

EU Customs Developments

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EU Customs Policy

Union Customs Code (UCC) Developments

On 11 May 2016, the European Commission published a correction to the Union Customs Code (UCC) Delegated Act. It removes references to certain special procedures that no longer exist under the UCC. In addition, a few inadvertently omitted forms have been re-introduced into the Delegated Act.

Discussions on corrections and amendments to the UCC Implementing Act are meanwhile continuing between the Commission and Member States.

Customs Infringements and Sanctions

The European Parliament (EP)'s Internal Market and Consumer Protection (IMCO) Committee recently discussed 197 amendments to a draft opinion on the Commission's proposed Directive on an EU-wide legal framework for customs infringements and sanctions. The IMCO Committee is the EP's lead Committee on this file, and it is expected to vote on the final opinion on **14 June 2016**. Meanwhile, the EP's International Trade (INTA) Committee adopted its opinion on 24 May 2016, which is fed into the IMCO work. The INTA Committee opinion, which proposes 17 amendments to the Commission's original proposal, focuses on ensuring that the EU has a more uniformly applied regime to handle customs infringements. In addition, this Committee would like to see minimum fines, where the Commission's proposal only proposes maximum fines.

Tariffs

Duty Suspensions and Tariff Quotas

a) July 2016 round

On 26 May 2016, the European Commission formally submitted its proposals for updating the EU's Duty Suspension (DS) and Tariff Quota (TQ) Regulations to the Council. Presuming they will be adopted without further changes as usual, these proposals would add 140 new suspensions to the DS list, eliminate 6 existing suspensions, and amend the product descriptions of almost 50 existing suspensions. In addition, the TQ Regulation would contain 9 new TQs, while four existing TQs are being amended. As always, adoption and publication of the updating Regulations in the EU's Official Journal are expected in **late June 2016**, for entry into effect on **1 July 2016**.

Generalised Scheme of Preferences – Interim Evaluation

The Commission has announced the expected timing for the obligatory interim evaluation of the EU's Regulation on a Generalised Scheme of Preferences (GSP) in an "evaluation and fitness check roadmap". This review started recently and it should be completed in **late 2017**. The process will include an external study to support the Commission's evaluation. The current EU GSP Regulation was adopted in 2012 and will remain in place until the **end of 2023**.

Environmental Goods Agreement – EU Ambitions

The EP's European People's Party (EEP) group recently organised a hearing on the pending international negotiations on the Environmental Goods Agreement (EGA). On that occasion, EU Trade Commissioner Cecilia Malmström said that these negotiations have "enormous potential". The Commissioner observed that the EU would like to see the elimination of tariffs on three or four times more products than the initial list of 54 products (which is the list agreed in separate talks among Asia-Pacific countries). The Commissioner acknowledged that it would be unrealistic at this stage to achieve the EU's goal of including liberalisation of related services and non-tariff barriers in the EGA. As a result, the EU will instead aim for a "living" agreement with a revision mechanism. Malmström further emphasised the need to get even more countries to join EGA, in addition to important players like China.

EU FTA Update

a) United States

The EU's Foreign Affairs Council recently discussed the negotiations between the EU and the United States on a Transatlantic Trade and Investment Partnership (TTIP). The Ministers welcomed the Commission's efforts to achieve "a balanced and comprehensive outcome in all key areas" and expressed their wish for the TTIP talks to be finalised during President Obama's term (provided that the outcome is sufficiently ambitious). At the same time, they acknowledged that "much work remains before political negotiations can begin in earnest." The EU's Trade Ministers are set to review the ongoing TTIP negotiations during an informal meeting scheduled to take place in **September 2016**. EU Commission President Juncker is also expected to press the Heads of State of the EU Member States to reaffirm their support for TTIP at the **June 2016** European Summit.

Meanwhile, the Commission has made available a draft study (by external authors) on the impact of TTIP. On 24 May 2016, the Commission published a report on the 13th TTIP round that was held in April 2016, and also released the EU's proposals on regulatory cooperation in pharmaceuticals which were submitted to the US during that round.

