

EU Customs Developments

In this issue...

- EU Customs Policy
- Tariffs and FTA news
- Classification
- Origin
- Valuation
- Procedures
- Miscellaneous

January-March 2017

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

EU Customs Policy

EP resolution on tackling UCC challenges

The European Parliament (EP) adopted a resolution on tackling challenges in relation to the Union Customs Code (UCC) on 19 January 2017. In it, the EP calls on the European Commission and EU Member States to come up with a “clear, coherent and ambitious strategy and timeline” for UCC enforcement, as well as an interim evaluation of the EU’s customs policy in **2017**. The EP further wants increased efforts to create and co-finance an interoperable IT system, and ensure a more uniform customs environment (including risk assessment programmes at EU level, and cooperation with economic operators on UCC implementation). The EP resolution also recognises the EU’s commitment to create a genuine Digital Single Market. In this context, it wants customs simplifications for low value shipments to remain in place, while at the same time avoiding loopholes in customs procedures for e-commerce.

Tariffs and FTA news

GSP changes for Ukraine and Tonga

On 9 February 2017, the Commission published a Delegated Regulation introducing changes to the Generalised Scheme of Preferences (GSP) status of Tonga and Ukraine. As a result, Tonga regained its status as a GSP beneficiary country as from 1 January 2017 (following its World Bank classification as a lower-middle-income country for three consecutive years). Ukraine will lose its GSP beneficiary status as from 1 January 2018, as a result of the provisional application of the EU-Ukraine Free Trade Agreement (FTA) since January 2016.

Commission wants to reinstate GSP+ benefits for Sri Lanka

On 11 January 2017, the Commission formally proposed a Delegated Regulation amending the EU's GSP Regulation to re-introduce "GSP+" status for Sri Lanka. The EU GSP+ system grants zero duty treatment for most products from certain GSP beneficiary countries which have ratified and effectively implemented various international conventions. The Council and EP now have a few months to object to the draft Delegated Regulation. If neither of them does so, Sri Lanka will benefit from EU GSP+ benefits (in addition to regular GSP benefits) as from the day the Regulation is published in the EU's Official Journal. Sri Lanka lost its EU GSP+ status in 2011 over alleged human rights issues. On 21 March 2017, the EP International Trade (INTA) Committee announced that it will take a decision on the proposal by mid-May 2017.

Court judgment on objection to autonomous duty suspensions

On 16 February 2017, the Court of Justice of the EU (CJEU) issued its judgment in Case T-191/14 (*Lubrizol France SAS v. Council*) concerning the EU's regime of autonomous duty suspensions. More specifically, the judgment deals with the Council's decision to terminate existing duty suspensions for certain additives for engine oil, fuel and other industrial uses following an objection filed by an EU company.

The applicant in this case (Lubrizol France) claimed that the Council had committed a manifest error of assessment by not taking into account certain differences between the product covered by these duty suspensions and the product offered by the objecting company. The Court found, however, that Lubrizol had not provided sufficient evidence in this regard.

Lubrizol also argued that the Council had infringed essential procedural requirements by not acting to address the objecting company's late response to Lubrizol's request for information. The applicant further claimed that the Council ignored that misleading or inaccurate information had been submitted for one relevant product. The Court held in that respect that it was not proven that the EU institutions would have reached a different conclusion if certain circumstances were different.

The Court also concluded that the objector's production capacity was sufficient to meet the needs of all relevant processing or manufacturing companies in the EU. As a result, a tariff quota (instead of a duty suspension) could not be applied as the relevant conditions were not satisfied.

Brexit news

On 17 January 2017, UK Prime Minister Theresa May delivered a speech on the UK's Brexit plans, confirming that the UK wants to leave the EU Single Market and hopes to strike a UK-EU agreement that would "give British companies the maximum freedom to trade with and operate in the Single Market". May's plans were further confirmed in a Brexit White Paper published by the UK government on 2 February 2017.

On 29 March 2017, the Brexit negotiations with the EU were formally launched through the delivery of PM May's so-called "Article 50 notification letter" to European Council President Donald Tusk. On 29 April 2017, the European Council is expected to agree on broad EU negotiating guidelines. The actual negotiations will commence after the Council of Ministers approves the European Commission's detailed negotiating mandate, i.e. not before **early May 2017**. The Brexit negotiations are expected to last until the **end of March 2019**. The UK wishes to negotiate the withdrawal agreement (including settling outstanding financial EU obligations of the UK and citizens'/expat rights) in parallel with the future EU-UK trade relationship agreement during the **coming two years**. However, the EU is insisting that there must first be good progress on the withdrawal agreement before it will discuss the broad outlines of a future trade deal with the UK. Because both sides will want to avoid major trade disruptions, it would be important to agree to some sort of bilateral EU-UK trade deal **by 2019**. However, it is currently unclear if and how this can be achieved. There are indications that a potential interim agreement (that would give more time to strike a final trade deal) is being assessed under WTO rules.

