

EU Customs Developments

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EU Customs Policy

Union Customs Code Developments – Key Provisions Published

On 29 December 2015, the Implementing and Delegated Acts for the Union Customs Code (UCC) were published in the EU's Official Journal as **Commission Implementing Regulation 2015/2447** and **Commission Delegated Regulation 2015/2446**, respectively. As planned, the UCC will start to apply on **1 May 2016** and formally repeal the current EU Customs Code (**Regulation 2913/92**) and its Implementing Provisions (**Regulation 2454/93**) on that date.

The UCC and its accompanying rules should lead to an entirely paperless customs environment with modern IT systems **by 2020**, but key changes will already take effect on **1 May 2016**. For example, more detailed and product-specific rules will be applied to determine non-preferential origin of a product. Binding Tariff Information (BTI) will also become binding on the holder. In addition, unless a company can benefit from a special transitional provision, it will no longer be able to use an earlier sale in a chain of transactions under the new customs valuation rules. At the same time, more royalties and licence fees are set to become dutiable, as the Member States' customs authorities are likely to follow the UCC provisions to the letter, unless and until clear guidance is made available to them by the Commission (see below). There will also be changes to the so-called "special procedures" (e.g. the inward processing procedure will be merged with processing under customs control) in **May 2016**. Importantly, for new authorisations to use certain simplifications or procedures, the provision of a guarantee will become mandatory; at present, the Member States have discretion in deciding whether or not to require a guarantee in certain cases. As and when the necessary IT systems are up and running, certain opportunities will become available, including self-assessment and centralised clearance. Under the UCC, compliance with criteria for Authorised Economic Operators (AEO) will be required in new circumstances, so that, in effect, companies will need to look into this in order to retain access to procedures for which they do not currently have to demonstrate AEO criteria compliance.

In view of the gradual IT process, the European Commission on 17 December 2015 presented the so-called "Transitional Delegated Act". This Act contains temporary rules and suspensions of UCC provisions pending the introduction of electronic systems under the UCC for the exchange of information between customs authorities and the Commission, and for the storage of such information. Unless the European Parliament (EP) or Council objects to this Act during the scrutiny period, the Commission can formally publish it in the Official Journal. This scrutiny period is supposed to end in **February 2016**, but the EP or Council could ask for

two extra months if they consider this necessary. Meanwhile, the Commission is aiming to issue its first guidance documents on the UCC in **February** or **March 2016**, and will continue to issue such documents over the **next two years**.

Customs Infringements and Sanctions – EP discussion

On **14 January 2016**, the Internal Market and Consumer Protection (IMCO) Committee of the EP is set to have an exchange of views on the European Commission proposed Directive for an EU legal framework on customs infringements and sanctions. Last October, this Committee organised a hearing on the topic, and the Commission followed with its own conference a month later (in light of severe criticism from many stakeholders). The draft report by the IMCO rapporteur on this controversial proposal is expected to be presented in **February 2016**, and a vote in this Committee is tentatively planned for **June 2016**. It is unclear when the Council will continue its discussions on this draft legislation.

Customs 2020 Programme

On **14 January 2016**, the Customs Code Committee is due to approve the annual work programme for **2016** under the Customs **2020** Programme. Customs **2020** is the current multiannual customs programme aimed at supporting the customs authorities in fighting against fraud, protecting intellectual property rights, increasing safety and security, protecting citizens and the environment, improving the administrative capacity of the customs authorities, and strengthening the competitiveness of EU businesses.

Tariffs

Duty Suspensions and Tariff Quotas

On 30 December 2015, the EU published the latest updates to the EU lists of Duty Suspensions (DS) and Tariff Quotas (TQs) through **Council Regulations 2015/2449** and **2015/2448**, respectively. The changes took effect on **1 January 2016**.

As far as DS are concerned, 110 new DS have been introduced; 41 DS have been eliminated; the product description has been amended for 45 DS; and the CN/TARIC codes have been updated for 22 existing DS to reflect changes introduced to the Combined Nomenclature for **2016**. The list of TQs has been amended as follows: 2 TQs have been closed; 10 new TQs have been introduced; the TARIC codes have been amended for 3 TQs; the quota volume has been increased for 5 TQs and decreased for 1 TQ; and the product description of 2 TQs has been amended.