The TTIP talks have in the recent past generated the usual mix of criticism and support, including some back and forth between Commissioner Malmström and various NGOs (e.g. Greenpeace's leak of consolidated TTIP texts) and majority EU citizen support in a recent poll. Certain scepticism on TTIP has been expressed in France, Germany, the Netherlands, and Austria, for example, while the Belgian parliament has invited Commissioner Malmström back in the **Autumn** to provide more information on TTIP. Italy and Greece have emphasised that protection of the EU's Geographical Indications (GIs) will be crucial for TTIP to be acceptable.

On this latter point, senior US officials have again stated that the EU's GI position will not be accommodated as the EU's GI system discriminates against US producers. The US side has also warned the EU that no new US public procurement offer should be expected until the very last stage in the negotiations. Generally speaking, various US officials have stated that they are getting worried about the negative publicity in relation to TTIP as a result of statements by certain EU Member State leaders.

The 14th TTIP round is reportedly taking place during the **second week of July 2016** in Brussels.

b) Canada

On 13 May 2016, the EU's Foreign Affairs Council unanimously agreed that the Comprehensive Economic Trade Agreement (CETA) negotiated between the EU and Canada involves mixed EU and Member State competence and should therefore be signed and concluded as such. The planned ratification of CETA – which the Commission had intended to submit to Council and EP in **June 2016** – continues to run into problems. For parts considered to be of Member State competence to apply under a mixed agreement, all 28 national parliaments must first approve them. The Commission has confirmed that CETA will now most likely not be presented to the Council and the EP until **July 2016**.

Among EU Member States where CETA ratification may prove to be less than smooth are the Netherlands (which is reported to be planning a referendum following a petition challenging CETA) and Austria (where the newly elected President has indicated during his electoral campaign that he may decide not to approve it). Also, German activists have announced plans to file a lawsuit with the German Constitutional Court on CETA.

On a more supportive note, the EP's President Martin Schulz and Canadian Trade Minister Freeland stated during a recent meeting that they still hope to sign CETA by the **end of 2016** and implement it in **2017**. Similarly, French President Hollande and Canadian Prime Minister Trudeau have (on the fringes of the G7 summit in Japan) noted that CETA's entry into force is in everyone's interest and expressed their hope that the agreement can be ratified as soon as possible.

c) Japan

In a recent meeting with Japan's Prime Minister, EU Commission President Juncker reiterated that the EU considers the EU-Japan FTA to be important. He observed that the negotiations can be concluded **before the end of 2016**. During the same meeting, EU President Tusk said that the meeting would send a "clear political steer to the negotiators". He expressed hope that the FTA can be concluded **in the near future**, adding that it needs to be ambitious and that this requires political will on both sides.

In a Joint Statement issued on the fringes of the G7 Summit in Japan on 26 May 2016, EU Commission President Juncker and the leaders of France, Germany, Italy and the UK welcomed the intention expressed during the abovementioned meeting to instruct EU and Japanese negotiators to accelerate the talks. They emphasised their "strong commitment to reach agreement in principle as **early as possible in 2016**".

Also, a report on the 16th round of negotiations held in Tokyo in April 2016 has been published by the Commission, summarising the progress made by 14 Working Groups during that round. Considerable progress was reported on the discussions on non-tariff barriers, sanitary/phytosanitary measures, services, investment and customs and trade facilitation, while the pace of negotiations on market access for goods and intellectual property rights was said to be slower.