Meanwhile, UK Trade Secretary Liam Fox has stated that the UK intends to replicate the EU's trade agreements with third countries and repurpose them for the UK only, while also adjusting the tariff quotas applied to various product lines. May also said during her speech on 17 January 2017 that the UK will be looking for trade agreements "with old friends and new partners"; the Prime Minister said Canada, China, India, Mexico, Singapore, and South Korea have told the UK they would welcome FTA discussions, while FTA scoping discussions with Australia and New Zealand have already started. The UK Department for

International Trade has also confirmed that it has begun discussions on future trade agreements with India. UK and Turkey officials have held a series of meetings to prepare the ground for a bilateral agreement, but it has been noted on the UK side that a comprehensive FTA with Turkey may not be possible because of Turkey's restrictions under its customs union agreement with the EU. Turkey's ability to negotiate a deal with the UK may therefore only be possible for areas not covered by the current customs union, such as services or public procurement.

Other UK developments concerning trade relations with third countries include:

- On 27 January 2017, Theresa May met with US President Donald Trump. During this meeting, the UK and US indicated a willingness to start discussing a bilateral trade agreement already before the official Brexit.
- On 12 January 2017, New Zealand's Prime Minister Bill English confirmed that the country is keen to strike an FTA with the UK after Brexit, but also noted that because of the single market with Australia, New Zealand's hands are somewhat tied.
- Canada has reportedly indicated a willingness to extend the EU-Canada FTA (CETA) to the UK after Brexit, and technical discussions have apparently started on this.
- On 21 February 2017, the UK and Singapore signed an agreement to renew their bilateral Economic and Business Partnership, which includes cooperation on trade policy capacity-building initiatives and the establishment of a working group to deepen trade and investment ties.
- Pakistan's Commerce Minister Kurram Dastgir Khan has asked the UK to maintain benefits currently granted to his country under the EU's GSP+ programme for Pakistani goods until the **end of 2023** (when the current EU GSP Regulation expires). This is to keep the *status quo* for Pakistani exporters, with the aim to start negotiating a bilateral FTA in late **2019** or **2020**.
- Chile's President Michelle Bachelet has apparently announced that her country will only consider an FTA with the UK after it has agreed to a deal with the EU.

The UK Department for International Trade has further confirmed that the UK will aim to replicate existing EU obligations in the UK's future WTO schedules of commitments. The goal would be to only make technical changes through a so-called rectification process. However, the UK government does not exclude the possibility of consulting with other WTO members on a number of areas (in particular with respect to WTO commitments for agricultural subsidies and tariff rate quotas).

In a submission to the House of Commons International Trade Committee, the UK Department for International Trade has announced that it has quadrupled the number of trade policy officials (while expecting that number to grow even further). Finally, the UK press has reported that the new IT system which the UK intends to introduce in **2019** to replace the current CHIEF system will only be able to handle 100 million customs declarations per year. Early estimates put the number of post-Brexit customs declarations to be filed in the UK at four times that amount.

Trade priorities of Maltese EU Presidency

On 24 January 2017, Malta's Minister for Economy, Investment and Small Businesses Cristian Cardona presented the trade priorities of the Maltese Presidency to the EP INTA Committee. The Minister stated that while holding the rotating Presidency of the EU Council for six months, Malta will aim to give new momentum to the EU's FTAs ("but not at the expense of EU standards") and wants to move forward the EU's pending Trade Defence Instruments (TDI) reform by **mid-2017**. He confirmed that the EU is also ready to resume Transatlantic Trade and Investment Partnership (TTIP) negotiations as soon as the US shows willingness to do so.

Meanwhile, Malta's written Presidency Programme calls international trade a key policy area. The Trade in Services Agreement (TiSA) and the Environmental Goods Agreement (EGA) are considered to be of great importance at plurilateral level. On the bilateral front, the Programme states that "substantial progress can be achieved with Japan", and that Malta intends to drive negotiating mandates in relation to the pending EU-Turkey customs union update and FTA negotiations with Australia, New Zealand and Chile. The Maltese Presidency notes the pending negotiations with Tunisia, Mercosur, Mexico and ASEAN, and confirms that the

status of trade relations with the US will also be “under consideration”.

Sanctions for violations of labour/environmental FTA provisions

The European Commission is said to be planning the inclusion of clauses in future FTAs (including with Mercosur) that would allow trade or financial sanctions against FTA partners that violate agreed trade and sustainable development clauses after they enter into force. This initiative is aiming to strengthen the enforcement of labour and environmental provisions, similar to US rules, where such violations can attract sanctions.

EU FTA Update

a) United States

On 17 January 2017, i.e. just before Donald Trump's inauguration as the new US President, EU Trade Commissioner Malmström and US Trade Representative Froman published a joint assessment of the progress made in US-EU negotiations for a TTIP agreement. The joint document states that the strategic rationale for TTIP has only grown stronger since the negotiations started in 2013. The report then lists identified so-called “landing zones”, including on most tariffs, regulatory requirements, protection of environment and labour rights, trade remedies and competition policy. It also specifies, however, areas in which “significant work” is still needed, such as with respect to certain tariffs, market access for services, access to public procurement, investor protection, data protection, energy markets, and intellectual property rights.

