EU Customs Practice Group

October 2014

EU CUSTOMS POLICY

New EU Customs Commissioner calls for "ambitious and intelligent" customs code

The new European Commission took office on 1 November 2014. During his hearing before the European Parliament (EP), the new Economic and Financial Affairs, Taxation and Customs Commissioner Pierre Moscovici stated that he would try to put in place a new "ambitious and intelligent" customs code by May 2016. Moscovici also called for greater cooperation with non-EU countries and between customs and market surveillance authorities.

TARIFFS

Duty suspensions and tariff quotas

a) January 2015 Round

It is expected that the formal proposals for the EU's Duty Suspension and Tariff Quota Regulations that will start to apply on 1 January 2015 will be submitted to the Council in the next few weeks. These proposals are likely to be adopted in December before their entry into force on 1 January 2015.

b) July 2015 Round

The list of applications for duty suspensions and tariff quotas filed for the July 2015 Round has been made available on the Commission's dedicated webpage. As always, these applications will be discussed during three meetings of the Economic Tariff Questions Group (ETQG). The deadline for objections against new applications is 16 December 2014.

c) Corrigendum to existing duty suspensions

In two corrigenda published on 9 October 2014, the EU has removed the end-use controls for existing duty suspensions covering certain PVC copolymer film, ambient light modules for flat TV sets, and electronic compasses for PCB assembly.

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White & Case LLP – Avocats-Advocaten
rue de la Loi, 62 Wetstraat – 1040 Brussels – Belgium
Tel: +32 2 239 26 20 / Fax: +32 2 219 16 26
www.whitecase.com

GSP – Council decides not to object to GSP+ status for the Philippines

The EU Council has announced that it will not object to a Commission proposal for a Regulation to add the Philippines to the EU list of GSP+ beneficiary countries. The GSP+ regime is the special preference regime for Generalised Scheme of Preferences (GSP) beneficiary countries that meet certain criteria related to sustainable development and good governance. Unless the EP objects, the Regulation will therefore enter into force in the near future.

GSP – Commission proposes to maintain duty preferences for Ecuador in 2015

As of 1 January 2015, Ecuador will no longer enjoy GSP (including GSP+) preferences. However, the European Commission has recently proposed a Regulation that would provide for interim reciprocal arrangements as of 1 January 2015, pending the approval and application of the recently negotiated FTA between the EU and Ecuador. Under this proposal, customs duties on products originating in Ecuador would therefore not be increased (provided certain requirements are fulfilled). As a result, the GSP+ preferences would *de facto* be maintained. This proposal is currently being discussed in the EU Council and the EP.

FTA Update

a) Japan

The EU and Japan held their 7th round of FTA negotiations on 20-24 October 2014 in Brussels. Following the negotiation round, the European Commission confirmed that parties held discussions on topics such as tariffs, services and government procurement. Rules of origin, trade facilitation and customs issues will be discussed at informal meetings during the period between the formal negotiating rounds.

The next round of negotiations is scheduled for the second week of December in Tokyo.

b) US

The 7th round of Transatlantic Trade and Investment Partnership (TTIP) negotiations between the EU and US took place between 29 September and 3 October 2014 in the US. Negotiators discussed the regulatory and rules pillars, as well as the services chapter of the Agreement.

c) Singapore

On 17 October 2014, the EU concluded investment negotiations with Singapore. This investment chapter (that is to be added to the EU-Singapore FTA) will now undergo legal scrubbing before negotiations are formally finalised and the FTA enters the ratification process.

On 30 October 2014, the European Commission announced that it will ask for an opinion by the EU Court of Justice on the precise division of competence between the EU level and the Member States to sign and ratify the FTA with Singapore to determine which FTA provisions require national parliament ratification before entry into force.

d) Ukraine

On 31 October 2014, the EU published the Regulation that extended the autonomous trade preferences for products from Ukraine until the end of 2015.

e) ASEAN

On 27 October 2014, the EU-ASEAN Business Council (EUABC) announced its constitution as a new independent body. The aim of this Business Council is to focus European business support for, *inter alia*, the establishment of an EU-ASEAN FTA, for which negotiations have been on hold since March 2009.

f) Russia

In connection with the Asia-Europe Meeting (ASEM) summit that took place on 16 October 2014, Russian Foreign Minister Lavrov expressed support for a free trade area between the EU and the Russian Federation. The European Commission has stated it is open to such discussions, but that certain basic conditions (regarding respect by Russia of its WTO commitments, the EU-Ukraine Association Agreement and Ukraine's sovereignty) would have to be fulfilled.

g) Fiji

On 7 October 2014, the EU announced that the Interim Partnership Agreement between the EU and the Pacific States entered provisionally into force between the EU and Fiji as from 28 July 2014. As a result, new rules of origin and temporary suspension procedures apply since then.

