

## EU Customs Developments

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Authors: [Jacquelyn MacLennan](#), [Sara Nordin](#), [Fabienne Vermeeren](#), [Charlotte Van Haute](#)

## EU Customs Policy

### Union Customs Code (UCC) Developments

On **1 May 2016**, the Union Customs Code (UCC) entered into force. The UCC is the new EU framework regulation for the rules and procedures for customs and replaces the previous Community Customs Code (CCC). On a dedicated UCC webpage, the Commission has so far published UCC guidance documents on data integration and harmonisation, Authorised Economic Operators (AEO), Binding Tariff Information (BTI), Valuation (see below), Debt and Guarantees, Import and Entry (in particular on the definition of “exporter”), Transit, and Export. The Commission has further made available various e-learning modules on the UCC, including on customs procedures and customs declarations, customs valuation, special procedures other than transit, export, customs decisions, and AEO.

On 15 April 2016, the European Commission published **Decision 2016/578**, which updates the Work Programme providing the target dates for development and gradual deployment of the electronic systems provided for in the UCC by **end 2020**. The UCC Work Programme will be updated at least once per year to take into account actual progress made on implementing the various IT systems.

On 27 April 2016, the European Commission published two corrections to the UCC Delegated Regulation (**Regulation 2015/2446**) to clarify that temporary import of containers, pallets and means of transport (and related spare parts, accessories and equipment), as well as travellers passing the EU border by car will not require the lodging of a normal customs declaration.

The EU is meanwhile also working on an amendment to Article 136 UCC regarding goods that have temporarily left the EU customs territory while moving between two points in that territory by sea or air (provided it is by direct route without a stop outside the EU customs territory). The current version of the UCC provides that certain requirements do not apply in relation to the presentation of such goods. In order to ensure effective customs administration, it was in the Commission’s view necessary to amend Article 136.

### Customs Infringements and Sanctions

On 25 April 2016, the European Parliament’s (EP’s) Committee on Legal Affairs issued an opinion on the legal basis of the Commission’s proposed new Directive on customs infringements and sanctions (which sets out a

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uniform EU-wide legal framework for Member State treatment of customs law violations and related sanctions). The Committee is proposing to add a second legal basis to the proposal. This opinion will be shared with the EP's Internal Market and Consumer Protection (IMCO) Committee, which is the lead committee on this topic. The EP's International Trade (INTA) Committee is also working on its opinion.

## Tariffs

### Duty Suspensions and Tariff Quotas

#### *a) January 2017 round*

The Commission has made available a list of products for which a duty suspension has been requested for the **January 2017** round on its dedicated webpage. During that round, 187 duty suspensions and 19 tariff quotas will be considered.

Member State objections against these new requests must be sent to the Commission by the second meeting of the Economic Tariff Questions Group (ETQG), which will take place on **17 June 2016**.

### Additional Duties on Certain US Products

On 28 April 2016, the Commission published a regulation adjusting the retaliatory duties (initially set at 15%) for certain products of US origin. These additional duties are imposed as part of the EU's implementation of a WTO Dispute Panel finding that the US is violating WTO rules through its Continued Dumping and Subsidy Offset Act (CDSOA). The Commission considered that the level of damage caused by the CDSOA decreased during fiscal year 2015, and therefore decided to lower the additional duty to 0.45%. This duty applies to products classified under Combined Nomenclature (CN) codes 0710 40 00 (sweetcorn), 9003 19 30 (frames and mountings for spectacles), 8705 10 00 (crane lorries) and 6204 62 31 (trousers, overalls, breeches and denim shorts).

## EU FTA Update

#### *a) United States*

On 11-12 April 2016, EU Trade Commissioner Malmström and US Trade Representative Froman discussed a roadmap for the ongoing Transatlantic Trade and Investment Partnership (TTIP) negotiations until the **Summer**, including the timing for concrete proposals. The meeting preceded US President Obama's visit to the Hannover Messe in Germany on 24-25 April 2016, where he stated that the time to complete TTIP talks is in **2016**. German Chancellor Merkel on that occasion observed that in order to achieve that goal, the TTIP parties must speed up the pace of negotiations.

