also discussed, *inter alia*, the tariff classification of modified phenolic resins, articles made of artificial stone, heat-sensitive ink ribbons in rolls, food supplements produced from vegetable meals, glitter for toothpaste, two groups of hydrocarbons in C11-\*C14 and C13-C17, cooking wine, and palm wax. The Committee also discussed a possible amendment to the notes of Chapter 40 (covering rubber and articles thereof) and an amendment of Annex A to CN Chapter 27 (covering mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes).

## Correlation Table between EU CN Codes and Entries of Waste

On 29 July 2016, the EU published **Regulation 2016/1245** setting out a preliminary correlation table between the EU's CN codes and the waste codes listed in the EU Regulation on shipments of waste.

## Origin

### Diagonal PEM Cumulation of Origin

On 5 July 2016, the Commission published an updated notice on the date of application of diagonal cumulation of origin under the Regional Convention on Pan-Euro-Mediterranean (PEM Convention).

The EU also issued a draft Council Decision in relation to the PEM Joint Committee, inviting Georgia to accede to the PEM Convention. Georgia submitted its request for accession to the Convention in September 2015.

The EU further published a Decision of the Joint Committee between the EU and the Palestine Liberation Organisation (PLO) amending the origin protocol under the EU-PLO Interim Association Agreement to incorporate the PEM Convention for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip.

## Procedures

### Court Judgment on Outward Processing of Petrol

On 21 July 2016, the CJEU rendered its judgment in Case C-4/15 (*Staatssecretaris van Financiën v. Argos Supply Trading BV*) on the outward processing of petrol for the purpose of blending it with bioethanol. The applicant in this case had filed a request to use this special customs procedure for the export of petrol of EU origin to be blended on the high seas with bioethanol from a third country and then returned to the EU. The applicant claimed that following blending, it would obtain ethanol 85 ('E85') and that the outward processing procedure would entitle it to reduce the import duty for biofuel with the duty applicable to petrol.

The customs authorities claimed that the EU import of large E85 volumes would seriously harm the essential interests of EU bioethanol producers and therefore refused to grant an outward processing authorisation. The CJEU agreed with that decision and found that the relevant EU Customs Code provision required it to take the economic interest into account and therefore not only consider the interests of EU producers of the finished product obtained following processing, but also of EU producers of products analogous to the basic or intermediate non-EU products. The Court noted that in this case, a significant quantity of a non-EU basic product (bioethanol) was to be included in temporarily exported goods, and the duties related to that basic product are significantly higher than those applied to the final imported product (E85). Therefore, it should be assessed whether the subject outward processing operation is capable of harming the interest of traders producing the basic product within the EU.

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## Miscellaneous

### EU Launches Third WTO Case against China on Raw Materials

On 19 July 2016, the EU filed a request for WTO consultations with China on alleged export restrictions concerning the raw materials graphite, cobalt, copper, lead, chromium, magnesia, talcum, tantalum, tin, antimony and indium. The request for consultations is the first step in the WTO dispute settlement process. In the absence of a consultation solution within 60 days, the EU can request the WTO Dispute Settlement Body to set up a panel to rule on the compatibility of China's export measures with WTO rules.

### Expansion of EU, China and Hong Kong SSTL Pilot Project

The EU, China and Hong Kong launched Phase 3 of the Smart and Secure Trade Lanes (SSTL) Pilot Project on 15 July 2016. The SSTL project tests end-to-end supply chain safety and security instruments and mechanisms. The aim of the project is to ensure less customs intervention for consignments through data exchange between exporting and importing customs authorities before container stuffing and loading. Phase 3 extends the scope of the project to air and rail transport (in addition to maritime transport) and will also include more ports into the Project.

### EU Renews Sanctions against Russia

On 7 July 2016, the EU Council extended the EU's economic sanctions targeting certain Russian industry sectors through to the end of January 2017. These sanctions were introduced in July 2014 in response to Russia's actions in east Ukraine, and restrict EU supply of various goods and services, for example.

### EP Resolution on Trade for All Strategy

On 5 July 2016, the EP adopted a resolution on the EU's "Trade for All" Strategy, calling on the Commission to focus more on the role of the manufacturing sector in the EU's Common Commercial Policy. It also asks the Commission to work with trade partners to ensure that their markets are open to EU companies, especially in the area of transport, telecommunications and public procurement. The EP also wants the Commission to refer negotiated trade agreements to the EP more promptly, which it argues should allow these agreements to be applied more swiftly. Finally, the EP insists that the Commission should publish all adopted and future FTA negotiating mandates.

### EU Annual Report on Fight against Fraud

On 14 July 2016, the Commission issued its annual report on the fight against fraud in the EU, including EU anti-fraud policy in the customs field and related provisions in international agreements. In this report, the Commission states that in 2015, the European Anti-Fraud Office (OLAF) coordinated and cooperated with the EU Member States in seven Joint Customs Operations (JCOs) which targeted smuggling of cigarettes, chemical drug precursors and narcotics. The report further notes that customs controls carried out at the time of EU clearance of goods were among the most successful methods for detecting fraudulent cases in 2015. Going forward, the Commission expects that the 2015 revision of the EU Regulation on mutual administrative assistance in the customs area (which creates an EU database on container movements and on goods entering, transiting and leaving the EU) will serve as a powerful tool in stepping up the fight against customs fraud.

### Commission Report on Customs Risk Management

On 19 July 2016, the Commission published a progress report on the implementation of the EU's 2014 strategy and action plan for customs risk management. The action plan identifies 22 actions and 54 sub-actions to reach 7 key priorities (including tapping the potential offered by international customs cooperation). In its progress report, the Commission notes that 41 sub-actions have been completed or are on-going (representing 76% of the action plan), and a total of 11 deliverables have been achieved.

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## Commission Notice on IPR Enforcement at Transit

The Commission has published a notice updating the 2012 EU guidelines concerning customs enforcement of IPR for goods in EU transit. These guidelines apply especially to medicines, but also other goods, and set out conditions and procedures for administrative customs enforcement of relevant IPR to avoid barriers to legitimate trade. The updated guidelines reflect the fact that EU trademark rights allow proprietors to prevent certain EU entry of third country goods, even if they are not released for free circulation in the EU.

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