On 24 January 2017, EU Commissioner Malmström acknowledged in a speech on the future of trade policy that TTIP negotiations are “firmly in the freezer, at least for a while”. At the same time, she noted that since the US Presidential elections, many of the EU's trading partners have been seeking to intensify pending negotiations with the EU.

On 20 February 2017, US Vice President Mike Pence stated that the Trump Administration wants to deepen the US-EU economic partnership, without however mentioning TTIP. Various officials of the EU and its Member States have rejected the idea floated by the White House administration for the US to negotiate bilateral trade deals with certain individual EU Member States. German Chancellor Merkel did so as well when she met US President Trump on 17 March 2017.

In late March 2017, the US had not yet decided a formal position on their trade relations with the EU, but the candidate US Trade Representative Robert Lighthizer has not ruled out the possibility of continuing TTIP negotiations either. Meanwhile, progress has been achieved in the bilateral relationship through updating of the 1998 Mutual Recognition Agreement with respect to inspections of pharmaceutical plants on both sides of the Atlantic.

b) Canada

On 15 February 2017, the EP approved the EU-Canada Comprehensive Economic and Trade Agreement (CETA). CETA was expected to enter provisionally into force in the beginning of **April 2017**. However, due to delays in the Canadian approval process, provisional application is now expected to start in **July**. Certain elements of the agreement, including investment protection rules, will not apply until CETA has been ratified by all the EU Member States' parliaments. Meanwhile, the legal instruments and statements relating to the CETA were published in the EU's Official Journal in January 2017.

In related Member State news, the Latvian Parliament was the first national parliament to formally approve CETA on 23 February 2017. Meanwhile, the Constitutional Court of Germany has rejected a CETA related appeal which was brought by various NGOs. They claimed that the German government had violated its obligations when it signed CETA on 30 October 2016.

c) Japan

On 17 February 2017, EU Trade Commissioner Malmström met Japan's Foreign Minister Fumio Kishida to discuss the deadlock in the EU-Japan Economic Partnership Agreement (EPA) negotiations. On 21 March 2017, an EU-Japan Leaders Meeting took place between Japanese Prime Minister Abe and European Council President Tusk during which both sides expressed their commitment to finalising these negotiations, or at

least reaching political agreement still in **2017**. Domestic reforms in Japan (notably with respect to Japan's dairy subsidies) and the upcoming elections in France and Germany were seen as important reasons for delays in the negotiations in late 2016 and early 2017.

Meanwhile, progress is expected in the controversial area of data flows: On 20 March 2017, the EU and Japan announced bilateral discussions for a data transfer agreement (entailing an equivalence decision allowing the free flow of data to countries with data protection rules that are considered to offer essentially the same level of protection as the EU). This fits in a broader discussion among the Commission and EU Member States to include special digital trade clauses in future FTAs that would explicitly recognise data protection as a fundamental right, and would only allow data transmission to partner countries if EU privacy rules are respected.

Finally, there are indications that civil society organisations in both the EU and Japan are becoming more vocal as calls have been made for more transparency.

d) [New Zealand](#)

On 10 January 2017, European Council President Tusk stated that the EU hopes to launch FTA negotiations with New Zealand in **2017** after a meeting with the country's Prime Minister. Tusk also reportedly indicated that it should be possible to conclude such negotiations within **two to three years**. On 7 March, the completion of the FTA scoping exercise was announced. The European Commission will now formally seek a negotiating mandate, and it is also finalising its impact assessment on this future FTA.

Meanwhile, the EU dairy sector has raised concerns about these pending FTA talks, and Poland has gone so far as to propose that the dairy sector should be fully excluded from liberalisation under this FTA. Certain other EU Member States shared similar concerns during a meeting of the Agriculture and Fisheries Council held on 23 January 2017.

e) [ASEAN](#)

On 10 March 2017, the EU and the Association of South East Asian Nations (ASEAN) during their ministerial consultations agreed to resume trade negotiations on a region-to-region FTA (which were launched in mid-2007, but frozen in early 2009). Senior officials will be asked to carry out a stocktaking exercise on the precise parameters to reactivate the actual negotiations. Exploratory discussions will also be held to discuss the EU's proposal on the International Court System (ICS), which was originally proposed by the EU in the context of the TTIP negotiations to allay concerns of civil society and certain politicians.

f) [Singapore](#)

On 8 March, EU Trade Commissioner Malmström and Singapore's Minister for Trade and Industry Lim Hng Kiang discussed the possible inclusion in the EU-Singapore FTA of new investment dispute resolution provisions based on the EU's proposal for an ICS. Meanwhile, the CJEU has set **16 May 2017** as the date on which it will issue its Opinion on the competence of the EU and the Member States. That Opinion will form an important precedent in other pending EU FTA negotiations as it should clarify which areas fall within the sole competence of the EU, and which provisions can only be concluded by the EU and individual Member States acting jointly.

g) [Korea](#)

The Commission has conducted a survey on the effect of the EU-Korea FTA on consumer interests and sustainable development to gather detailed views from consumer organisations and NGOs. The survey will be used for the upcoming general evaluation of the EU-Korea FTA.