Finally, the Commission presented its Sustainable Impact Assessment on the EU-Japan FTA in May 2016. The report concludes that Japan remains a sizeable market for EU exports and a source of investment and R&D. Importantly, it states that the trade diversion resulting from the Trans-Pacific Partnership concluded between Japan and various other countries "may only be overcome through completion of EU-Japan FTA to return to the status quo."

d) Philippines

The first round of FTA negotiations between the EU and the Philippines was held on 23-27 May 2016. A report published by the European Commission after the round shows that the main goal was to get clarity on respective approaches, ambitions and expectations in various negotiating areas. Dedicated first round meetings were held on trade in goods, rules of origin, sanitary/phytosanitary measures, services and investment, intellectual property rights (including GIs), competition, trade and sustainable development and dispute settlement. The EU aims to ensure consistency and coherence with FTAs negotiated with other ASEAN member countries, but taking into account specific features of EU-Philippines relations. It is expected that certain formal textual proposals will be exchanged before the next round (expected to take place in **early October 2016**).

e) *Mercosur*

As expected, the EU and Mercosur exchanged offers on access to goods, services and public procurement markets on 11 May 2016. They also agreed that a meeting will be held at Chief Negotiators level **before the Summer** break to take stock of the negotiations. As further confirmation that these region-to-region FTA talks are back on track after a long hiatus, a schedule of meetings for the **second half of 2016** will be agreed soon.

f) *Mexico*

On 30 May, EU Trade Commissioner Malmström and Mexico's Minister for Economy Guajarda officially launched negotiations to update the EU-Mexico Global Agreement (in effect since 2000). The Council of Ministers had formally given the Commission a mandate to do so the week before. As part of the update, it is expected that the rules of origin will be simplified and tariffs on more agricultural goods eliminated. The first round will take place on **13-14 June 2016**.

g) *South Korea*

A delegation of the EP's INTA Committee visited South Korea on 17-19 May 2016 to discuss implementation of the EU-Korea FTA. This FTA entered into force in July 2011.

Classification

Court Judgment on Electric Mobility Scooters for the Disabled

On 26 May 2016, the Court of Justice of the EU (CJEU) delivered its judgment in Case C-198/15 (*Invamed Group and Others v. Commissioners for Her Majesty's Revenue & Customs*). The importer in this case had declared electrical mobility scooters under CN heading 8713 as carriages for disabled persons (carrying 0% import duty and falling within a low VAT rate). However, UK customs wanted these products to be classified under duty-bearing heading 8703 for motor cars and other motor vehicles, principally designed for the transport of persons. The key question was whether only scooters exclusively intended for disabled persons could be classified under heading 8713, as it was clear that the scooters were also used by persons who are not disabled. The CJEU ruled that the words "for disabled persons" in the wording of heading 8713 mean that the scooters are designed 'solely' for disabled persons, but that the fact the vehicle may be used by non-disabled persons is irrelevant for their classification.

Court Judgment on Liquefied Petroleum Gas

On 26 May 2016, the CJEU ruled in Case C-286/15 (*Valsts ieņēmumu dienests v. SIA Latvijas propāna gāze*). This case involved a Latvian dispute on the classification of a shipment of Russian liquefied petroleum gas (LPG) which contained propane, butane and various other components (methane, ethane, ethylene, propylene and butylene).

The question was whether the product at issue fell within the subheading for propane (2711 12) or butane (2711 13), or under the residual subheading for 'other' LPG (2711 19). Imports had been declared under CN code 2711 19. The Latvian customs authorities considered CN code 2711 12 appropriate in this case as the key component was propane on the basis of General Interpretative Rule 3(b) (ordering classification of a mixture in the heading for the component that gives a product its essential character). However, the CJEU decided that it is impossible to determine the essential component for LPG as its essential character is determined by all its components together, and not, for example, by the component which represents the greatest percentage of the gas mixture. The CJEU ruled that GIR 3(b) could not be applied and that GIR 3(c), which orders classification in the CN code which comes last in numerical order of all codes, should be used here. Accordingly, correct classification was under subheading 2711 19.