It has, however, been reported that Dutch voters are calling for a referendum on TTIP. Other EU Member States (such as Germany, Italy and France) have also expressed concerns that the US is seeking a watered-down and "highly imbalanced" agreement in order to get a deal before the upcoming US Presidential Elections, and they question whether it is worth continuing the TTIP negotiations at all in light of this circumstance. The EP INTA Committee's Chair and various business organisations have expressed similar concerns about the risk of a TTIP-"light" agreement.

Against this background, the 13<sup>th</sup> round of TTIP negotiations took place in New York on 25-29 April 2016. During this round, negotiators aimed to consolidate the texts of as many TTIP chapters as possible. In a report on the state of play of negotiations issued on 27 April 2016, the Commission reveals that both sides have so far exchanged, among others, two tariff offers, while 17 consolidated texts are currently on the table. For the other TTIP topics, the exchange of textual proposals is one-sided (i.e. either the US or the EU would need to respond to a proposal from the other side). The aim of the negotiators is to see submission of proposals by both parties in all areas by the **Summer**.

At the conclusion of this round, EU Chief Negotiator Bercero noted in a statement that significant progress was made in areas such as customs and trade facilitation and tariffs. He added that the EU is ready to try to conclude the TTIP negotiations in **2016**, "but only if the substance is right." The aim is to have another TTIP round in **July 2016** aimed at concluding with as few "open issues" for political decision as possible.

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## *b) Canada*

On 21 April 2016, the EU and Canada announced that they continue to make progress translating the text of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and that their “top priority” is to sign the CETA **this year**, to enable its entry into force in **2017**. In that envisioned scenario, ratification by the European and Canadian Parliament should take place at the **end of this year**, or **beginning of next year**.

However, there are signs that it there may be road blocks to ratification at least on the EU side. For example, France and various other Member States want CETA ratification by the EU Member State parliaments before certain agreement parts they consider to fall outside EU level competence can enter into force. In addition, in April 2016, the Dutch parliament passed a motion rejecting provisional application of the CETA deal, while the Belgian regional parliament for Wallonia has refused to grant full powers to the Belgian federal executive to sign the agreement. Canada’s refusal to grant visa-free entry to Romanians and Bulgarians is also jeopardising ratification of CETA. Romania has stated that it will reassess “the approach to the relationship between the EU and Canada”, and it has been reported that Romania possibly intends to veto the CETA ratification.

## *c) Japan*

The 16<sup>th</sup> round of EU-Japan FTA negotiations took place in Tokyo during the week of 11 April 2016. During this round, negotiators discussed several issues, including trade in goods and trade barriers.

Meanwhile, the 24<sup>th</sup> EU-Japan summit was postponed from **early May** to the **second half of 2016**. The May meeting (held on 3 May 2016) turned into an informal technical meeting between Japanese Prime Minister Abe, Council President Tusk and Commission President Juncker.

## *d) ASEAN*

On 9 April 2016, while addressing the ASEAN Committee of Permanent Representatives, EU High Representative Mogherini confirmed that the parties are proceeding with a joint stocktaking exercise on a region-to-region FTA. She added that the Commission expects to receive a mandate from the EU Member States to negotiate an agreement on air transport with ASEAN soon.

## *e) Indonesia*

On 21 April 2016, the EU and Indonesia concluded their scoping exercise in preparation for negotiations on a Comprehensive Economic Partnership Agreement (CEPA). A joint EU-Indonesia statement on the same day indicates that CEPA negotiations could be launched very soon.

## *f) Mercosur*

On 8 April 2016, the EU and Uruguay (which currently holds the rotating presidency of Mercosur) agreed on the next steps in negotiations on a possible EU-Mercosur FTA (involving Argentina, Brazil, Paraguay and Uruguay, but not Venezuela). In the **second week of May 2016**, the parties will exchange, among others, tariff offers. In addition, a roadmap for talks during the rest of the year has been agreed.