On 21 March 2017, the EP's INTA Committee adopted a report on the implementation of the EU-Korea FTA. This report welcomes the significant increase in EU exports to Korea in the last 5 years, but also calls for better implementation by Korea of certain labour and environmental provisions. The INTA Committee also wants the Commission to launch consultations with Korea on issues relating to non-tariff barriers, sanitary and phytosanitary measures and intellectual property rights.

h) Indonesia

From 24 to 27 January 2017, the EU and Indonesia held the 2nd round of negotiations on a bilateral FTA in Jakarta. This was a “full” round, addressing all topics to be covered in the FTA. The EU presented nine draft negotiating texts (e.g. on trade in goods, rules of origin, customs and trade facilitation, and intellectual property rights) which were published in February, while Indonesia tabled certain counter-proposals along with a so-called non-paper on economic cooperation and capacity building. The chief negotiators agreed to a detailed time table, including a proposed 3rd round of negotiations in **early September 2017** (which will be preceded by inter-sessional exchanges). The Commission has also issued a report on the second round of negotiations.

On 28 January 2017, the parties also held the annual meeting of the bilateral Working Group on Trade and Investment, during which EU companies brought up certain trade issues they face in Indonesia.

i) Philippines

Both in Commission and EP circles, calls for reconsideration of the GSP+ status of the Philippines can be heard in light of human rights related developments in the country. It has also been reported that for similar reasons, the ongoing bilateral FTA negotiations have been put on hold by the EU.

j) Pakistan

On 24 January 2017, a meeting was scheduled between EU Trade Commissioner Malmström and Pakistan's Commerce Minister Khan to discuss possibilities for boosting bilateral trade relations. The EU made no public announcements after the meeting.

k) Ukraine

On 21 February 2017, the Lower House of the Dutch Parliament expressed its support for ratification of the EU-Ukraine Association Agreement. An earlier ratification decision by the Dutch Parliament was suspended in 2016 following a non-binding referendum in the Netherlands rejecting the agreement. In order to resolve the impasse created by that rejection, the EU Council and the Netherlands adopted a declaration in December 2016 to address certain Dutch concerns. The Netherlands is the last EU Member State to formally ratify the agreement, so the EU ratification process will be completed if the Dutch Senate approves the agreement as well.

l) Mexico

On 1 February 2017, the EU and Mexico agreed to accelerate negotiations on updating the existing EU-Mexico FTA. Two additional negotiating rounds are scheduled to take place before the summer, in early April and late June. EU Commissioner Malmström has indicated that the Commission intends to finalise the negotiations or at least reach political agreement by the **end of 2017**. The EP also pushed to speed up negotiations with Mexico during a session of the INTA Committee in February 2017, following an EP delegation visit to the country.

m) Mercosur

The 27th round of negotiations on a region-to-region FTA between the EU and Mercosur took place on 20-24 March 2017. “Significant progress” was reported by both sides, but the more contentious discussions on issues such as market access for agricultural products or machinery were avoided. The Brazilian government has reportedly rejected Commission plans to focus EU-Mercosur trade talks on a so-called ‘Mercosur-lite’ deal, particularly in relation to agriculture.

The next round is scheduled to take place on **3-7 July 2017**.

n) Chile

The EU and Chile have reportedly finalised their joint scoping exercise on the modernisation of the existing EU-Chile FTA. The aim of this modernisation would be to introduce further tariff liberalisation, as well as chapters on investment, geographical indications, SMEs and sustainable development. The Council is expected to grant the negotiating mandate for these talks to the Commission shortly.

o) Turkey

On 10 January 2017, the EP's INTA Committee published the draft report "Towards a new trade framework between the European Union and Turkey and the modernisation of the Customs Union". The EP's plenary vote on the related draft resolution was tentatively scheduled for **April 2017**. However, the preceding vote in the INTA Committee (originally scheduled for March 2017) was delayed due to the worsening climate in Turkey, so this file is still on hold at the Committee level.