Court Judgment on a Turret System

On 26 May 2016, the CJEU ruled in Case C-262/15 (*GD European Land Systems- Steyr GmbH v. Zollamt Eisenstadt Flughafen Wien*). This case involved German classification of a turret system intended for use in an armoured fighting vehicle, which could also be used on mobile maritime systems or in stationary installations. The CJEU was asked to consider whether the system fell under duty-bearing motor vehicles CN code 8710 00 00 (covering tanks and other armoured fighting vehicles, motorised whether or not fitted with weapons, and parts of such vehicles) or under duty-free CN heading 9305 (as parts and accessories of

weapons).

The CJEU ruled that a turret system 'solely or principally' intended for use in armoured fighting vehicles would fall under CN heading 8710. Otherwise, it was classifiable as part of a weapon under heading 9305. The fact that the applicant had obtained Binding Tariff Information (BTI) classifying the system in heading 9305 was irrelevant in this case, as such BTI was obtained after the import took place. The Court thereby confirmed that BTIs do not apply retroactively and that the company could therefore not rely on it.

Nomenclature Committee Developments

a) CN Sector

The minutes of the 168th meeting of the Combined Nomenclature (CN) Sector of the Tariff and Nomenclature Section of the Customs Code Committee (Nomenclature Committee) have been made available. The Committee discussed the transposition of the 2017 version of the Harmonised System (HS) into the CN2017, in particular with respect to Chapters 22 (wine), 44 (wood), 85 (monitors, MCOs), 87 (motor vehicles), and 96 (tripods). The vote on the final CN 2017 is tentatively scheduled for **18 or 19 July 2016**. The experts further agreed, inter alia, on changes with respect to the wording of CN subheading 2710 19 83 (hydraulic oils) and subheadings for blind rivet nuts under CN heading 7318. They also discussed the implementation of the expansion of the Information Technology Agreement (ITA-II) by the EU. A vote on the relevant Regulation is scheduled for **20-21 June 2016** during a meeting of the Agri/Chem sector of the NC Committee, so that adoption can take place before **1 July 2016**.

b) Textiles and Mechanical/Miscellaneous Sector

The agenda of the 169th meeting of the Textiles and Mechanical/Miscellaneous Sub-section of the Tariff and Nomenclature Section of the Nomenclature Committee held on 30 May – 2 June 2016 has been made available. It shows that the Member State experts were due to give their opinion on draft Classification Regulations on hammocks and play/drawing mats. They were further set to consider, inter alia, an Additional note to Chapter 90 (Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof) as well as the classification of a very diverse range of products, including digital microscopes, DAB radios using Bluetooth/A2DP technology, a set of table and chairs, bedspreads, foot/screws for furniture, undercarriage parts, dental lamps, power distribution units, control units for gas discharge lamps, 3D printers, threaded coaxial cable connectors, airboards, thumb grips for a game computer controller, Notepads, touch pens, little singing teddy bears, incomplete shelves, and Tatami puzzles.

c) Agriculture/Chemistry Section

The agenda of the 170th meeting of the Sub-Section for Agriculture/Chemistry of the Nomenclature Committee scheduled for **20-21 June 2016** has been revealed. As noted above, the Committee should on that occasion vote on ITA-II related amendments to the EU's CN. The group will also consider, among others, the classification of modified phenolic resins, heat-sensitive ink ribbons in rolls, food supplements, amendments to Chapter 27 (mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes), glitter for toothpaste, and a possible amendment to a CN Explanatory Note on Chapter 27 subheadings on mazut.

Miscellaneous

EU Syria Sanctions

In May 2016, the EU renewed its sanctions against Syria by another year, until **1 June 2017**. These sanctions include, for example, restrictions on exports of equipment and technology that may be used for internal repression or for monitoring or interception of internet or telephone communications.

EU Regulation to Avoid Trade Diversion into the EU of Certain Medicines

On 11 May 2016, the EU adopted a Regulation aimed at avoiding entry into the EU market of key medicines placed by manufacturing companies on developing country markets at greatly reduced prices. The means to achieve this goal includes the use of a special logo that should make it easier for customs authorities of EU Member States to identify such imports.

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