The next update of the lists will occur on **1 July 2016** so the current round of discussions in the Economic Tariff Questions Group (ETQG) will shortly be coming to an end, after which the Commission will prepare its formal proposals for submission to the Council in **May 2016** and adoption in **June 2016**. Meanwhile, the **January 2017** round is about to commence as Member States will have to forward eligible applications to the Commission by **15 March 2016**. The national deadlines for companies to file their applications differ but tend to fall in late **January** or early **February**.

Autonomous Preferences for the Western Balkans Renewed, but Suspended for Bosnia and Herzegovina

Autonomous preferences for the Western Balkans have recently been renewed. In 2009, the EU introduced exceptional trade measures for countries and territories participating in or linked to its Stabilisation and Association Process (i.e. for Kosovo, Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Montenegro and Serbia). These autonomous preferences provide for zero duty for EU imports of most products from the Western Balkans. They were due to expire on 31 December 2015, but on 24 December 2015, the duration of the special measures was extended until the **end of 2020** through **Regulation 2015/2423**. However, the application of the measures is suspended as regards Bosnia and Herzegovina, until it agrees to adapt its Stabilisation and Association Agreement with the EU to also cover Croatia.

Report on Autonomous Preferences for Pakistan

On 30 November 2015, the European Commission issued a report on the operation and effect of the emergency autonomous trade preferences for Pakistan. These trade preferences were introduced to assist in Pakistan's recovery and future development following the floods from July to September 2010 that affected extensive parts of Pakistan. The EU granted trade preferences to Pakistan for 75 products, mainly textile products: 49 products could be imported at zero duties and 26 products benefited from tariff rate quotas. The report concludes that there are indications that these trade preferences fulfilled their objective of supporting economic recovery in Pakistan.

EU-China Agreement in relation to Croatia's Accession to the EU

On 16 December 2015, the European Commission proposed two Council Decisions authorising the signature and conclusion of an agreement between the EU and China under Article XXIV:6 of the GATT. These negotiations were launched as Croatia had to increase its tariffs for certain products following its accession to the EU. The proposal reveals that the agreement entails a compensatory adjustment for China in the form of a slight decrease in the EU import duty on certain types of footwear and split-system window or wall air conditioners.

WTO e-Commerce Moratorium Renewed Again

On 21 December 2015, in the context of the Nairobi Ministerial Conference, the WTO confirmed that WTO Members (including the EU) have agreed to maintain the current practice of not imposing customs duties on electronic transmissions until the next session to be held in **2017**. These moratoria have been in place since 1998 and are renewed at WTO level **every two years**.

Information Technology Agreement Expansion Agreed

On 16 December 2015, the EU and 25 other WTO Parties reached an agreement on the expansion of the Information Technology Agreement (ITA) by adding 201 products to the list after over 3 years of negotiation. Tariffs for these products will be removed either in **2016, 2019 or 2022**. All WTO members, including those that are not a party to ITA-II, will benefit from the tariff elimination under the WTO's most-favoured nation (MFN) principle.

The expansion list for the 1996 ITA covers consumer goods and other finished products as well as components and manufacturing equipment. It includes GPS, DVD players, smart cards, multifunctional printing and copying machines, TV-cameras, video recording, digital car radios, set-top boxes, medical equipment, video games/consoles, telecommunication satellites, weighing and money-changing machines, loudspeakers, microphones and telescopes, microscopes and telescopes, routers and switches, multicomponent integrated circuits (MCOs), various machine tools, and various parts (for IT goods and semiconductors, smartphones, instruments for aeronautical and space navigation, etc.).

Environmental Goods Agreement – State of Play

On 4 December 2015, the 11th round of Environmental Goods Agreement (EGA) negotiations was concluded in Geneva. In a public report, the European Commission notes that the negotiators took stock of progress achieved so far and agreed to continue their efforts to conclude the EGA in **2016**. The discussion on the list of 370 products nominated earlier by EGA members continued, and customs experts made progress on the customs classification of many of these products. The next round is tentatively scheduled for **February 2016**. In the context of the WTO Nairobi Ministerial, WTO Director-General Azevêdo welcomed the progress reached on EGA. On 7 December 2015, the European Commission also organised an EGA related event in the context of the UN Climate Convention in Paris.

