

EU Customs Practice Group

March 2014

EU CUSTOMS POLICY

UCC Developments

Discussions between the European Commission and the EU Member States on the draft Union Customs Code Implementing Act (UCC IA) and Delegated Act (UCC DA) took place on 10-14 March 2014. Going forward, these discussions will primarily take place in the General Legislation Sector of the Customs Code Committee (which will ultimately have to vote on the drafts), but experts on particular topics (e.g., origin, valuation, classification) will be involved as well.

A first round of discussions on certain parts of the draft UCC IA and UCC DA between the Commission and the Trade Contact Group (TCG - consisting of representatives from various European business organisations) took place on 17-18 March 2014. The initial TCG discussions on the other parts of the draft are scheduled for May and June 2014.

A second round of TCG consultations will take place in September and November 2014, focussing on remaining issues and the draft Annexes (which are yet to be made available to the TCG). In the pursuit of more transparency, comments by the TCG will be shared with the Member States, and *vice versa*, but the Member State comments will be anonymised.

On 21 March 2014, EU Member States voted in favour of the Commission's draft UCC Work Programme. This Work Programme sets out the timing by which various systems required under the UCC will become operational. The text is expected to be published in the Official Journal in May 2014, after formal adoption by the Commission.

Proposed EU Framework for Customs Infringements and Sanctions

On 3 March 2014, the Committee on Internal Market and Consumer Protection (IMCO) of the European Parliament (EP) voted on a draft resolution regarding the Commission's proposal for a legislative EU framework for customs infringements and sanctions. The Commission's proposal must still be discussed in the EP Plenary session. The relevant Council Working Group was due to discuss the proposal during its meeting of 7 March 2014, and a state of play discussion was also scheduled for 1 April 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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TARIFFS

Duty Suspensions and Tariff Quotas

a) *January 2015 Round*

The deadline for EU Member States to submit eligible applications for tariff quotas and duty suspensions to the European Commission for the January 2015 Round was 15 March 2014. These applications have since been listed on the Commission's special webpage. The first meeting of the Economic Tariff Questions Working Group (ETQG) to discuss the submitted applications will be held by mid-May 2014.

b) *Evaluation of the regime*

On 13 March 2014, a study commissioned by the European Commission to evaluate the EU regime for autonomous duty suspensions was published. This study reveals that the chemicals and electronics sectors make most use of the system, and also provides details on usage per Member State and the key third countries benefiting from the system. The savings for EU processing companies were found to be significant and the scheme is considered effective in increasing the competitiveness of EU manufacturers. Some negative effects were identified, but these were deemed too limited to call into question the overall effectiveness and justification of the regime. The study further recommends that more can and should be done to raise awareness of the regime, in particular also among SMEs, and to increase its transparency.

EU reduces additional customs duties for certain US products

On 26 March 2014, the Commission published **Regulation 303/2014** which amends the rate of additional customs duty on certain products originating in the US. These additional customs duties were originally imposed by **Regulation 673/2006** following the WTO's condemnation of the United States' Continued Dumping and Subsidy Offset Act (CDSOA). These additional duties are adjusted annually by the EU to match the level of nullification or impairment considered caused by the CDSOA.

The Commission found that the level of nullification or impairment for the fiscal year 2013 decreased considerably and therefore amended the additional duty for three products listed in Annex I to **Regulation 673/2005** to 0.35% as from 1 May 2014 (as opposed to an additional duty of 26% imposed last year). These additional duties apply to sweet corn, frames/mountings for spectacles, crane lorries and women's denim trousers/breeches.

FTA Update

a) *Japan*

The 5th round of negotiations between the EU and Japan took place from 31 March to 4 April 2014. The Commission will now prepare a review report evaluating FTA-related progress which will form the basis of discussion with the Council on whether the EU should continue or suspend the negotiations. This report will likely be presented to the EU Member States by the 8 May Foreign Affairs Council meeting focussing on trade issues. It is unclear when the EU decision on whether to suspend the EU-Japan FTA negotiations will be taken; some indicate this may only be in June.

b) *Ukraine*

The political part of the EU-Ukraine Association Agreement (including the related annexes and protocols) was signed on 21 March 2014. The Deep and Comprehensive Free Trade Area (DCFTA), which is part of the Association Agreement, will be signed at a later stage.