A group of 13 EU Member States (led by France) successfully opposed the Commission’s proposal to include quotas on sensitive products in the EU’s offer to Mercosur (beef and ethanol), arguing that this would particularly harm the EU’s agricultural sector. They fear such quotas could have a “ripple effect” on all ongoing FTA negotiations, and in particular on the TTIP negotiations.

## *g) Mexico*

On 21 April 2016, EU Trade Commissioner Malmström reportedly indicated that the Commission could be given a mandate by the EU Member States to modernise the existing EU FTA with Mexico “in a couple of weeks”. She also met with Mexico’s Minister of Economy on 18 April 2016 to discuss the status of the mandate. Meanwhile, the EP has issued an analysis of the upcoming modernisation of the trade pillar of the EU-Mexico FTA, examining the needs and expectations of both sides.

## *h) Tunisia*

On 29 April 2016, the EU issued the initial proposals for the future Deep and Comprehensive Free Trade Area (DCFTA) with Tunisia, which were discussed during the first round of negotiations on 18-21 April 2016. These texts cover 11 areas of the EU-Tunisia trade relationship, including customs procedures. The aim of this

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DCFTA is to extend the provisions of the existing EU-Tunisia Association Agreement to areas that are excluded today, such as trade facilitation and trade in agricultural and fishery products (as industrial goods are already included in the existing FTA).

#### *i) China*

On 19 April 2016, the EU-China Economic and Trade Working Group (ETWG) held its annual meeting to discuss key aspects of the bilateral economic and trade relationship, including the EU-China investment negotiations and various non-tariff barriers. Meanwhile, the Foreign Trade Association (which groups retailers) has called for an FTA with China in a position paper on 20 April 2016, noting – based on a study from the Centre for European Policy Studies (CEPS) and the World Trade Institute – that an EU-China FTA would increase the combined GDP of the parties by **2030** by \$200 billion.

## Classification

### Court Judgment on a Mixture of Fluid Vegetable Oils

On 28 April 2016, the Court of Justice of the European Union (CJEU) rendered a judgment in Case C-233/15 (*SIA "Oniors Bio" v. Valsts ieņēmumu dienests*) as regards the classification of a mixture of fluid vegetable oils. The oils in question are composed of 88% rapeseed oil and 12% sunflower oil, intended to be used for technical purposes, and not for food.

In this judgment, the Court considered whether this mixture should be considered edible, allowing a classification under CN subheading 1517 90 91, or whether this is an inedible mixture of vegetable oils to be classified under CN subheading 1518 00 31. The Court found that in order to make such a determination, all factors in relation to the objective characteristics and properties inherent to the product should be taken into account. This would include the information provided by the producer of that mixture in the context of the customs declaration, according to which the presence of noxious substances cannot be excluded. The Court considered that the fact that an analysis of samples taken from the mixture has not shown that it contains any noxious substance does not suffice to call into question the classification as 'inedible'.

### Classification Regulations

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

- **Commission Implementing Regulation 2016/613** classifies a so-called "monitor arm" designed to be fixed onto a wall, a desk or a rail at one end, and to a monitor at the other, under CN code 7616 99 90 as "other" articles of aluminium.
- **Commission Implementing Regulation 2016/614** classifies a so-called "hobby greenhouse" for the storage of plants under CN code 7326 90 98 as other articles of iron or steel.
- **Commission Implementing Regulation 2016/615** classifies a so-called "smartphone docking station" under CN code 8537 10 99 as other boards, panels, consoles, desks, cabinets and other bases for electric control for a voltage not exceeding 1 000 V.
- **Commission Implementing Regulation 2016/663** classifies an electronic device functioning as an audio interface or a sound mixer used in sound studios or live on stage (also called "mixer-converter analogue/digital pre-amplifier device") under CN code 8543 70 90 as other machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.
- **Commission Implementing Regulation 2016/664** classifies a portable battery-operated apparatus for capturing and recording video images (other than still images) with a two-step digital zoom function under CN code 8525 80 90 as other video camera recorders.
- **Commission Implementing Regulation 2016/665** classifies a so-called "glue gun" under CN code 8419 89 98 as other machinery, electrically heated, for the treatment of materials.
- **Commission Implementing Regulation 2016/666** classifies an AC/DC adapter supplying power to a set-top box or various other apparatus under CN code 8504 40 82 as a rectifier.