EU FTA Update

a) United States

On 11 December 2015, a joint statement was issued by US Trade Representative Michael Froman and EU Trade Commissioner Cecilia Malmström on the ongoing negotiations on the Transatlantic Trade and Investment Partnership (TTIP) agreement. They noted considerable progress in the negotiations in 2015 and

agreed to further intensify them during **2016**, including through enhanced intersessional work and frequent formal negotiating rounds.

Meanwhile, the EP on 2 December 2015 announced an agreement with the Commission which will allow all Members of the EP to access all categories of confidential documents relating to TTIP negotiations. As a result, all MEPs will be able to see consolidated texts also reflecting the US position in a secure reading room and take notes and use the information as a basis for their political actions. Previously, only 30 MEPs had such access to TTIP documents.

b) Japan

On 17 December 2015, it was reported that EU chief negotiator Mauro Petriccione had said that the EU and Japan could conclude their negotiations on a Free Trade Agreement (FTA) "within a few months". However, failure to do so by the **end of 2016** could lead to scepticism that a deal will ever be reached, in line with the view of various EU stakeholders before the negotiations were launched. The 15th round of FTA negotiations between the EU and Japan is expected to take place at the **end of February 2016**.

c) Vietnam

As reported in our previous issue, on 2 December 2015, the EU and Vietnam issued a joint declaration to announce the successful conclusion of their FTA negotiations. The EU has stated that this bilateral FTA can be a model for future FTAs between the EU and developing countries and also constitutes a building block towards the region-to-region EU-ASEAN FTA.

The text of the negotiated FTA is not yet available, but the Commission has confirmed that it will remove nearly all tariffs on goods. It will also contain provisions on sanitary and phytosanitary (SPS) measures, customs and trade facilitation, services and investment, government procurement, intellectual property rights, state-owned enterprises, trade and sustainable development, and cooperation and capacity building. The FTA will also include the new EU rules on investment protection and an Investor-State Dispute Settlement mechanism that have been developed in the TTIP context.

The process involving legal scrubbing and translation of the agreement is expected to commence in **early 2016**. The Commission's aim is to be able to formally present its FTA proposal to the Council and EP for decision-making by the **end of 2016**. It is expected that the FTA will not start to apply until **after 2017**.

d) South Korea

On 13 December 2015, the FTA between the EU and South Korea formally entered into force, after having been applied provisionally since mid-2011. On 10 December 2015, the EP's International Trade (INTA) Committee organised a workshop on "*Trade and economic relations with Asia*". This workshop covered general trade and economic relations with Asia, the EU external strategy vis-à-vis Asia, and also information about the implementation and lessons learned from the FTA with South Korea.

e) Canada

On 9 December 2015, Commissioner Malmström held a keynote speech during an EP Workshop on the EU-Canada FTA (CETA). In this speech, she stated that the EU intends to use the ongoing talks on legal scrubbing to fine-tune provisions on investment dispute resolution, but that neither the EU nor Canada have any interest in reopening negotiations.

Meanwhile, on 15 December 2015, the 2009 CETA negotiating directives (as updated in 2011 to cover investment protection) were made public by the Council, following requests from several parties (i.e. by the EU's Trade Policy Committee, EU Trade Commissioner Malmström and several MEPs) to do so.

f) Australia and New Zealand

On 1 December 2015, the EP organised a public hearing entitled "*Trade relations with Australia and New Zealand: From reflections to negotiations*" in the presence of the Ambassadors to the EU of these two countries.

As reported earlier, New Zealand and Australia launched FTA negotiations with the EU in October and November 2015, respectively. It is hoped that the Commission will complete the usual scoping exercise and impact assessment in relation to each of the planned FTAs in **2016**, and that actual negotiations could then start in **2017**.

g) Ukraine

On 1 and 21 December 2015, the EU, Ukraine and Russia were unable to resolve the dispute in relation to the implementation of the EU-Ukraine Deep and Comprehensive Free Trade Agreement (DCFTA) in trilateral talks. In December 2015, Russia announced the suspension of its FTA with Ukraine from **1 January 2016**. The trilateral discussions in their current format have been abandoned.