The negotiations to modernise the EU-Turkey customs union have not yet started, as the Council must first give the Commission a formal mandate to conduct them. However, the pending non-binding EP resolution is intended to make the Commission aware of the EP's views early on in the process, as the EP will ultimately have to give its consent to the new arrangement. Responding to the INTA report during a meeting in February 2017, Commission officials have stated that "the current trade relationship is asymmetrical to the favour of Turkey" and that the current EU-Turkey customs union lacks strong rules on SMEs, regulatory coherence and dispute settlement. These officials further explained that the Commission is reluctant to involve Turkey more in EU FTA negotiations with third countries. (As a consequence of the EU-Turkey customs union, Turkey has to accept tariff reductions that the EU has agreed with third countries, while not being part of, and thus not benefitting from, these trade deals.) It has been reported that the EU Member States have firmly rejected Turkey's request to join meetings of the EU's Trade Policy Committee (TPC), but it is not excluded that some form of EU-Turkey consultations may occur over time on future trade negotiations with third countries.

Classification

Classification Regulations

Since the last issue, the following Classification Regulations have been published:

- **Commission Implementing Regulation 2017/181** classifies a single glass shelf with metal supports for fixing to the wall (which is presented unassembled) as other furniture under Combined Nomenclature (CN) code 9403 89 00.
- **Commission Implementing Regulation 2017/182** classifies so-called "thumb grips for a game console controller" equipped with a self-adhesive aluminium profile as other articles of plastics under CN code 3926 90 97.
- **Commission Implementing Regulation 2017/183** classifies a so-called "tatami puzzle mat" designed to absorb shocks generated during various sports activities and to serve as an insulator of noise, heat and moisture as floor coverings of plastics under CN code 3918 90 00.
- **Commission Implementing Regulation 2017/200** classifies electrical apparatus using DAB and FM technology for radio broadcast reception equipped with a built-in loudspeaker and Bluetooth/Advanced Audio Distribution Profile (A2DP) as a radio-broadcast receiver not combined with a sound-reproducing apparatus under CN code 8527 19 00.
- **Commission Implementing Regulation 2017/209** classifies a notepad, notepad holder and ballpoint pen packaged together for retail sale as notebooks, letter pads and memorandum pads under CN code 4820 10 30.
- **Commission Implementing Regulation 2017/226** classifies model train sets as other toys, put up in sets, under CN code 9503 00 70.
- **Commission Implementing Regulation 2017/268** classifies white tablets composed of steviol glycosides, sodium carbonate, sodium citrate and leucine as other food preparations under CN code 2106 90 92.
- **Commission Implementing Regulation 2017/285** classifies a type of drone as a helicopter of an unladen weight not exceeding 2000 kg under CN code 8802 11 00.

Furthermore, the Commission has launched a written vote until **17 February 2017** for a draft Classification Regulation for an empty e-cigarette cartridge.

CN Explanatory Notes

The Commission has published Explanatory Notes to the Combined Nomenclature (CNENs), and amendments thereto, with respect to the classification of the following products:

- **Textile fabrics:** On 2 February 2017, the EU published a CNEN to Chapter 59 on the classification of textile fabrics partially covered by plastic dots giving anti-slip properties to the fabric.
- **Drones:** On 3 February 2017, the EU published CNENs on the classification of drones. Pursuant to these CNENs, drones are to be classified either under subheading 8802 11 00 (see also the above mentioned Classification Regulation) or 9503 00, depending on whether or not they have the character of toys or recreational models.
- **Sets of a table and chairs:** On 11 February 2017, the EU introduced a CNEN clarifying the classification of sets of a table and chairs under headings 9401 (seats, whether or not convertible into beds, and parts thereof) and 9403 (other furniture and parts thereof).
- **Dog or cat food:** On 15 February, the EU replaced the CNEN to subheadings 2309 10 11 and 2309 10 90 (dog or cat food) as regards the classification of articles consisting of hide to be chewed by dogs. The CNEN now differentiates between classification under subheadings 2309 10 11/2309 10 90 and heading 4205, depending on the percentage of hide in the product.
- **Sparkling Wine:** On 18 February 2017, the EU published a CNEN on the classification of Prosecco, a sparkling wine with a protected designation of origin, under CN code 2204 10 15.
- **Electromechanical plugs and sockets:** On 22 March 2017, the EU replaced the CNENs on the scope of CN codes 8536 69 10 and 8536 69 90 to provide examples of various types of connectors covered by these subheadings.

Court judgment on the classification of calcium carbonate

On 9 February 2017, the CJEU delivered its judgment in Case C-441/15 (*Madaus GmbH v. Hauptzollamt Bremen*) concerning the classification of calcium carbonate, composed of chemically defined calcium carbonate in powder form and modified starch.

The product in question is used as a raw material for the manufacture of calcium tablets. The question raised before the Court was whether this product should be classified under CN code 3824 90 97 as a chemical product or under CN code 2106 90 92 as a food preparation. The Court found that this type of product must be classified under heading 2106 ('food preparations not elsewhere specified or included'), as it is intended for the preparation of products which are human foodstuffs.

Court judgment on classification of three-wheeled motor vehicles

On 16 February 2017, the CJEU delivered a judgment in Case C-145/16 (*Aramex Nederland BV v. Inspecteur van de Belastingdienst/Douane*) on the question whether a three-wheeled motor vehicle should be classified as a 'motorcycle' (under CN code 8711 50 00) or as a 'motor vehicle' (CN code 8703 21 10). Based on the steering system, the Court found that the product should be classified as a 'motor vehicle'.

