

## EU Customs Developments

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## EU Customs Policy

### Union Customs Code Developments

The minutes of the 13 May 2016 meeting between the European Commission and Member State experts, summarising the discussion on various amendments and corrections to the Union Customs Code ('UCC') Implementing Act, have been made available. Comments made by Member States during this meeting will be taken into account by the Commission in the draft amending act. The Commission may also consider further modifications to the UCC Implementing Act, but has emphasised they would only involve corrections, rather than new approaches to policy questions.

### Customs Infringements and Sanctions

On 13-14 June 2016, the European Parliament's (EP's) Internal Market and Consumer Protection (IMCO) Committee had a further exchange of views on the draft EU Directive for customs infringements and sanctions. The proposed Directive sets out a uniform EU-wide legal framework for Member State treatment of customs law violations and related sanctions. The discussion in the IMCO Committee focused on potential compromise amendments to the draft legislative report. IMCO decided to postpone its vote on the dossier in order to allow it to come up with an acceptable solution for all the different political groups in the EP.

## Tariffs

### Duty Suspensions and Tariff Quotas

#### *a) July 2016 round*

On 30 June 2016, the EU published the Regulations with Duty Suspension (DS) and Tariff Quota (TQ) updates. These two regulations took effect on **1 July 2016**. Under **Council Regulation 2016/1051**, 140 new DS have been introduced, 46 existing DS have been amended and 6 DS have been eliminated. **Council Regulation 2016/1050** introduced 9 new TQs, amended 4 TQs and ended 1 TQ.

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### *b) January 2017 round*

The third round of discussions in the Economic Tariff Questions Group (ETQG) on applications made for the **January 2017** round took place in **mid-July 2016**. Almost 250 DS and 38 TQ files are under discussion. The Commission will prepare its formal proposals for the future update of the DS and TQ Regulations in the **Autumn**.

### *c) July 2017 round*

Member States will need to forward eligible applications for the **July 2017** round to the European Commission by **15 September 2016**.

## **ITA-II Agreement and First Round of Tariff Reductions**

On 17 June 2016, the EU Council concluded the expansion of the WTO Information Technology Agreement ("ITA-II"). Prior to that, the EP backed the EU's ratification of the ITA-II on 8 June 2016. ITA-II foresees elimination of customs duties for 201 IT products over a **three-year period** ending on **1 July 2019**.

The EU published the Regulation implementing the first round of ITA-II tariff reductions on 29 June 2016. These tariff reductions applied as of **1 July 2016**.

## **Environmental Goods Agreement**

On 2 June 2016, the EU and the United States, Canada, Japan, South Korea, Australia and New Zealand discussed progress made in the WTO negotiations on an Environmental Goods Agreement (EGA). 13 negotiation rounds have been held to date, and negotiators aim to conclude negotiations before the G20 summit to be held in China on **4-5 September 2016**.

China has further signalled its willingness to re-engage on EGA negotiations ahead of the G-20 summit. China was scheduled to submit its offer on product coverage at a technical negotiating session in late June 2016, and it was reported that constructive discussions were held at that time.

## **Calls for Plurilateral Agreement on Trade in Chemical Products**

During a meeting with WTO Director-General Azevedo, international business groups called for a debate during the **December 2017** WTO Ministerial Conference on a plurilateral agreement to eliminate tariffs on trade in chemical products. The EU, US and China have already expressed their support for eliminating tariffs in this sector.

## **EU FTA Update**

### *a) Brexit*

Following the UK's Brexit referendum on 23 June 2016, EU Trade Commissioner Malmström issued a statement confirming that all EU trade negotiations at bilateral, plurilateral and multilateral levels will continue.

The UK continues to be an EU Member State for now, but it will no longer benefit from the EU's FTAs if it ceases to be an EU Member State in the future (i.e. if the UK's potential withdrawal agreement enters into force).

It is also expected that Brexit-related developments could potentially delay certain on-going EU FTA negotiations and change the dynamics of other planned negotiations. It has, for example, been reported that Australia might pursue an FTA with the UK before it does so with the EU (see below).

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## *b) Canada*

As expected, the European Commission presented its ratification proposal for the EU-Canada Comprehensive Economic Trade Agreement (CETA) on **5 July 2016**. After some pressure from various Member States, the Commission decided to propose CETA as a so-called 'mixed agreement'. Consequently, it will not only be the case that the EU Council and EP must approve the agreement as part of EU ratification procedures. The Parliaments of all 28 EU Member States will also need to approve certain CETA parts that are considered under Member State competence before such parts can enter into force.

Parties aim to sign the agreement during the next EU-Canada summit, which is scheduled to take place in **October 2016**.

## *c) United States*

The new Slovak Presidency of the EU Council (as of 1 July 2016) expressed its commitment to conclude TTIP negotiations **this year**.