On 11 March 2014, the European Commission issued a proposal to unilaterally implement the preferential tariff provisions of the DCFTA as part of immediate support measures for Ukraine. The EP's International Trade (INTA) already backed the Commission's proposal on 20 March 2014 and voted on this proposal at a plenary session on 3 April 2014. The relevant Council Working Group was due to discuss this proposal on 24 March 2014.

c) *US*

The 4th round of negotiations on a Transatlantic Trade and Investment Partnership (TTIP) agreement took place on 10-14 March 2014 in Brussels. Negotiators reported steady progress during discussions on all three pillars of a future agreement – market access, the regulatory cluster and so-called 'rules' issues. The main outstanding issues include food safety standards, government procurement, and investor to state dispute settlement. Special attention was given during this round to ensuring that small and medium-sized enterprises (SMEs) will benefit from a possible agreement.

In the context of the EU-US summit in Brussels on 26 March 2014 featuring President Obama, European Council President Van Rompuy and Commission President Barroso, the Parties reaffirmed their commitment to expeditiously conclude a comprehensive and ambitious TTIP agreement. It is expected that one or two more rounds of negotiations will take place before the summer, but no dates have been confirmed yet for such discussions.

d) Vietnam

The 7th round of EU-Vietnam FTA negotiations was held on 17-21 March 2014 in Hanoi.

During this round, the Parties continued discussing, among other things, the chapters on trade in goods, rules of origin, trade defence, legal issues, transparency, and dispute settlement. The negotiators also focussed on the market access offers exchanged by the Parties and discussions were held to promote possible improvement of offers already exchanged in the areas of services and tariff liberalisation.

On the sidelines of the negotiation round, EU Trade Commissioner Karel De Gucht met with his Vietnamese counterpart for a political stocktaking of the progress made in negotiations so far. Both leaders affirmed their commitment to early conclusion of the negotiations. They hope to conclude negotiations by late 2014, possibly at the Asia-Europe (ASEM) summit scheduled for 16-17 October 2014. Two more negotiation rounds are expected to be held before that time, one in June and one in September.

e) China

On 31 March 2014, European Council President Van Rompuy and Commission President Barroso hosted China's President Xi Jinping in Brussels for the first time; an exchange of views on bilateral, regional and international issues was held. As far as a possible future FTA is concerned, the Parties expressed their willingness to negotiate a deep and comprehensive FTA 'once the conditions are right'. China is now reportedly pushing for the opening of an FTA feasibility study as a next step.

f) Mercosur

EU and Mercosur Chief Negotiators met on 21 March 2014, as indicated in the context of the EU-Brazil Summit in February 2014. During that meeting, parties were expected to define if conditions are met for the exchange of tariff offers within ongoing EU-Mercosur FTA negotiations. However, no progress was seemingly made as Argentina's tariff offer is reportedly considered insufficient for the other Mercosur parties. It has been reported that the EU and Mercosur will meet again in the next few months to hold further discussions.

g) Ecuador

On 24-28 March 2014, the EU and Ecuador held their 2nd round of negotiations on the possible accession of Ecuador to the existing EU-Andean (Colombia and Peru) FTA. The European Commission reported that negotiators made progress in all areas and reduced the number of open issues. However, negotiators still need to find agreement on certain important matters. Ecuador's

Foreign Trade Minister expects to conclude negotiations with the EU already during the first half of 2014, and then to sign the FTA in 2015.

h) New Zealand

On 25 March 2014, the EU and New Zealand announced their commitment to conclude a new Partnership Agreement on Relations and Cooperation. Parties also agreed to reflect on the possible opening of trade and investment negotiations. A stocktaking meeting between the EU and New Zealand to be held in 2015 is expected to decide on the next steps.

i) West Africa

A few days before the EU-Africa summit of 2 April 2014, it was reported that West African leaders had again failed to agree to an Economic Partnership Agreement (EPA) with the EU. Nigeria reportedly voiced concern over the potential negative effects of duty elimination on its industrial sector. The West African countries have apparently agreed on a 2-month deadline to find a solution on outstanding issues.

j) Mexico

The EP's INTA Committee held an exchange of views with Mexico's Ambassador on 20 March 2014. During these discussions, it was reported that the EU and Mexico agreed in early March to start a scoping exercise on the modernisation of their existing FTA. The Parties will also prepare a Joint Vision report.

k) Korea

If the EP gives its consent during the April Plenary session, it is expected that the Additional Protocol to the existing EU-Korea FTA to take account the recent EU accession of Croatia will be provisionally applied by the end of April. This protocol is expected to have retroactive effect from 1 July 2013, and should allow import duties paid on Croatian products upon import into South Korea to be refunded.