Nomenclature Committee Developments

a) [Agriculture/Chemistry Sector](#)

The 175th meeting of the Agriculture/Chemistry Sub-section of the Nomenclature Committee (NC) took place on 13-15 February 2017. During this meeting, the Committee delivered a positive opinion on the classification of whole coconut butter and creamed coconut blocks. The Committee also discussed the classification of food supplements produced from vegetable meals, and various other food products, ceramic microspheres, cleaning preparations, medium oils (hydrocarbons C11-C14 and C13-C17), marine gas-oils, protein concentrates and isolates, heat-sensitive ink ribbons, and iodine solution.

b) Mechanical/Miscellaneous/Textiles Sector

The Commission has issued the report of the 174th meeting of the Mechanical/Miscellaneous/Textile Sub-section of the NC that took place on 19-21 December 2016. During this meeting, the Committee delivered a positive opinion on the classification of DAB radios using Bluetooth/A2DP technology, model train sets and notepads (see above). The Commission also discussed the classification of laundry baskets, mobile phone and mobile device cases, headbands, steering wheel covers, wireless charging plates, a combination of a trolley and a scooter, mastectomy brassieres, pulse oximeters, video converters, a weather station, touchless soap dispensers, aluminium tubes used as parts of coolers for motor vehicles, wrist band adapters for a smart watch, printing plates, toys in sets, light chains, fasteners for routers, welding helmets, shower rods, van type vehicles and electric scooters and sewer covers of ductile iron.

The 176th meeting of this Sub-section of the NC was scheduled for 20-22 February 2017. The agenda indicates that the Member State experts were scheduled to vote on draft Classification Regulations on touch pens and double buckle seatbelts. In addition, the Committee was to discuss the classification of, *inter alia*, laser devices for treatment of skin conditions and hair removal, a wireless charging plate, a van type of vehicle, an electric scooter, USB wall chargers, cameras for drones, glass fibre fabric, aluminium rails, a video phone entry system, an audio-video-radio transmission set, and a 3D scanner.

Origin

Court judgment on post-clearance liability for import duties

On 16 March 2017, the CJEU delivered its judgment in Case C-47/16 (*Valsts ieņēmumu dienests v "Veloserviss" SIA*). This case involved post-clearance recovery of import duties after a Form A certificate of origin for bicycles from Cambodia was found to have been issued wrongly. During a first post-clearance examination, Latvian customs had not found any irregularity. However, after receiving information from the EU's Anti-Fraud Office (OLAF) showing that the exporter provided incorrect information, they decided to carry out a second post-clearance examination and ordered the importer to pay back the duties, along with VAT and interest for late payment. Veloserviss, the importer, claimed that the result of the first examination had created legitimate expectations, that it had acted in good faith, and therefore should not pay these sums.

The Court confirmed that it is for the referring court to determine if relevant conditions were met in order for the importer to object to a post-clearance incurring of liability for import duties (i.e. if there was an error on the part of the competent authorities themselves which could not have been reasonably detected by the importer acting in good faith and with proper diligence, and provided the importer otherwise has complied with all legal provisions with respect to its customs declaration). With respect to the good faith claim by Veloserviss, the CJEU held that an importer is not expected to verify systematically the issue of origin certificates. However, the importer could not rely on legitimate expectations where there are clear reasons for doubting the accuracy of a Form A certificate and it fails to obtain information concerning the circumstances of the issue of that certificate.

The Court was also asked if the customs authorities could rely solely on an OLAF report when determining whether or not the Form A certificate was issued based on an incorrect statement of the facts by the exporter. The CJEU held that if the OLAF report only contains a general description of the situation, it cannot on its own suffice as evidence of an incorrect statement of the facts by the exporter. In that case, the customs authorities would normally have to prove that the exporter made an incorrect statement of facts. But if they are unable to do so, it is for the importer to then prove that the certificate was issued on the basis of a correct statement of the facts by the exporter.

GSP – REX system takes effect

On 1 January 2017, the EU's new Registered Exporter (REX) system for self-declaration of origin by economic operators took effect. REX was introduced under the EU's GSP regime in 2011 and entails registration of exporters by the authorities of the exporting country. This enables registered exporters to self-declare that the preferential origin rules have been satisfied, e.g. on the invoice. REX thereby eliminates the need for the "Form A" certificate of origin issued by the exporting country authority to exporters. However, approximately 40 GSP beneficiary countries were unable to introduce required REX related changes on time. These countries have been granted extra time to switch to REX, while they can during a short transitional

period continue to issue the Form A instead. The EU's plan is to ultimately expand the REX system to bilateral preferential arrangements with third countries as well.