CLASSIFICATION

Common Customs Tariff 2015

On 31 October 2014, the EU published **Commission Implementing Regulation 1101/2014** containing the EU's Common Customs Tariff (CCT) for 2015. As every year, certain new classification codes are introduced, and the product scope for certain existing codes will change (as of 1 January 2015).

Commission publishes amendments to HSENs and to Compendium of Classification Opinions

On 7 October 2014, the European Commission published references to amendments to the Harmonised System Explanatory Notes (HSENs) and the Compendium of Classification Opinions, approved by the Customs Cooperation Council of the World Customs Organisation (WCO). As a result, these amendments are now firmly endorsed at EU level.

Nomenclature Committee Developments

a) HS/WCO Coordination Sector

The report of the 139th meeting of the HS/WCO Coordination Sector of the Customs Code Committee that took place on 10-12 September 2014 reveals that the Committee discussed, *inter alia*, a possible amendment of the ENs to Chapter 41 (leather), the classification of a product called "infant food", the possible amendment of the ENs to heading 25.01 (salt and pure sodium chloride; sea water), heading 38.24 (anti-scaling preparations), and heading 29.11 (peroketals, ketone peroxides), and the classification of seat covers for motor vehicles.

The 142nd meeting of the HS/WCO Coordination Sector will take place on 13-14 November 2014. Discussions on the above mentioned amendment to heading 25.01, heading 29.11 and the classification of seat covers for motor vehicles will continue. The Committee will also discuss the divergent classification of goods under headings 39.21 (other plates, sheets, film, foil and strip, of plastics) and 59.03 (textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902).

EU judgment on the classification of single-use temperature indicators

On 9 October 2014, the Court of Justice of the EU (CJEU) issued its judgment in Case C-541/13, *Douane Advies Bureau Rietveld v Hauptzollamt Hannover*, on the customs classification of two types of single-use temperature indicators. These indicators indicate irreversibly when a specified upper or lower temperature has been reached. They are intended to be affixed to goods (such as vaccines, medicines and chemicals) that are sensitive to variations in temperature to monitor the temperatures during storage or transport.

The CJEU considered the objective characteristics, the properties and the intended use of these products and held that temperature indicators of this kind do not fall within the category of diagnostic reagents of CN heading 3822 ('Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials'). The CJEU also held that the products cannot be considered as laboratory reagents of the same CN heading, as they do not function on the basis of a change in their constituent substances resulting from a reaction with the goods with which the indicators are intended to be used. The German customs authorities had argued in this case that the products should be classified under CN code 3824 90 97 as products of the chemical industry, not elsewhere specified or included, but this argument was not addressed by the Court.

ORIGIN

Origin Committee Developments

The report of the 211th meeting of the Origin Section of the Customs Code Committee, that took place on 20 May 2014, has been made available. During this meeting, the Committee discussed, certain Pan-Euro-Med (PEM) matters, a working document explaining the origin-related aspects of the Regulation granting autonomous tariff preferences to Ukraine, a proposal from Switzerland concerning diagonal cumulation for agricultural products and the origin-related issues that were raised at a meeting of the sub-committee for Industry, Trade and Services established under the EU-Algeria Association Agreement. Member States were also debriefed on origin-related discussions during the EU-Vietnam and EU-Thailand FTA negotiations and EPA negotiations.

As regards GSP, the Committee was informed on certain legislative amendments needed in order to implement the registered exporter system (REX). The Committee also discussed the state-of-play and deployment of the information point regarding the REX system in Norway and Switzerland. Finally, the Committee discussed the determination of origin for bio ethanol, and the provisions relating to binding origin information and non-preferential origin in the Union Customs Code (UCC) implementing act.

