

EU Customs Practice Group

February 2014

EU POLICY

UCC Developments

Preparatory work on the detailed implementing rules for the Union Customs Code (UCC) continues. The agenda of the 17 February 2014 meeting of the Council Working Party on the Customs Union included an information exchange between the Commission and the EU Member States on the state-of-play of the drafting of the delegated and implementing acts for the UCC. The first deadlines for business community comments on certain parts of the draft implementing and delegated acts passed in January and early February 2014. Follow-up meetings between the European Commission and representatives of stakeholders on these parts are scheduled to take place during the week of 17 March.

A recently released meeting report of the General Customs Legislation Section of the Customs Code Committee includes a list of the delegated and implementing acts that are expected to be adopted for application of the UCC (i.e. the framework and structure of the future UCC implementing rules). These acts include: (i) a final delegated act including the general provisions and those based on full availability of required IT systems; (ii) a delegated act establishing transitional provisions (applicable until 2020 at the latest, when all IT systems should be up and running); (iii) an UCC IT work programme; and (iv) a general implementing act including provisions of general scope (mainly procedural rules).

TARIFFS

GSP Plus – El Salvador, Guatemala and Panama

On 27 February 2014, the European Commission published **Regulation 182/2014**, granting GSP Plus status to El Salvador, Guatemala and Panama. These countries are added to the list of GSP Plus countries that benefit from better tariff preferences under the special incentive arrangement for sustainable development and good governance, bringing the total to 13. The prior list of GSP Plus countries was published in early January 2014.

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This newsletter briefly describes EU customs developments. Due to the general nature of its content, this newsletter is not and should not be regarded as legal advice.

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FTA Update

(a) Japan

The 5th round of FTA negotiations between the EU and Japan is scheduled to take place from 31 March to 4 April 2014. After which, the European Commission is expected to draft a report on the elimination of identified non-tariff barriers (NTBs) in Japan. This report will serve as a basis for institutional discussions in the context of the required one-year review of EU-Japan negotiations to determine whether the EU's FTA negotiations with Japan should be suspended or continue in light of the progress made so far. The Commission is likely to submit this report to the Member States in late April or early May 2014.

On 13 February 2014, the European Parliament's (EP) International Trade (INTA) Committee held an exchange of views on EU-Japan FTA negotiations (in the context of the EP's position on the one-year review) with the European Automotive Industry Association (ACEA) and the European Pharmaceutical Industry Association (EFPIA).

(b) US

In the first half of February, the EU and US exchanged their initial tariff offers in negotiations for the Transatlantic Trade and Investment Partnership (TTIP) Agreement. The EU's offer reportedly anticipated tariff elimination within a staging period of up to seven years, with the majority of tariffs scheduled for elimination upon future entry into force of the agreement.

On 17-18 February 2014, a political "stocktaking" meeting took place between EU Trade Commissioner De Gucht and US Trade Representative Froman. During this meeting, both sides assessed the progress made so far in TTIP negotiations, and discussed actions needed to move things forward. De Gucht and Froman also prepared the ground for the EU-US summit which is scheduled to take place on 26 March 2014. After the meeting, both sides issued statements that good progress was made during the stocktaking meeting, but that a number of issues still needed to be resolved. The 4th round of TTIP negotiations is taking place on 10-14 March 2014. A subsequent political stocktaking meeting has been scheduled for September 2014.

(c) Canada

In mid-February, chief negotiators from the EU and Canada met in an attempt to find agreement on key outstanding technical issues of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) (including tariff rate quota administration rules). Despite the fact that the two sides reached political agreement on the CETA text in October 2013, the final text of the Agreement is not likely to become publicly-available before the summer.

(d) Thailand

Due to the current political crisis in Thailand, no date has been set for the next round of free trade negotiations between the EU and Thailand. Discussions at a technical level between the EU and Thailand are reportedly continuing to take place.

(e) Brazil/Mercosur

At the EU-Brazil summit held on 24 February 2014 in Brussels, the EU and Brazil stated that they were on track to exchange market access offers as part of negotiations for an EU-Mercosur Association Agreement. On 21 March 2014, the EU and Mercosur negotiators are scheduled to verify whether the requirements to exchange tariff offers are met. However, the timing of the actual exchange of tariff offers reportedly is yet to be fixed.

(f) Korea

On 31 January 2014, the European Commission issued proposals to the Council on the signing, provisional application, and conclusion of an Additional Protocol to the existing EU-Korea FTA, to take account of the recent accession of Croatia to the EU.

On 28 February 2014, the European Commission issued its annual report on the implementation of the EU-Korea FTA. The report shows a higher increase in EU exports to Korea, compared to Korean exports to the EU. However, the preference utilisation rate remains much higher for Korea than for the EU.