CLASSIFICATION

Classification Regulations

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

- **Commission Implementing Regulation 310/2014** – classifying a colour monitor of the LCD type for use with automatic data-processing (ADP) machines, under Combined Nomenclature (CN) code 8528 51 00 as other 'monitors of a kind solely or principally used in an automatic data-processing system of heading 8471'.

- **Commission Implementing Regulation 311/2014** – classifying two types of sound reproducing machines. The first type – intended to be used for sound reproducing and editing in a non-professional environment – is classified under CN code 8519 81 35 as ‘other sound recording or sound reproducing apparatus with laser reading system’. The second type – intended to be used by professional disc-jockeys for reproducing, editing and mixing sound (a ‘disc jockey multi player’) – is classified under CN code 8543 70 90 as ‘other machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85’.

CNEN for homogenised composite food preparations

On 7 March 2014, the EU replaced the CN Explanatory Note (CNEN) for homogenised composite food preparations in CN subheading 2104 20 00, to clarify the definition of these products.

Nomenclature Committee Developments

a) HS/WCO Coordination Sector

The report of the 128th meeting of the Tariff and Statistical Nomenclature Committee’s HS/WCO Coordination Sector of 19-21 February 2014 has been made available. The Committee pre-coordinated the 53rd meeting of the HS Committee, and discussed the classification of leather (Chapter 41) and a maize flour snack, as well as possible misalignment of HSEs to Chapters 3 and 5.

b) CN Sector

The 130th meeting of the CN Sector of the Nomenclature Committee took place on 4 March 2014. During this meeting, the Committee examined the first draft of the 2015 CN, the draft CNENs 2014, the possible creation of new CN codes for lubricants, succinic acid and 1, 4-butandiol, a proposal to modify the text of CN codes 2204 21 46 and 2204 29 46 for certain wines, the possible creation of CN codes for certain cheeses in Chapter 4 and for phosphonates in Chapter 29, and a draft proposal to amend the CN and the CNENs for products of subheading 3824 90 (other prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products)).

c) Agriculture/Chemistry

The 131st meeting of the Agriculture/Chemistry Sub-Section of the Nomenclature Committee took place on 5-7 March 2014. The Committee discussed a draft Regulation amending **Regulation 900/2008** laying down the methods of analysis and other technical provisions necessary for the application of the arrangements for imports of certain goods resulting from processing of agricultural products.

Favourable opinions were delivered on new ‘Additional Notes’ the Chapters 3, 4, 13, 17, and 21. The Committee concluded examinations regarding the creation of new CN codes in subheading 3824 90 and a revised draft for the creation of new CN codes for lubricants, succinic acid and 1, 4-butandiol (both referred to above as well). It also concluded on the tariff classification of ‘tobacco refuse’, glucosamine, and eye wash products. The Committee also examined the classification of mixtures of cyclopentane and isopentane, orange oil and the interpretation of the CNEN to heading 3301 (essential oils), the possible amendment of an Additional Note to Chapter 27 (Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes), and the possible republication of the refractometric method of revoked **Commission Regulation 558/93**.

d) Textiles

The report of the 127th meeting of the Textiles Sub-Section of the Nomenclature, held on 18 February 2014, shows that the Committee failed to deliver an opinion on draft Classification Regulations for cat scratchers and pet baskets. It further discussed the classification of pillow pumps, snow chains, and sanitary towels, and the Commission briefed the Member States on a recent Court judgment on footwear (reported in our previous newsletter).