The 214th meeting of the Origin Committee took place on 21 October 2014. The agenda for that meeting included discussions on certain PEM matters and a debriefing on origin-related discussions within the EU-Vietnam FTA negotiations. The agenda further featured discussions on a note on the interpretation of Article 27 (concerning verification) of the protocol on rules of origin to the EU-Korea FTA, and a retrospective on the EUR.1 movement certificates issued by Chile as well as the issue of EUR.1 movement certificates for EU exports to New Caledonia. The Committee was also due to discuss the monitoring of the management and administration of rules of origin for preferential arrangements and an amendment to the EU guidelines concerning the application in the EU of the provisions concerning replacement movement certificates or origin certificates.

'Made in' origin labelling

The European Commission is planning to start the drafting process for a new cost-benefit analysis on possible mandatory marking of the country of origin on non-food consumer products (which it proposed in product safety regulations) in the EU very soon. The Commission aims to present this study to the EP and the Council in early 2015.

EU judgment on the rights of the defence as regards proofs of origin

On 23 October 2014, the CJEU issued its judgment in Case C-437/13, *Unitrading Ltd v Staatssecretaris van Financiën*, on the exercise of the rights of defence as regards examinations carried out by a third party (an American laboratory in this case) to assess the origin of a certain product (i.e. fresh garlic bulbs). More specifically, in this case, Dutch customs had relied on the conclusion of a US government laboratory that imported garlic originated from China, rather than Pakistan as stated in the customs declaration (with the result that duties were owed by the UK importer Unitrading). Unitrading challenged the use of the US government laboratory on due process grounds, as the laboratory refused to divulge certain background information to its origin conclusion, citing data access restrictions under US law – thereby making the lab results essentially impossible to verify on appeal. Two related issues were also whether based on the same due process grounds, Dutch customs would need to 1) grant Unitrading's request for an inspection or sampling in the claimed country of origin, and 2) inform Unitrading that there were remaining garlic samples on which a new examination could be made.

The Court held that Article 47 of the Charter of Fundamental Rights of the EU (on the right to an effective remedy and to a fair trial) does not preclude customs authorities' use of origin evidence that is – consistent with national procedural rules – based on the results of an examination carried out by a third party. This is the case even if that third party refuses to disclose further information which makes it difficult or even impossible to verify or disprove the correctness of the conclusions reached, provided that the principles of effectiveness and equivalence are being upheld.

On the two related issues (i.e. on possible follow-up sampling in the claimed country of origin and a duty to inform the importer about remaining samples), the Court held that these must be assessed on the basis of national procedural law.

PROCEDURES

EU judgments on export declarations submitted without an export licence

On 16 October 2014, the CJEU issued two judgments mainly focussing on the use of export declarations and related applications for export refunds when the export licence was not presented with the export declaration, but was presented either at a later date at the agreement of the customs authorities, or issued the day after acceptance of the export declaration.

In Case C-334/13, *Nordex Food A/S v Hauptzollamt Hamburg-Jonas,* the CJEU held that export refunds can be granted where export takes place without presentation of an export licence, provided that the export licence was submitted at the time the export declaration was made and within the period granted for that purpose by the competent customs office. However, on a related issue the Court ruled that where an exporter first presents forged customs documents in order to prove the arrival of the exported goods (save in cases of *force majeure*), that exporter may not subsequently present valid customs documents in the course of the judicial proceedings relating to the export refund (even if the grant of the export refund was delayed for other reasons than those relating to the proof of arrival of those goods). The Court also confirmed that in that case a penalty can be imposed for the use of forged documents even if valid documents have been produced during the judicial proceedings.

In Case C-387/13, *VAEX Varkens-en Veehandel BV v Productschap Vee en Vlees,* the CJEU found that the grant of export refunds and the release of lodged security cannot take place when the exporter did not have a valid licence at the time the export declaration was accepted (i.e. the day before), even though the actual export of the goods took place within the period of validity of the export licence subsequently issued to the exporter. The CJEU did find, however, that the EU rules do not preclude post-clearance regularisation of the export declaration, which would enable payment of the export refund and release of the lodged security.

MISCELLANEOUS

Commission submits draft delegated act to update Dual-Use Regulation

On 22 October 2014, the European Commission submitted a draft delegated act to update Annex I of the EU Dual-Use Regulation, to reflect recent changes in the international control lists on which Annex I is based. The Council and the EP now have two months to object to this draft (but this term can be extended by another two months).

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