These developments, as well as issues relating to the implementation and ratification of the DCFTA, were also discussed between the EU and Ukraine during the second Association Council meeting on 7 December 2015, confirming that the DCFTA will start to apply provisionally as of **1 January 2016**.

h) Philippines

On 22 December 2015, the EU and the Philippines agreed to launch formal FTA negotiations. The first round of talks is expected to take place in the **first half of 2016**. The aim is for the EU-Philippines FTA to address trade in goods, services, investment, non-tariff barriers (NTBs), government procurement, competition, intellectual property rights, and sustainable development.

i) India

According to the Indian press, the EU and India are preparing to hold the 16th round of negotiations for a bilateral Broad-based Trade and Investment Agreement (BTIA) in **early 2016**. This would mark a resumption of the talks which originally started in 2007 and have largely been at a standstill since 2013.

j) Armenia

On 7 December 2015, the EU and Armenia launched negotiations for a new “overarching framework agreement” aiming to deepen their bilateral relationship and replace the existing 1999 Partnership and Cooperation Agreement. Specifically, it will seek to remove uncertainties created when the previously negotiated EU-Armenia Association Agreement/Deep and Comprehensive FTA could, in the end, not be completed. This was because Armenia decided to join the Eurasian Economic Union with Russia and other ex-Soviet Republics instead.

k) Afghanistan

On 17 December 2015, the European Commission issued a proposal for two Council Decisions on the conclusion and signing of the Cooperation Agreement between the EU and Afghanistan. The agreement contains provisions on customs cooperation with a view to ensuring a transparent trade environment and facilitating trade, while enhancing supply chain security and aiming to stem the flow of goods infringing intellectual property rights.

l) Cuba

On 1-2 December 2015, the EU and Cuba held the 6th round of negotiations towards a bilateral Political Dialogue and Cooperation Agreement (PDCA). During this round, the parties reached final agreement on the Trade and Economic Cooperation chapter. The next round is scheduled for **early 2016**.

Classification

Court Judgment – *Canon and Kyocera Mita*

On 10 December 2015, the Court of Justice of the European Union (CJEU) delivered its judgments in two similar cases, namely C-552/14 P (*Canon Europe NV v. European Commission*) and C 553/14 P (*Kyocera Mita Europe BV v. European Commission*). These cases cover appeals to set aside orders of the General Court of the EU, which had refused the partial annulment of **Regulation 861/2010** amending the EU Combined Nomenclature (CN) as from 1 January 2011 with respect to multifunctional machines (MFMs). The contested regulation created subheadings to tariff line 8443 31 (for printers, copying or facsimile machines which ‘perform two or more of the functions of printing, copying or facsimile transmission, capable of

connecting to an automatic data-processing machine or to a network'). As a result, the import of MFMs falling within CN code 8443 31 91 (MFMs with an electrostatic print engine) was made subject to a duty rate of 6%, while MFMs falling within the two other subheadings (8443 31 10 and 8443 31 99) benefited from zero duty. The applicants had argued in these two cases that the Regulation was invalid as it amended the rates of customs duty applicable to certain MFMs, contrary to WTO rules.

These actions had been dismissed as inadmissible by the General Court on grounds that the applicants (i.e. two importers of MFMs) did not have legal standing to bring an action for annulment because the contested Regulation did not directly affect them. In this regard, the Court considered that the contested Regulation did not produce “concrete and definitive effects” because the customs authorities must always take individual implementing measures after the submission of a customs declaration before a customs debt is established. Accordingly, the companies were able to contest such implementation before the national authorities in the first instance, and could not bring a direct action before the EU courts to seek annulment of the contested Regulation.

On appeal, the CJEU held that the General Court was correct in deciding that the contested Regulation entailed implementing measures, as it had been shown that the communication to the debtor (i.e. of the amount of duty or the grant of release of the goods) implied an actual decision concerning the tariff classification of the goods. The Court rejected the complainants' arguments that the release of the goods or the communication of the amount of duty payable did not have sufficient legal effects and was not open to challenge at national level. It also rejected arguments that the use of simplified procedures or data-processing techniques for customs declarations permits derogations from the powers devolved to national authorities and that the use of such procedures thus means that no measure is adopted by the customs authorities.