GSP – Cumulation of origin

On 18 March 2017, the EU published two Council Decisions on the signing of two Agreements with Switzerland and Norway on the cumulation of origin between the EU, Switzerland, Norway and Turkey in the framework of the EU's GSP. The purpose of these agreements is to revise existing agreements concluded with Switzerland and Norway in order to reflect recent changes made to Switzerland's and Norway's GSP rules of origin.

PEM Convention – EU-Bosnia and Herzegovina and Moldova cumulation

The EU has published two decisions replacing the existing Origin Protocols of the EU-Bosnia and Herzegovina Stabilisation and Association Agreement and the EU-Moldova Association Agreement with new Protocols, simply referring to the preferential origin rules set out in the Pan-Euro-Mediterranean (PEM) Convention.

Regional cumulation of origin is allowed within the entire PEM area (i.e. the EU, the EFTA States, the Faroe Islands, the participants in the Barcelona Process (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia and Turkey), and 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 the Republic of Moldova)) if identical origin rules are in place under relevant bilateral agreements. This encourages use of materials from within the PEM region (and hence PEM trade), as such materials are considered to have "originating" status, and this makes it easier for the final product to achieve preferential origin status and enjoy tariff preferences.

The key aim of the PEM Convention was to replace the network of approximately 60 different protocols on rules of origin in force among countries of the PEM area with Protocols simply referring to the PEM Convention. This way, changes to the rules can be implemented in the various bilateral agreements simultaneously. This is why all the old detailed Origin Protocols are being replaced by a new simple Protocol. This is a gradual process, and regional cumulation is therefore not yet possible between all PEM parties.

On 9 March 2017, the Commission published the latest update on the dates of application of the PEM rules, or origin protocols which provide for diagonal cumulation of origin. The previous update was published in September 2016.

Origin rule derogations for Colombia, Peru and Ecuador

On 25 January 2017, **Commission Implementing Regulation 2017/120** was published in relation to the FTA between the EU and Colombia, Peru and Ecuador. It lays down twelve origin quotas under which derogations from the regular FTA preferential rules of origin apply as from 1 January 2017. These derogations concern certain products of Harmonised System (HS) Chapters 39 (notably heading 3920 for certain plastic plates, sheets, film, foil and strip), 61 (textiles), and 73 (notably certain stoves, barbecues, etc. of iron or steel, and certain iron or steel table, kitchen or other household articles and parts thereof).

Amendment of EU-Mexico FTA origin rules for chemicals

On 21 March 2017, the EU Council adopted two decisions allowing for the approval of two draft decisions of the EU-Mexico Joint Committee amending the origin protocols of the 2000 EU-Mexico Economic Partnership, Political Coordination and Cooperation Agreement. The purpose of these decisions is to amend certain product-specific rules of origin for certain chemical products under tariff headings 2914 and 2915, and to extend the application this Agreement to products originating in Andorra and San Marino.

Valuation

Court judgment on royalties or license fees

On 9 March 2017, the CJEU issued its judgment in Case C-173/15 (*GE Healthcare GmbH v. Hauptzollamt Düsseldorf*) regarding the inclusion of royalties or license fees in the customs value of goods. Under the EU customs rules, such fees must be included in the customs value when they are (a) related to the imported goods and (b) a condition of the sale for export to the EU. The applicant had argued that certain fees were not related to the imported goods because their amount could not be determined at the time the underlying licence agreement was concluded or the customs declaration was accepted by the German customs authorities, and were only partially related to the imported goods (as they also related to post-importation services).

The Court ruled that the fees were related to the imported goods, and that it is not necessary for them to be only related to the imported goods. Moreover, it is not essential that the exact fee amount is known at the outset, as EU rules allow the filing of incomplete declarations if not all information is available at the time of customs clearance. With respect to the “condition of sale” test, the CJEU considered that the buyer of goods, licensor, and seller of goods were all part of the same company group. The main question was therefore whether the seller would not sell the goods to the buyer without the payment of the fees (i.e. as a “condition of sale”), including whether the licensor has sufficient control over the seller or buyer to ensure the fee payment is made. The CJEU left that question for the referring court to decide. The Court also clarified that adjustment and apportionment measures can be applied where the customs value has been determined on the basis of any of the alternative valuation methods and (i.e. not on the basis of the primary “transaction value” method).

Undervaluation fraud unveiled by OLAF in UK

In March 2017, OLAF reportedly found that the UK customs authorities have ignored a fraud network under which the customs value of imports of Chinese textiles and footwear was grossly understated in the customs declarations. This allegedly has led to a loss of almost EUR 2 billion in duty revenues for the EU budget (which the UK authorities disputes) and EUR 3.2 billion in lost value-added tax revenues for various EU Member States.

Procedures

Court judgment on interest due on reimbursed import duties

On 18 January 2017, the CJEU delivered its judgment in Case C-365/15 (*Wortmann KG International Schuhproduktionen v. Hauptzollamt Bielefeld*) with respect to payment of interest after reimbursement of anti-dumping duties on certain shoes. This case was brought after the CJEU had earlier ruled that the anti-dumping duties were unlawful with respect to the company, and partially annulled the regulation imposing such duties.