CLASSIFICATION

New Classification Regulations

In February 2014, the following EU Classification Regulations were published:

- **Commission Implementing Regulation 111/2014**
– classifying an LCD monitor with touch screen as other monitors of a kind solely or principally used in an ADP system of heading 8471, under CN code 8528 51 00.
- **Commission Implementing Regulation 112/2014**
– classifying certain 30-inch LCD monitors used in information display applications under CN code 8528 59 31 as flat panel displays able to display signals from automatic data-processing machines with an acceptable level of functionality.
- **Commission Implementing Regulation 113/2014**
– classifying a high-speed camera allowing temporary storage onto volatile memory as other television cameras, under CN code 8525 80 19.

- **Commission Implementing Regulation 114/2014**
– classifying a medical LCD monitor for displaying radiographic images for clinical diagnostics, under CN code 8528 59 31 as flat-panel displays able to display signals from automatic data-processing machines with an acceptable level of functionality.
- **Commission Implementing Regulation 115/2014**
– classifying an LCD unit with touch-screen used for electric control of machines in industrial processes in applications using programmable automation controllers or programmable logic controllers, under CN code 8537 10 10 as numerical control panels with built-in automatic data-processing machine for a voltage not exceeding 1000 V.
- **Commission Implementing Regulation 197/2014**
– classifying a round, moulded plastic container for pet food as other household articles and hygienic or toilet articles of plastics, under CN code 3924 90 00.
- **Commission Implementing Regulation 198/2014**
– classifying a food supplement for human consumption that is presented in tablets as a food preparation not elsewhere specified or included, under CN code 2106 90 92.
- **Commission Implementing Regulation 199/2014**
– classifying a stylised giraffe that can be used as a heating or cooling cushion as a stuffed toy representing an animal, under CN code 9503 00 41.

Nomenclature Committee Developments

(a) Mechanical/Miscellaneous

The report of the 124th meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee that took place on 13 December 2013 has recently been made available. It shows that the Committee issued a favourable opinion on the draft classification regulations relating to products such as monitors with touch screen, LCD (medical) monitors, video monitors, and high-speed cameras (see also above under adopted Regulations). The Member States also concluded discussions on a proposed CN Explanatory Note for wheels for sliding systems (subheading 8302 20), and on the classification of, amongst other things, HDMI splitters and HDMI switches, steel plastic dowels, articles for coronary angioplasty, manual knife sharpeners, and silicone bottle tops. The Chair further informed the Committee that the WTO negotiations on the expansion of the Information Technology Agreement (ITA) have been delayed until further notice.

In February, the Nomenclature Committee also adopted favourable opinions through a written vote on draft Commission Regulations on the tariff classification of LCD monitors (CN code 8528 51 00), rear-view camera

systems (CN code 8528 72 40), sound editors for non-professional use (CN code 8519 87 35), LED floodlights (CN code 9405 40 99), and flame detectors (CN code 8536 50 19). This means that the Commission can proceed with formal adoption and publication of these Regulations.

(b) Agriculture/Chemistry

The agenda for the 131st meeting of the Agriculture/Chemistry Sector of the Nomenclature Committee on 5-7 March 2014 includes a vote on a Commission proposal to add an Additional Note concerning subheading 2207 20 (ethyl alcohol and other spirits, denatured, of any strength), which clarifies that this subheading covers certain mixtures of ethyl alcohol used as raw material to produce fuels for motor vehicles, and a discussion on the tariff classification of lubricants, succinic acid and 1,4-butandiol, tobacco refuse, eye wash products and glucosamine. The agenda also includes a first examination of a possible amendment of Additional Note 2(g) to Chapter 27 (concerning fuels containing biodiesel), and a discussion on the tariff classification of mixtures of cyclopentane and isopentane.

EU judgment – GIR 2(a) and footwear components

On 6 February 2014, the Court of Justice of the European Union (CJEU) issued its judgment in Case C-2/13, *Directeur general des douanes et droits indirects and Chef de l'agence de la direction nationale du renseignement et des enquêtes douanières v Humeau Beaupréau SAS*, concerning the customs classification of imports of sports footwear components. The Court found that an upper, an outer sole and an inner sole that have the essential character of footwear while presented unassembled at the time of importation (where a counter must be inserted into the upper and the upper and the outer sole must be roughed for their assembly) should be classified under heading 6404 as footwear presented unassembled (rather than parts of footwear classified under heading 6406). Based on General Interpretative Rule (GIR) 2(a), these imports are considered to be goods that do not need actual working, but merely assembly, and therefore will be subject to a higher customs duty under the correct customs classification.