ORIGIN

Origin Committee Developments

The report of the 209th meeting of the Origin Committee (held on 19-20 December 2013) has been made available. During this meeting, the Committee discussed certain Pan-Euro-Med (PEM) matters and debriefed the Committee on FTA negotiations with, *inter alia*, Moldova and Georgia, the Southern African Development Community (SADC), Vietnam, and Thailand. There was also a discussion on the November 2013 meeting of the second Customs Committee set up under the EU-Korea FTA. The Commission further explained a proposal from Switzerland on diagonal cumulation for agricultural products. The Committee also discussed the modification of certain Customs Code Implementing Provisions to distinguish proofs of origin issued or made out under a DCFTA or Autonomous Trade Measures (ATM) in a single partner/beneficiary country; various matters relating to the EU-Turkey Customs Union; a Commission working document on direct transport/non-alteration and conditions for making out a proof of origin; the issue of replacement certificates; and a Commission working document regarding repetitive subsequent verification requests by partner countries. The Commission further announced a survey for economic operators to report problems concerning the acceptance of origin/invoice declarations by third country authorities.

In the area of the EU's Generalised Scheme of Preferences (GSP), the Committee discussed certain aspects of transition to the new EU GSP regime in 2014; a request by Cambodia for a transitional period in implementing new Everything But Arms (EBA) rules on ASEAN cumulation for the period 2014-2023; and the Agreement between the EU, Switzerland and Norway on treatment of products originating in countries benefiting from GSP of the EU, Switzerland, Norway or Turkey. The Committee also discussed the legislative amendments needed in order to implement the registered exporter system (REX), and approved exporter guidelines. Finally, the Commission explained the non-preferential origin rules for, *inter alia*, aluminium road wheels and solar panels.

PROCEDURES

EU judgment – Admissibility of legal proceedings

On 13 March 2014, the Court of Justice of the EU (CJEU) issued its judgment in Cases C-29/13 and C-30/13, *Global Trans Lodzhistik OOD v. Nachalnik na Mitnitsa Stolichna*. These cases concerned the admissibility of legal proceedings challenging decisions ordering tax adjustment following a reassessment of the customs value by the Bulgarian customs authorities. The main question was whether a prior administrative review before the customs authorities must take place prior to challenges of decisions by the customs authorities before the administrative court.

The CJEU found that the EU Customs Code does not provide that judicial proceedings are only admissible if remedies at the administrative level have been exhausted first, and confirmed that the customs authorities' decision should be regarded as final and capable of being challenged at the judicial level, even if the decision was adopted in breach of the right to be heard and the right to raise objections. The CJEU held that it is for the national court itself to decide whether it refers the matter back to the administrative level, or proceed with a ruling.

EU judgment – Transfer of rights/import licences

On 13 March 2014, the CJEU issued its judgment in Case C-155/13, *SICES and others v. Agenzia Dogane Ufficio delle Dogane di Venezia*, regarding the import of garlic under a tariff quota by certain importers holding special licences. In this case, the goods were sold by an EU operator to an EU importer (who held a special 'A' licence) before they were imported into the EU, and they were resold after release for free circulation in the EU by that importer to the same operator. The customs authorities considered that these two successive sales were organised by the operator (whose own licence had been exhausted) purely to circumvent the prohibition against transfer of rights under the licence system.

The CJEU held that the relevant regulation granting import licences did not, *per se*, prohibit transactions through which importers holding import licences purchase goods outside the EU from an operator and then resell those goods to the same operator after importation, but did agree that where such sales were artificially created to benefit from the duty exemption, they constitute an abuse of rights. It was for the referring court to determine if this was the case.

MISCELLANEOUS

Enforcement of IPRs in third countries

On 10 March 2014, the European Commission launched a consultation aimed at gathering information from EU entities on the protection and enforcement of their Intellectual Property Rights (IPRs) in third countries. The findings will be used to assess the situation in various third countries and ultimately in negotiations with these countries. The consultations close on 10 June 2014.

Commission e-Learning Course on IPRs

In March 2014, the European Commission made available on its website an electronic learning course on IPRs, including on their enforcement by customs following the entry into force of **Regulation 608/2013**.

European Commission Trade and Investment Barriers Report

On 12 March 2014, the European Commission published its 2014 Trade and Investment Barriers Report, describing key barriers faced by European companies in third countries such as China, India, Japan, Mercosur, Russia and the US. The report describes progress achieved in reducing/eliminating barriers identified in previous annual reports and analyses a number of new measures of serious concern. The report notes that a significant number of barriers relate to local content requirements, often used by emerging countries (notably China, India and Brazil).

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