Following the Brexit referendum outcome, EU Trade Commissioner Malmström confirmed during a speech in Washington D.C. on 29 June 2016 that the rationale for a TTIP agreement remains strong with or without the UK, and negotiations are continuing with the aim of concluding during the current Obama administration.

Meanwhile, US Trade Representative Froman has reportedly stated that the EU will need to show creativity and leadership to complete TTIP negotiations this year. Froman has further confirmed that the US is not considering negotiating a separate FTA with the UK.

## *d) Japan*

The Slovak Presidency affirmed the EU's commitment to finalise EU-Japan FTA negotiations **this year**. The future Foreign Affairs Council to focus on trade issues, which is currently scheduled for **11 November 2016**, will discuss the state of play of the EU-Japan FTA negotiations.

## *e) South Korea*

The South Korean government has reportedly stated it will review the EU-South Korea FTA following Brexit, and also consider signing another bilateral free trade agreement with the UK.

## *f) Vietnam*

The EU delegation to Vietnam has released a detailed guide with information to businesses about all the areas covered by the EU-Vietnam FTA. Negotiations on an EU-Vietnam FTA were concluded in December 2015. The Commission has indicated to the EP that it expects to present the FTA text to the other EU institutions by **mid-2017**.

## *g) Mercosur*

On 22-23 June 2016, the EU and Mercosur took stock of the FTA negotiations and made preparations for the resumption of negotiating rounds in the **second half of 2016**.

Meanwhile, a deputy of the EP delegation to Mercosur has reportedly sent an open letter to EU High Representative Mogherini, asking to halt the FTA negotiations with Mercosur due to the current political situation in Brazil.

## *h) Mexico*

On 13-14 June 2016, the EU and Mexico held a first round of negotiations on the modernisation of the trade pillar in the EU-Mexico Economic Partnership, Political Coordination and Cooperation Agreement. During this round, the parties discussed work methods and organisation, and held a first exchange on the content of a modernised agreement. They agreed to continue informal talks to prepare for the second negotiating round that is expected to take place in the **Autumn of 2016**.

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### *i) Chile*

On 30 May 2016, the EP published a report analysing the prospects of updating the trade pillar of the EU-Chile Association Agreement. The report concludes that the Agreement could be improved compared to more recent EU FTAs, and recommends modelling an updated agreement on trade deals such as CETA and TTIP.

On 9 June 2016, the Commission launched a public consultation on possible modernisation of the trade part of the EU-Chile Association Agreement. The consultation will be open until **31 August 2016**. The results of the consultation will feed into the impact assessment that is currently being prepared on the topic.

### *j) New Zealand*

During the first week of June 2016, New Zealand's Trade Minister McClay reportedly made a visit to gather support for an FTA with the EU. The EU and New Zealand agreed to start FTA negotiations in October 2015, but there has not been much movement since then. While there have been assurances by relevant officials that New Zealand will not be adversely affected as a result of the Brexit vote, it is unclear at this stage what effect Brexit may have on the launch of EU FTA talks.

### *k) Australia*

It has been announced that the EU and Australia will launch a Leadership Forum to broaden the bilateral trade relationship between the two parties ahead of bilateral FTA negotiations. The forum will run from **June 2016 – June 2019**. The effect of Brexit on the actual launch of bilateral FTA negotiations is currently unclear, but there have been reports that Australia might now consider an FTA with the UK first.

### *l) EPA Countries*

On 10 June 2016, the EU and six countries of the Southern African Development Community (SADC) signed an Economic Partnership Agreement (EPA). The EPA guarantees Botswana, Lesotho, Mozambique, Namibia, and Swaziland duty-free, quota-free access to the EU market. South Africa will benefit from enhanced market access, going beyond its existing bilateral arrangement with the EU. The SADC markets will open gradually and partially to EU exports, in an asymmetric manner.

### *m) Moldova and Georgia*

On 18 June 2016, the EU announced that the Association Agreements – which include a Deep and Comprehensive Free Trade Area (DCFTA) – between the EU and Moldova and Georgia would enter into force on **1 July 2016**.

## Classification

### **Court Judgment on Anti-Radiation Protective Coats**

On 9 June 2016, the Court of Justice of the EU (CJEU) delivered its judgment in Case C-288/15 (*Medical Imaging Systems GmbH (MIS) v. Hauptzollamt München*) on the classification of anti-radiation protective apron-coats consisting primarily of antimony. The question raised before the Court was whether such coats should be classified under Combined Nomenclature (CN) code 6211 33 10 covering industrial and occupational clothing (carrying a higher duty), or under CN code 8110 90 00 for antimony and articles thereof.