Court Judgment – Ultraviolet Aerodynamic Particle Sizer Spectrometers and Handheld Particle Counters

On 10 December 2015, the CJEU rendered its judgment in Case C-183/15 (*TSI GmbH v Hauptzollamt Aachen*) related to the customs classification of two items: a handheld particle counter to monitor particulate contamination, and a particle sizer spectrometer for measuring the aerodynamic diameter, scattered-light intensity and fluorescence intensity of individual airborne particles in real time.

The complainant in this case, TSI, had declared the products under zero duty subheadings 9027 50 00 and 9027 30 00, respectively (i.e. the residual subheadings of heading 9027 for certain instruments for physical/chemical analysis, other than gas/smoke analysers). The Principal Customs Office of Aachen, however, felt that the products should be classified under duty bearing subheading 9027 10 10 as gas or smoke analysis apparatus. The complainant brought a court action before the Finance Court in Düsseldorf, which referred the matter to the CJEU while asking whether the products at issue should be considered smoke analysis apparatus within the meaning of subheading 9027 10 10 (as it was undisputed that the products were not gas analysers). In addition, it asked how ‘smoke’ in that subheading should be interpreted in the absence of a definition in the Harmonised System (HS) or CN.

The CJEU ruled that the products in this case do not specifically and exclusively analyse particles derived from combustion, which are covered by the concept of ‘smoke’ in accordance within the normal meaning of that word in common language. This is because the subject apparatuses also analyse particles resulting from mechanical processes. In line with Note 3 to Chapter 90 with respect to machines designed for performing two or more functions, the Court looked at the principal function of the equipment and decided that it did not involve smoke analysis. The Court thus agreed with TSI that the ultraviolet aerodynamic particle sizer spectrometers and handheld particle counters do not fall under subheading 9027 10 10.

Classification Regulations

Since our November 2015 issue, the following relevant EU Classification Regulations have been published:

- **Commission Implementing Regulation 2015/2315** classifies a so-called “Photovoltaic (PV) junction box” for transmitting electricity generated by a solar panel to another PV module or PV inverter under CN code 8544 42 90 as “other” electric conductors fitted with connectors (attracting an MFN rate of 3.3%).

- **Commission Implementing Regulation 2015/2316** classifies a so-called “Electronic money box” including a small LCD display under CN code 8470 90 00 as “other machines with a calculating device” (attracting an MFN rate of 0%).
- **Commission Implementing Regulation 2015/2317** classifies certain free arm sewing machines of the household type working with an upper and a lower thread (that can produce various types of stitches) under CN code 8452 10 11 as sewing machines of the household type, lock-stitch only, having a value of more than EUR 65 each (attracting an MFN rate of 5.7%).
- **Commission Implementing Regulation 2015/2318** classifies a so-called “arm sleeve for smartphone” made predominantly of textile material under CN code 4202 92 98 as cases with outer surface of textile materials (attracting an MFN rate of 2.7%).
- **Commission Implementing Regulation 2015/2319** classifies certain “adapters” or “rectifiers” designed to convert AC current into DC current for use with special game consoles under CN code 8504 40 82 as “rectifiers” (attracting an MFN rate of 3.3%) rather than as an accessory to a video game machine.
- **Commission Implementing Regulation 2015/2320** classifies an article consisting of shiny woven transparent polyester fabric with decoration embroidered on it for conversion into a curtain under CN code 6303 92 90 as “curtains of synthetic fibres” (attracting an MFN rate of 12%).
- **Commission Implementing Regulation 2015/2321** classifies a so-called “free-hub cassette” without a free-wheel mechanism, designed to enable cyclists to keep the pedals still or to pedal backwards while the bicycle is in forward motion, under CN code 8714 93 00 as “free-wheel sprocket-wheels” (attracting an MFN rate of 4.7%).
- **Commission Implementing Regulation 2015/2351** classifies the different articles of a gardening kit under their individual headings and not as a set, as one or more articles did not meet the same particular need or were not designed to carry out the same specific activity.
- **Commission Implementing Regulation 2015/2253** classifies a so-called “door bottom seal” or “draught excluder” made of aluminium and plastic bristles, to be affixed by means of an adhesive strip to the bottom of a door, under CN code 3926 90 97 as “other articles of plastic”(attracting an MFN rate of 6.5%).
- **Commission Implementing Regulation 2015/2254** classifies a photo book with personalised photographs and short texts under CN code 4911 91 00 as “photographs” (attracting an MFN rate of 0%).
- **Commission Implementing Regulation 2015/2255** classifies a so-called “coin vibration motor” to be used in tablets, mobile phones, etc. to create a vibration effect under CN code 8479 89 97 as other machines and mechanical appliances having individual functions, not specified or included elsewhere (attracting an MFN rate of 1.7%).
- **Commission Implementing Regulation 2015/2455** classifies a frozen product composed of the meat of different crustaceans and molluscs under CN code 1605 54 00 as “prepared or preserved cuttlefish and squid” (attracting an MFN rate of 20%).