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## Amendments to EU Explanatory Notes

On 6 April 2016, the EU published amendments to the CN Explanatory Notes (CNENs) concerning the scope of subheading 3403 19 90 (other lubricating preparations containing petroleum oils or oils obtained from bituminous minerals), and subheading 0802 90 50 (pine nuts). A CNEN to subheading 0802 90 85 (other nuts) was deleted.

The EU also published an amendment to the CNENs to subheading 2403 99 90 (other manufactured tobacco and manufactured tobacco substitutes) with respect to smoking tests, and the method of determining the particle size by sieving the sample.

In addition, the CNEN for subheading 3912 20 11 (collodions and celloidin) was corrected through a corrigendum.

## Additional Notes on Dairy Products

On 6 April 2016, the EU published Additional notes 3 and 4 to CN Chapter 4 (dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included). They address the scope of the term 'dairy produce' and the differentiation between milk permeate and whey permeate.

## Additional Note on Protein Content in Soya-Based Beverages

The EU has published an Additional note to CN Chapter 22 (beverages, spirits and vinegar) clarifying the methodology for determining protein content under subheadings 2202 90 11 and 2202 90 15.

## HS Amendments and Classification Opinions

On 5 April 2016, the European Commission published a communication endorsing amendments to the ENs of the Harmonised System (HS) Nomenclature, and Classification Opinions approved by the WCO HS Committee in September 2015. These HS instruments relate to the classification of, *inter alia*, medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses; waddings, gauzes, bandages, or similar articles; carpets and other textile floor coverings; aluminium foil; tool holders; hand tools, pneumatic and with a self-contained electric motor; machines for the reception, conversion and transmission or regeneration of voice, images or other data (including switching and routing apparatus); television or digital cameras and video camera recorders; vehicles for travelling on snow, golf cars and similar vehicles; agricultural tractors and forestry tractors; and electric lamps and lighting fittings.

## Nomenclature Committee Developments

### a) HS/WCO Coordination Sector

The minutes of the 165<sup>th</sup> meeting of the HS/WCO Coordination Sector that took place on 29 February – 2 March 2016 have been made available. During this meeting, the Committee endorsed a number of HS Classification Opinions (see also above) and pre-coordinated the 57<sup>th</sup> HS Committee meeting. It also discussed the classification of, among others, ceramic inks for inkjet technology.

### b) BTI Sector

The report of the 167<sup>th</sup> meeting of the BTI Sector of the Nomenclature Committee held on 22 March 2016 has been made available. During this meeting, the Committee discussed, *inter alia*, endorsement of revised administrative guidelines on the European BTI (EBTI) system, and its operation taking into account changes introduced by the UCC. The Committee also considered the state of play of the "Future BTI" project.

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## c) CN Sector

The 168<sup>th</sup> meeting of the CN Sector of the Nomenclature Committee is scheduled to take place on **23 May 2016**. The agenda for this meeting includes a discussion on the transposition of the HS **2017** into the CN with respect to Chapters 22 (wine), 44 (wood), 85 (monitors, MCOs, etc.), 87 (motor vehicles) and 96 (tripods). The Committee is also scheduled to discuss the rewording and linguistic alignment of hydraulic oils in subheading 2710 19 83; and a new subheading for “blind rivet nuts” under heading 7318 (Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel). In addition, the Committee was due to consider amendments of the CN as a result of the expansion of the Information Technology Agreement (ITA-II).

## Origin

### Court Judgment on Transport of Products under GSP

On 28 April 2016, the CJEU issued a judgment in Case C-294/14 (*ADM Hamburg AG v. Hauptzollamt Hamburg-Stadt*) on the transport of mixed crude palm kernel oil from GSP beneficiary countries. The importer in this case had mixed the oil originating from four different GSP beneficiary countries in a tank for transport to the EU. The German customs authorities had refused to grant preferential treatment for the mix of oils even though the importer had presented certificates of origin Form A.