The Court referred to General Rule of Interpretation (GRI) 3(a), which gives preference to the tariff heading with the most specific description and found that heading 6211 should be considered the more specific heading for classification of the product. The Court concluded that it is not necessary to refer to a component, but rather that classification should be based on the product's objective characteristics and properties, including its external appearance. Therefore, the product should be classified under subheading 6211 33 10.

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## Classification Regulations

Since our previous newsletter, the following EU Classification Regulations have been published:

- **Commission Implementing Regulation 2016/933** classifies a banana-scented yellow powder, put up for retail sale and intended to be mixed with beverages, under CN code 2106 90 92 as other food preparations containing no milkfats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milkfat, 5 % sucrose or isoglucose, 5 % glucose or starch.
- **Commission Implementing Regulation 2016/934** classifies a product presented as a set for retail sale of three pens and a cut-out with six stickers under CN code 4911 91 00 as printed or illustrated pictures, designs and photographs.
- **Commission Implementing Regulation 2016/935** classifies a type of PET film roll used as a raw material source to manufacture an aluminium pigment under CN code 7616 99 90 as other articles of aluminium.
- **Commission Implementing Regulation 2016/936** classifies gelatine capsules that are put up for retail sale and soothe stomach pain and prevent bloating and flatulence, presented with a recommended daily dose, under CN code 3004 90 00 as medicaments put up in measured doses for retail sale.
- **Commission Implementing Regulation 2016/996** classifies a powder consisting of dried leaves of the moringa tree that is used as an ingredient in foods, to prepare teas or as a food supplement under CN code 1212 99 95 as other vegetable products used primarily for human consumption.

### EU amends Explanatory Note for Printed Circuits and Cameras

On 15 June 2016, the Commission replaced the existing CN Explanatory Note (CNEN) for tariff subheading 8536 69 30 (relating to plugs and sockets for printed circuits), and deleted the CNEN for subheading 8536 69 90. The new CNEN clarifies the subheading scope and provides examples of products that are included or excluded from it.

The Commission also replaced the CNENs clarifying the scope of, and highlighting the differences between, the subheadings for digital cameras (CN code 8525 80 30) and video camera recorders (CN codes 8525 80 91 and 8525 80 99).

### EU amends Explanatory Note for certain sauces

On 15 June 2016, the Commission amended the CNEN for heading 2103 ('sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard') to clarify the scope of the heading with respect to sweet sauces that can be used as dessert sauces or toppings.

### EU amends Explanatory Notes with respect to seed husks and mucilages and thickeners

Also on 15 June 2016, the Commission amended the CNENs for subheading 1211 90 86 and 1302 39 00 as regards the classification of seed husks of Psyllium. It also inserted a CNEN for subheadings 1302 31 00 and 1302 39 00 for mucilages and thickeners as regards fulfilment of the criteria for heading 1302, by swelling or dissolving the product.

### EU amends Explanatory Note for blanched vegetables

The Commission has also amended the EN to Chapter 7 ('edible vegetables and certain roots and tubers') with respect to the blanching of vegetables.

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## Nomenclature Committee Developments

### a) CN Sector

The agenda for the 171<sup>st</sup> meeting of the CN Sector of the Tariff and Nomenclature Section of the Customs Code Committee (Nomenclature Committee) (scheduled for **19 July 2016**) reveals that the Commission and national experts will discuss, *inter alia*, the classification of blind rivet nuts (under heading 7318), the CN 2017 (including amendments resulting from ITA-II), and amendments to the CN to reflect the outcome of the Article XXIV negotiations between the EU and China following Croatia's accession to the EU.

## Origin

### Amendment of EU-Jordan Rules of Origin

On 16 June 2016, the Commission submitted to the EU Council a proposal for a Decision amending the rules of origin protocol and the methods of administrative cooperation in the Association Agreement between the EU and Jordan. The aim of this amendment is to temporarily relax the origin rules under the Agreement to take into account the Syrian crisis and to support the region.

## Procedures

### Special Procedures Section

The Commission has published the report of the 49<sup>th</sup> meeting of the Special Procedures Section of the Customs Code Committee that took place on 22 April 2016. During that meeting, the Committee examined whether the economic conditions were met with respect to an authorisation for Processing under Customs Control (PCC) for solar glass into solar panels. The Committee concluded that the economic conditions were not fulfilled anymore and the relevant Member State must therefore revoke existing PCC authorisation as from **1 July 2016**.

The Committee found that the economic conditions for the processing under customs control of extra high quality (EHQ) Grain Oriented Electrical Steel (GOES) into EHQ GOES coils were met. Consequently, Member States may grant an authorisation for PCC (subject to certain conditions). The Committee further continued its discussion on the rules of procedure and voting process to be used in economic conditions examinations under the UCC.