When the applicant applied for payment of interest from the time of original payment of the anti-dumping duties, the German customs authorities refused the request. They claimed that, based on relevant provisions in the then applicable EU Customs Code, interest could not be paid in cases where no national legal proceedings had been brought before the principal customs office for reimbursement of the import duties. Because the customs authorities had reimbursed the anti-dumping duties *ex officio* after the Court’s judgment, no such proceedings had been brought in this matter. The CJEU sided with the applicant and held that where import duties are reimbursed because they have been levied unlawfully, the Member State is obliged under EU law to also pay interest running from the date of payment of the subject duties.

Court judgment on employer liability for employees

On 25 January 2017, the CJEU ruled in Case C-679/15 (*Ultra-Brag v. Hauptzollamt Lörrach*). In essence, the Court held that a company is liable for customs debt as a result of unlawful introduction of goods into the EU when this is performed by an employee who is not a statutory representative of the company.

The unlawful introduction in question was the result of an attempt to avoid time delays because of damage to a vessel. The vessel was due to ship a turbine within the EU after delivery of two transformers to Switzerland. Accordingly, the business manager of a logistics company, Ultra-Brag, had instructed the vessel pilot (also employed by Ultra-Brag) to bring the transformers to Switzerland while leaving the turbine on board, and then ship the turbine back to the EU. The business manager had, however, failed to inform German customs before EU export that one turbine would be immediately transported back to the EU after the transformers were unloaded in Switzerland. As a result, upon re-import of the turbine into Germany, the German authorities argued the turbine had not been presented to customs and therefore was deemed unlawfully introduced into the EU. Ultra-Brag was requested to pay import duties.

In the subsequent court proceeding brought by Ultra-Brag, the company argued it had not been manifestly negligent (as it had entrusted customs formalities to a qualified employee) and had also not committed a breach of its supervisory obligations. It tried to argue that the subject business manager and vessel pilot were not *statutory* representatives of Ultra-Brag, and it was therefore not the company that had brought the goods into the EU unlawfully.

The CJEU disagreed and held that it is irrelevant that the two employees involved were not statutory representatives of Ultra-Brag. The court ruled that the employer itself is the debtor here, and not the employees, because the vessel pilot was following instructions from another employee empowered to give such instructions. In other words, in order to establish whether a debtor acted fraudulently or negligently, the conduct of individual employees must be attributed to the employer.

Miscellaneous

EP Approves Regulation on Conflict Minerals

On 16 March 2017, the EP formally approved the compromise text agreed with the Council and the Commission on trade in conflict minerals. The draft regulation was also formally approved by the Council on 3 April 2017 and is now expected to be published in the EU Official Journal and enter into force. As a result, as of **1 January 2021**, importers, smelters and refiners of tin, tungsten, tantalum and gold and their ores will be subject to mandatory certification, while voluntary reporting by larger EU manufacturers and sellers will be possible.

US retaliatory tariffs on European imports

On 15-16 February 2017, the Office of the United States Trade Representative (USTR) organised a hearing on the possible introduction of retaliatory tariffs in response to the EU ban on US hormone-treated beef. The US is considering imposing retaliatory tariffs for a list of 80 products, including a long list of agricultural products and motorcycles.

Possible EU challenge of US border taxes

The EU is reportedly considering filing a WTO complaint against the US plans to introduce new border taxes on imports. Commission officials have stated in that respect that a trade war between the EU and the US would be “disastrous” for the world economy, but that the EU would be prepared to act against the US if necessary.

WTO Trade Facilitation Agreement enters into force

The WTO Trade Facilitation Agreement (TFA) entered into force on 22 February 2017, following ratification by two-thirds of WTO members. The TFA contains provisions for expediting the movement, release and clearance of goods, and sets out measures to improve cooperation between customs and other appropriate authorities.

EU Commission proposes amendment to Croatia Neum Corridor Regulation

The Commission has issued a proposal to amend existing **Regulation 479/2013** laying down the rules under which the requirement for an entry and exit summary declaration is waived for goods exiting and re-entering the territory of Croatia when moved across the Neum Corridor. The Neum Corridor is the name for the part of

the territory of Bosnia and Herzegovina reaching the Adriatic coast, which separates the area of Dubrovnik from the rest of the territory of Croatia. The purpose of the proposed amendment is to change the maximum allowed value of shipments and to align the Regulation with the UCC.

EU Trade Commissioner responds to Egyptian trade restrictions

It has been reported that the EU is holding discussions with the Egyptian government in relation to a new Egyptian regulation impacting trade of EU goods. The Egyptian regulation requires EU exports of 24 categories of goods to undergo a registration procedure, under which requests are rarely approved.

White & Case LLP
Wetstraat 62 rue de la Loi
1040 Brussels
Belgium

T +32 2 239 26 20

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.