Nomenclature Committee Developments

a) Combined Nomenclature Sector

The report from the 162nd meeting of the Combined Nomenclature sector of the Statistical and Tariff Nomenclature Committee (“Nomenclature Committee”) held on 14 December 2015 has been published. It reveals that the Committee examined the transposition of the HS2017 to the 2017 CN as regards certain products of Chapters 3 (fish), 8 (fruit), 22 (wine), 44 (wood), 84 (machines), 87 (hybrid vehicles) and 96 (tripods). Concerning Chapter 84, the Commission notes that as a result of ITA-II (see above), it is expected that many subheadings will be deleted from 2018 onwards as obsolete. The Committee also discussed the rewording and linguistic alignment of subheading 2710 19 83 for hydraulic oils, but did not reach a final decision. The Committee also discussed the pending EGA negotiations (see above).

Finally, the Commission also announced the Article XXIV:6 agreement with China (see above) and announced a proposal to completely dismantle duty relief for civil aircraft in the EU.

b) HS/WCO Coordination Sector

The report of the 157th meeting of the HS/WCO Coordination Sector of the Nomenclature Committee that took place on 11 November 2015 has been made available. The Chair informed the Committee on the outcome of the 56th meeting of the HS Committee (HSC) and also pre-coordinated the EU position for the 49th session of the HS Review Sub-Committee. A recommendation of the Customs Cooperation Council of 11 June 2015 amending the HS Convention was accepted by the Member States. Finally, the Committee also agreed on an EU note on the classification of seat covers for motor vehicles to be sent to the WCO Secretariat for discussion at the next HSC meeting due in **March 2016**.

c) Agriculture/Chemistry Sector

The report of the 159th meeting of the Agriculture/Chemistry Sub-Section of the Nomenclature Committee held on 20 November 2015 has been published. It indicates that the Committee discussed an amendment to the Explanatory Notes for Chapter 24 (tobacco) and the classification of, *inter alia*, mazut undergoing a specific process, preparations based on synthetic lubricants, metallised PET film, soy-based beverages, and products with a high alcohol content. The Committee considered reports of the Project Groups on Food Chapters, and on Chemical Chapters.

Origin

Origin Committee Developments

The report of the 220th meeting of the Origin Section of the Customs Code Committee held on 30 September 2015 has been made available. It indicates that the Committee discussed certain Pan-Euro-Med (PEM) related matters, and ongoing origin-related discussions in the context of the EU's FTA negotiations with Japan and Vietnam. The Commission also presented the agenda for the then upcoming meeting of the bilateral EU-Korea Customs Committee of 4-5 November 2015. The Committee further continued its discussion on the procedure for verification of proofs of origin issued by the Member State authorities, where the proof of origin is issued by an exporting Member State which is not the Member State of establishment of the exporter.

The Member States were also updated on the Commission's monitoring activities with respect to the implementation of preferential origin rules by Papua New Guinea, the Seychelles, Cambodia, the Philippines, Cape Verde, India, Pakistan, Bangladesh and Indonesia. The Commission presented a working paper providing an overview of best practices relating to documents on which an origin declaration can be made out by approved exporters. However, as it has become clear that many Member States did not support the paper, the Commission decided it would "not ensure the publication of a document containing what it considers to be a too restrictive reading of the law". The discussion as regards the risks of fraud and abuse of invoice declarations therefore seems to have ended without any guidance being published.