### EU-EFTA Common Transit Procedure

On 31 May 2016, the EU published a Decision of the EU-EFTA Joint Committee on Common Transit amending the Convention on a Common Transit Procedure between the EU, Iceland, Norway and Switzerland. The purpose of this amendment is to align the subject procedure with the EU transit procedure in the UCC.

## Miscellaneous

### EU Political Agreement on Conflict Minerals

On 15 June 2016, the EU institutions reached a political agreement on a future Regulation on trade in so-called 'conflict minerals' (i.e. tin, tungsten, tantalum and gold).

The new EU framework provides for a mandatory certification system for importers, smelters and refiners, and voluntary reporting on sourcing practices by bigger EU manufacturers and sellers. The institutions still need to agree on the precise details of the future EU Regulation. They aim to conclude informal negotiations in the **Summer**, and to finalise the legislative text after that.

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## EU Report on Customs Cooperation with Eastern Neighbouring Countries

On 14 June 2016, the Commission issued a progress report on the EU's customs relations with Eastern Neighbouring Countries, including Georgia, Moldova, Ukraine, Belarus, Russia, Armenia, and Azerbaijan. In the report, the Commission finds that customs cooperation with the Eastern Partnership countries, in particular with Ukraine, Georgia and Moldova, intensified. Customs cooperation with Russia, Belarus and the Eurasian Economic Union on the other hand was limited.

## New EU-China Strategy

On 22 June 2016, EU High Representative Mogherini and the Commission adopted a joint Communication on the EU's relationship with China for the **next five years**. The Communication stresses the importance of concluding a comprehensive investment agreement with China, and refers to the possibility of an FTA with China once the investment agreement is concluded and China has implemented certain reforms. The strategy also highlights the need for swift adoption of the EU's proposed modernisation of its trade defence instruments. This communication will now be presented to the EU Council and the EP.

## New EU-Myanmar Strategy

Mogherini and the Commission have also presented a joint Communication on the EU's strategy vis-à-vis Myanmar/Burma. The document confirms that the EU is working towards concluding an Investment Protection Agreement with Myanmar. The Communication further states that the EU will enhance its engagement in trade and private sector development in Burma/Myanmar. This is to strengthen capacities with regard to value chains, trade reform, trade facilitation and promotion and export quality management.

## EU Renews Sanctions for Crimea/Sevastopol and Syria

On 20 June 2016, the EU renewed its sanctions against Crimea and Sevastopol until **23 June 2017**. The EU sanctions prohibit, *inter alia*, EU import of goods originating in Crimea or Sevastopol and supply of a broad range of equipment and technology to the two regions.

The EU has also renewed its sanctions against Syria until **1 June 2017**. These sanctions include restrictions on exports of equipment and technology that may be used for internal repression or for monitoring/interception of internet/telephone communications.

## Annual EU Report on Trade and Investment Barriers and Protectionist Trends

On 20 June 2016, the Commission released a report providing an overview of deemed protectionist tendencies in EU's trade partners for the period 1 July 2014 – 31 December 2015. The Report states that 201 new potentially trade restrictive measures have been introduced during the reference period, and only 16 previously imposed measures were withdrawn. The Report further finds that around 70 trade-facilitating measures that potentially improve trade or investment conditions were identified during the same period.

## INTA Report on EU 'Trade for All' Strategy

On 16 June 2016, the EP's International Trade (INTA) Committee approved a report on the Commission's "Trade for All Strategy" that was presented in October 2015. In the report, INTA finds that the Commission's strategy is excessively focussed on trade in services, and recommends priority on FTA negotiations with Australia, New Zealand and Mercosur in the coming years. The INTA report further says the EU Council should seek an opinion from the EP when drafting a negotiating mandate for the Commission. This report was also discussed during the EP Plenary Session of **4-7 July 2016**.

## Trade in Torture Equipment

The EU institutions have concluded so-called 'trilogue' negotiations on an update to the EU's Anti-Torture Regulation. The aim of this future EU Regulation is to reinforce the EU's export control regime that applies to torture equipment by strengthening controls on transit and advertising. The update also aims to extend the fast-track procedure which should enable a swifter update of the lists of controlled and prohibited products.

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## **OLAF Annual Report**

On 31 May 2016, the EU's anti-fraud office, OLAF, presented its 2015 annual report. This report shows that following investigations in the customs and trade area last year, OLAF recommended recovery of EUR 97.8 million.

## **Malmström on Trade and Sustainable Development**

During the 10<sup>th</sup> edition of the European Development Days held on 15 June 2016, EU Trade Commissioner Malmström commented on implementation of the UN 2030 Agenda for Sustainable Development and the link between development and trade. Malmström stated that a new generation of trade agreements will be incorporated into the EU's development aid. During the event, EU High Representative Mogherini further underlined the importance of trade on development.

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