The importer challenged the decision of the customs authorities and the litigation led to a preliminary question for the CJEU. The Court found that where valid certificates of origin have been presented, the preferential origin may be recognised even if those products have been mixed in the tank of a vessel at the time of transport to the EU. This is provided that it is possible to rule out that other products, in particular products not benefiting from any preferential treatment, have been added to that tank.

### Extension of GSP Bilateral Cumulation System to Turkey

A Commission notice published in April announces that Turkey will benefit from an extension of the EU GSP bilateral cumulation system with retroactive effect from 1 January 2015. This system is already in place with Norway and Switzerland, and allows EU GSP beneficiary countries to use materials originating in the three cumulation countries when producing goods for export to the EU (except for goods of Chapter 1 through 24). These materials will be considered “originating”, which makes it easier to satisfy the relevant GSP origin rule and benefit from GSP preferences. Conversely, EU materials will be considered “originating materials” by those three countries for imports from GSP beneficiary countries.

## Valuation

### UCC Guidance on Valuation

In late April 2016, the Commission issued guidance on customs valuation under the UCC, addressing, in particular, changes relating to transaction value (following the elimination of the first-sale rule) and the treatment of royalties and licence fees. The guidance explains which sale to use when goods are sold from EU bonded warehouses. It also clarifies that such a sale can only be used to determine the transaction value if there was no valid sale for export to the EU before the goods entered the EU customs territory, and provided that such a sale from a warehouse is not a “domestic” sale between two EU parties (in which case another valuation method will have to be used). On royalties and licence fees, the guidance takes the position that these fees are included in the customs value **unless** the declarant can demonstrate that they should not be, thus placing a significant burden on companies to seek and prove their exclusion.

## Procedures

### Special Procedures Section

The 49<sup>th</sup> meeting of the Special Procedures Section of the Customs Code Committee took place on 22 April 2016. The report for that meeting has not yet been made available, but the agenda indicates that the discussion on Processing under Customs Control (CCC) for solar glass was scheduled to continue, along with

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the discussion on grain electrical steel. The rules for examining economic conditions for applications for a special procedure were also due to be discussed, as well as usual forms of handling in customs warehouses and free trade zones.

## Miscellaneous

### EU Seeks Clarification from India on Duty Increase for Several ITA Products

During a meeting of the WTO Committee on the ITA held on 18 April 2016, the EU (along with the US, Japan, Korea, Canada, Norway and Australia) sought clarification from India on a duty increase for certain products. The duty increase involves a 10% duty imposed on several products covered by the agreement, which should therefore be subject to 0%.

### EU renews Myanmar Sanctions

On 22 April 2016, the EU renewed its sanctions against Myanmar/Burma for another year, until **30 April 2017**. Most EU sanctions against Myanmar/Burma were lifted in April 2013; the remaining sanctions include an arms embargo and restrictions on the supply of internal repression equipment.

### Council Updates Common Military List of the EU

On 6 April 2016, in line with its annual practice, the Council updated and replaced the existing Common Military List. The equipment and technology included in this list are subject to the Member States' military export control regimes.

### EU Introduces Surveillance of Steel Imports

On 28 April 2016, the Commission introduced prior EU surveillance of imports of certain iron and steel products (for which the weight exceeds 2500 kg) originating in certain third countries. The aim is to address the challenges faced by the EU steel industry. As of 21 May 2016, EU importers will have to obtain a surveillance document from the competent Member State authority before importing these products into the EU. These authorities must automatically issue the document (at no charge) within 5 working days. The Member States must then pass on the import information to the Commission on a monthly basis. A next step could be the imposition of EU safeguard measures under relevant EU legislation on common rules for imports.

White & Case LLP  
Wetstraat 62 rue de la Loi  
1040 Brussels  
Belgium  
T +32 2 239 26 20

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