PEM Convention – Protocols under Agreements with Egypt and Andorra replaced

Decision No 1/2015 of the EU-Egypt Association Council (adopted already in September 2015) was published in the Official Journal on 22 December 2015. It replaces the former origin protocol under the EU-Egypt Association Agreement with a new Protocol stating that the PEM Convention will apply instead as from **1 February 2016**.

Decision No 1/2015 of the EU-Andorra Joint Committee of 11 December 2015 has also been published. In order to improve legal certainty for traders and ensure uniform application, the origin protocol will be replaced as from **1 January 2016** with a new version that takes into account changes resulting from the PEM Convention.

WTO Nairobi Agreement on Origin Rules

On 19 December 2015, during the WTO Nairobi Ministerial, the WTO members adopted a decision on preferential rules of origin for least-developed countries (LDCs). It expands on the 2013 Bali WTO Ministerial Decision that provided guidelines to help LDC exports qualify for preferential market access. The Nairobi Decision provides more detailed directions on, amongst others, methods for determining when a product qualifies as “made in an LDC” or as regards cumulation of origin. It also calls on WTO members to consider allowing LDC use of non-originating materials for up to 75% of the final value of the product. The decision further encourages countries to simplify origin related documentary and procedural requirements.

Procedures

Court Judgment on Post-Clearance Examination of Declarations

On 10 December 2015, the CJEU delivered its judgment in Case C-427/14 (*Valsts ieņēmumu dienests v. “Veloserviss” SIA*) as regards the right for customs authorities to conduct post-clearance examinations. The importer in this case had imported bicycles originating in Cambodia in 2007 and paid neither customs duties nor VAT based on a certificate of preferential origin issued by the Cambodian Government. During an initial examination by the Latvian tax authority in 2008 no irregularities were found, but the European Anti-Fraud Office in 2010 found that the certificate of origin did not comply with the requirements of EU law and informed the Latvian authorities. The latter sought post-clearance recovery of relevant customs duties and VAT from the importer, who appealed. The Regional Administrative Court upheld the importer’s action for annulment of the post-clearance recovery of debt, as it considered that the initial tax authority examination had given rise to a legitimate expectation of compliance with all requirements relating to the filing of the customs declaration (as the importer could not have known that the Cambodian authorities has issued an incorrect origin certificate). The Latvian tax authority subsequently appealed on the basis that it did not at the time of the initial examination have the OLAF information, and was therefore not in a position to find that the certificate was incorrect.

The CJEU sided with the tax authority and observed that Article 78(3) of the EU Customs Code gives the customs authorities a general right to revise or conduct a post-clearance examination and to regularise a situation by fixing a new customs debt, as this does not undermine the principle of protection of legitimate expectations. The Court also added that legitimate expectations can only result in protection in case of errors attributable to acts of the competent authorities, and the CJEU concluded that this did not seem to be the case here.

Transit – Extension of International Conventions to Serbia

On 11 December 2015, the European Commission announced that Serbia will accede to the 1987 Conventions on a common transit procedure and on the simplification of formalities in trade of goods on **1 February 2016**. These two conventions currently apply to the movement of goods between the EU, the EFTA countries, Turkey and Macedonia.

Miscellaneous

Origin EU Dual-Use Export Control List Updated

On 24 December 2015, the Commission published **Commission Delegated Regulation 2015/2420** replacing the list of controlled items under the EU’s **Dual-Use Regulation 428/2009** (contained in its Annex I). This new dual-use export control list reflects changes made in 2014 to the international control lists on which the EU list is based. The changes relate mainly to the control of machine tools, avionics technology and aircraft wing-folding systems, spacecraft equipment and civil UAVs, and the removal from control of certain encrypted information security products. Annex IV (on intra-EU controls) has been amended to reflect these changes as well.

EU Prolongs Sanctions against Russia

On 22 December 2015, the EU published **Council Decision (CFSP) 2015/2431** prolonging the EU's sanctions against Russia until the **end of July 2016**. These sanctions were introduced in July 2014 and gradually tightened in response to Russia's actions in eastern Ukraine, and restrict supply of numerous goods (in addition to other types of economic measures).

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