VALUATION

Valuation Committee Developments

The agenda of the 16th meeting of the valuation section of the Customs Code Committee that will take place on 13-14 March 2014 indicates, among others, a discussion on the valuation of know-how, the treatment of quantity (bulk) discounts, a proposal for benchmarking on royalties, and a non-paper on a monitoring programme on valuation. As usual, the Committee will also prepare for the next meeting of the WCO Technical Committee on Customs Valuation (5-9 May 2014).

The valuation provisions of the draft UCC Implementing Act will be discussed in a joint session of the Valuation Committee with the General Legislation Section of the Customs Code Committee on 12 March 2014.

ORIGIN

Origin Committee Developments

The 210th meeting of the Origin Committee is scheduled to take place on 3-4 March 2014. The agenda indicates that the Committee will discuss certain Pan-Euro-Med (PEM) matters, and the possible modification of an existing Customs Code provision with respect to simplified proofs of origin issued or made out under a Deep and Comprehensive FTA (DCFTA) or autonomous trade measures in a single partner/beneficiary country. A discussion on the rules of origin in trade between the customs territory of the EU and Ceuta and Melilla is also planned. The Committee will furthermore discuss an Action Plan to monitor the functioning of preferential origin arrangements (see below) and a new format for collecting statistics on post-clearance verifications. The Commission will debrief the Member States on the state-of-play of on-going FTA negotiations with Japan, Vietnam, and the US. Other topics on the agenda include a state-of-play on the Registered Exporter System (REX), the procedure for the verification of proofs of origin, an amendment to the EU guidelines concerning the application of the provisions concerning replacement certificates, as well as a discussion on the judgment of the Court of Justice of the EU (CJEU) in Case C-613/12 on the use of replacement movement certificates (see below).

Monitoring preferential trade arrangements

On 26 February 2014, the European Commission published an Action Plan for monitoring the functioning of preferential trade arrangements, aimed at ensuring that duty preferences are only granted to imports genuinely originating in the partner or beneficiary country or region. The Commission is concerned that insufficient monitoring can amount to a 'special situation' under Customs Code provisions allowing remission of duties, even where the proof of origin is found to be incorrect. In the Action Plan, the Commission highlights (and proposes possible remedies to) the weaknesses of the current system such as: too much focus on collecting quantitative information on formalities, rather than ensuring compliance; the absence of periodic reporting on the beneficiary countries' management and controls; and the fact that the EU's Common Risk Management System does not include risk profiles for origin rules.

'Made in' Labelling

EU Member States have again failed to agree on a Council position on the Commission's proposal for a product safety package, which includes a Consumer Safety Regulation with a country of origin marking requirement clause. If the Member States cannot find

agreement on the origin marking issue soon, the product safety package will not get adopted before the end of the current EP's term. Some Member States have apparently suggested that the Commission should withdraw its current proposal and issue a new product safety package draft, which could take two to three years.

EU judgment – replacement movement certificates

On 6 February 2014, the CJEU issued its judgment in Case C-613/12, *Helm Düngemittel GmbH v. Hauptzollamt Krefeld*, concerning use of a replacement movement certificate EUR.1 issued at a time when the goods were no longer under the control of the issuing customs authority. The applicant, Helm Düngemittel GmbH, imported a consignment of fertilisers from Egypt for export to the Netherlands and Germany. The Egyptian customs authorities had issued one movement certificate EUR.1 for the entire consignment. After import into the Netherlands, the applicant obtained a replacement movement certificate EUR.1 in order to dispatch part of the consignment to Germany. However, this replacement movement certificate was issued after the goods had been released for free circulation in Germany, and the German customs authorities claimed that the certificate could therefore not confirm preferential Egyptian origin, as this was contrary to the wording of the relevant Origin Protocol provision under the bilateral agreement between the EU and Egypt.

The CJEU considered that the wording of the relevant EU-Egypt agreement provision indicates that the replacement movement certificate must be issued by the customs authorities either while the relevant goods are under their control 'or as soon as possible after that control has come to an end'. It added that it is for the authorities of the State of exportation (i.e. Egypt in this case) to assess the origin of the goods, and the customs authorities of the EU Member State must respect that assessment. The Court therefore found in favour of the applicant that the preferential origin was confirmed by the movement certificate issued by the Egyptian customs authorities under these circumstances, and that the Egyptian origin of the goods could be proved.

PROCEDURES

AEO – Mutual Recognition Agreements

The Commission has published an amendment to the Customs Code Implementing Provisions as regards the identification of persons in the context of Authorised Economic Operator (AEO) Mutual Recognition Agreements (MRA). This amendment now also requires the identification of the carrier (in addition to the consignor) in the entry summary declaration in order to improve risk analysis, and also further clarifies the use of identification codes.

The Commission has also published a proposal for a Council Decision on accepting a draft EU-China Joint Customs Committee decision establishing an AEO MRA. Negotiations for this MRA were launched in early 2012 and finalised in October 2013. This MRA is considered a key component of the Strategic Framework for EU-China Customs Cooperation.

Provision of intra-EU shipment data

The Irish Revenue Services are reportedly planning to implement, by the third quarter of 2014, a requirement for carriers or their agents to provide information for *all* goods entering or leaving Ireland, both for EU and non-EU goods (i.e. requiring systematic provision of information on goods flows within the EU's internal market). The French Senate has issued a similar proposal to give the French customs authorities the ability to require systematic transmission of data relating to all shipments destined for France, including those already in free circulation within the EU. These developments are seen by businesses as undermining the EU's internal market.

EU judgment - use of sampling results

On 27 February 2014, the CJEU issued its judgment in Case C-571/12, *Greencarrier Freight Services Latvia SIA v. Valsts ieņēmumu dienests*, concerning application of the results of partial examination of goods to identical goods covered by earlier customs declarations. The CJEU found in this case that the EU Customs Code permits the Member State customs authorities to apply the results of a partial examination of goods covered by a customs declaration, carried out by way of sampling, to goods covered by earlier customs declarations, provided those goods are identical, which was for the national referring court to ascertain.

MISCELLANEOUS

Customs enforcement of IPRs – clarifications

A recently-released meeting report of the IPR Enforcement Section of the Customs Code Committee that was held on 11 November 2013 contains clarifications of the scope and the language of the new **Regulation 608/2013** on the customs enforcement of Intellectual Property Rights (IPRs). These clarifications relate to, *inter alia*, the destruction of IPR infringing goods, goods in transit, the definition of “holder of the goods”, the destruction procedure for small consignments, the time limit for the destruction of goods, and the costs of storage.

EU judgment – customs enforcement of IPRs for internet sales

On 6 February 2014, the CJEU issued its judgment in Case C-98/13, *Blomqvist v. Rolex SA*, regarding the application of the EU Regulation on the customs enforcement of IPRs in relation to a private sale over the internet of a counterfeit watch from a non-EU country

(China) to an individual residing in an EU Member State (Denmark). The applicant argued that the counterfeit goods he ordered from a Chinese online sales website should not be destroyed without compensation, since he bought the watch for personal use, and therefore did not breach Danish law on copyright and trademarks, as there was no distribution to the public.

The Court disagreed with the applicant and found that the IPR holder of goods sold to a person residing in the territory of an EU Member State through an online sales website in a non-EU country must also enjoy the protection of the Regulation on the customs enforcement of IPRs when those goods enter the territory of an EU Member State merely by virtue of the acquisition of those goods, even if they have not been subject to advertising.

EP supports customs action on transit goods

On 25 February 2014, the EP adopted a resolution on the Commission's proposal to update EU Trademark legislation that clarifies, among others, the powers of customs authorities with respect to the seizure of counterfeit goods in transit. According to the EP's resolution, customs authorities should be entitled to stop counterfeit goods in transit that are destined to a country outside the EU, provided that the trademark holder can prove that their mark is validly registered in the country of final destination.

The amendment would overturn the CJEU's Philips/Nokia ruling according to which customs authorities can check counterfeiting goods in transit, but can only stop them if there is a risk of these goods entering the EU market.

The EP's resolution will now serve as a basis for trilogue negotiations with the Council and the Commission, with the aim of future adoption of the Trade Mark Package.

WTO Director-General – keep up the Bali momentum

On 6 February 2014, WTO Director-General Azevêdo asked the chair of the WTO Trade Negotiations Committee to start a dialogue with members on Doha Round issues and further urged the Committee to work on the implementation of the Bali package. The Bali package was agreed among WTO members in December 2013 and includes agreements on trade facilitation, agriculture and development.

On 12 February 2014, Azevêdo asked the members of the EP's INTA Committee to help keep up the pressure and the momentum to ensure EU implementation of the Bali package.

EU sanctions against Ukraine

On 20 February 2014, the Council agreed on the principle of imposing restrictive measures against Ukraine, including an asset freeze for Ukrainian parties “*responsible for human rights violation, violence and use of excessive force*”. The EU Member States also agreed to suspend export licences for equipment that might be used for internal repression in Ukraine. While it is currently unclear when details on export licensing suspensions (and possible other sanctions measures) will be adopted, an EU asset freeze list was adopted and published on 6 March 2014.

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