

EU Customs Practice Group

July 2013

EU POLICY

Recast MCC/UCC Developments

In July, the Council's lawyer linguists continued their legal scrubbing of the UCC compromise text agreed by the negotiators of the Council and the European Parliament (EP) in April 2013. The next step should be formal adoption in the EP Plenary in September and by the Council in October.

Customs 2020 programme endorsed

On 17 July 2013, the EU Council's Committee of Permanent Representatives (COREPER) endorsed a compromise reached by the negotiators of the Council and the EP in late June on the EU's "Customs 2020 programme". This programme should increase customs cooperation between Member States, and allow the development of EU-wide IT systems for customs during the years 2014-2020, which will of key importance in light of the adoption of the UCC.

TARIFFS

Update on duty suspensions/tariff quotas

(a) January 2014 Round

The third meeting of the Economic Tariff Questions Group (ETQG) discussing the January 2014 Round took place on 10-12 July 2013. A formal proposal should as always be submitted to the Council in the Autumn, for adoption in December 2013.

(b) July 2014 Round

The July 2014 Round will soon start. The Member States' deadline to submit eligible applications received from applicants to the European Commission is 15 September 2013. After that date, information on the pending applications will be posted on the Commission's dedicated webpage.

Proposed tariff suspension for Flat Panel Displays

The European Commission's pending proposal to create a special autonomous suspension for certain flat-panel displays (FPDs) was discussed in the Council's Working Party on Customs Union on 18 July 2013, and will be escalated to the political level (COREPER) after the Summer. In parallel, the discussions on draft classification regulations for various monitors have in the meantime (June) started in the Nomenclature Committee (see below).

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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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EU reinstates GSP preferences for Burma/Myanmar

On 29 June 2013, the EU published **Regulation 607/2013** repealing the 1997 Regulation which suspended benefits for Burma/Myanmar. This means that Burma/Myanmar now has access to the so-called 'Everything But Arms' (EBA) GSP regime after it was suspended from GSP benefits almost two decades ago. Burma/Myanmar enjoys duty-free and quota-free access to the EU market for all products except for arms and ammunition with retroactive effect, as of 13 June 2012. That was the day on which the International Labour Organisation (ILO) lifted some of its restrictions on Burma/Myanmar.

EU tariff quotas for agricultural products originating in Colombia

On 31 July 2013, the European Commission published a regulation formally opening the tariff quotas for certain agricultural products originating in Colombia, as foreseen in the tariff elimination schedule of the EU under the free trade agreement concluded between the EU on the one hand and Colombia and Peru on the other. This publication took place on the eve of the provisional application of the FTA with respect to Colombia (see FTA update below). The eight tariff quotas concern certain agricultural and processed agricultural products.

EU GSP – Bangladesh

On 8 July 2013, a "Global Sustainability Pact" was concluded between the European Commission, the ILO and Bangladesh to improve labour rights. This initiative is a follow-up to the Dhaka factory collapse and EU threats to suspend GSP benefits (reported in our May Newsletter). EU Trade Commissioner, De Gucht, has again stated that Bangladesh cannot take for granted the trade preferences it currently enjoys. In 2014, progress will be assessed.

EU-FTA Update

(a) EU-US

The first round of negotiations between the EU and the US on the Transatlantic Trade and Investment Partnership (TTIP) were held on 8-12 July 2013 and covered all the major areas that may be addressed during negotiations. Initial thoughts were also shared on how to approach the negotiations.

The second round of negotiations will take place in October, followed by a third round before the end of the year.

(b) EU-Vietnam

During the week of 2-5 July 2013, the EU and Vietnam held their fourth round of negotiations on a Free Trade Agreement in Brussels. The two sides exchanged initial tariff offers. The next round will take place before the end of 2013 in Vietnam.

(c) EU-Colombia

On 26 July 2013, the EU announced that the FTA concluded between the EU and Colombia/Peru will provisionally enter into force with respect to Colombia as from 1 August 2013. The FTA has applied provisionally for Peru since 1 March 2013.

(d) EU-Central America

On 31 July 2013, the EU announced that the trade provisions of the Association Agreement concluded between the EU and Central America will apply provisionally between the EU and Nicaragua, Panama, and Honduras as from 1 August 2013. This is not yet the case for the other Central American countries that are parties to the Association Agreement (Guatemala, El Salvador, and Costa Rica).

(e) EU-Georgia

On 22 July 2013, the European Commission announced that the EU and Georgia have concluded their negotiations on a Deep and Comprehensive Free Trade Area (DCFTA) as part of a broader EU-Georgia Association Agreement that will be signed by the Parties after the completion of internal procedures. Current EU-Georgia trade relations are governed by a less comprehensive Partnership and Cooperation Agreement, which took effect in 1999, and Georgia also has GSP Plus status.

(f) EU-Armenia

On 24 July 2013, the EU and the Republic of Armenia concluded a DCFTA as part of the EU-Armenia Association Agreement. Political confirmation is expected in November in the context of the Eastern Partnership Summit in Vilnius. At present, Armenia has access to preferences under its GSP Plus status.

CLASSIFICATION

New Classification Regulations

In July 2013, the following relevant EU Classification Regulations were published:

- **Commission Implementing Regulation 641/2013** – classifying two so-called 'fireside companion sets', under CN code 8205 51 00 as household tools.
- **Commission Implementing Regulation 699/2013** – classifying two types of cat litter sold to consumers, under CN code 3824 90 97 as chemical products and preparations of the chemical or allied industries, not elsewhere specified or included.
- **Commission Implementing Regulation 704/2013** – classifying three components for the electronic control system of motor vehicles, under CN code 8537 10 99 as other boards, panels, consoles, desks cabinets and other bases for electrical control

for a voltage not exceeding 1000 V. The three components are a so-called 'body control module' which controls various devices in the vehicle based on signals from buttons and sensors; a so-called 'automatic transmission' (ATM) which controls the engagement of the appropriate gear of the automatic vehicle transmission; and a so-called 'smart key' which controls various vehicle devices based on signals, including locking or unlocking of vehicle doors and starting up the engine.

- **Commission Implementing Regulation 705/2013** – classifying a so-called 'aircraft passenger handset' (designed to be installed into the passenger seat of an aircraft), under CN code 8537 10 99 as other boards, panels, consoles, desks, cabinets and other bases for electric control for a voltage not exceeding 1000 V.
- **Commission Implementing Regulation 706/2013** – classifying a control unit for incorporation into a washing machine consisting of a printed circuit assembly containing integrated circuits, passive elements, active elements and a heat sink, under CN code 8537 10 91 as programmable memory controllers for a voltage not exceeding 1000 V.
- **Commission Implementing Regulation 707/2013** – classifying non-alloy steel-welded pipes of circular cross-section with grooves at both ends, intended to be used as pipes in sprinkler systems as other welded pipes of non-alloy steel, under CN code 7306 30 77.
- **Commission Implementing Regulation 708/2013** – classifying a so-called 'LED strip' (comprising light-emitting diodes, transistors, resistors and protection diodes) which provides light when supplied with electrical current and is designed to be used, for example, in furniture, under CN code 9405 40 99 as other lighting fittings.
- **Commission Implementing Regulation 709/2013** – classifying an exhaust gas temperature sensor, under CN code 8533 21 00 as other fixed resistors for a power handling capacity not exceeding 20 W.
- **Commission Implementing Regulation 710/2013** – classifying a so-called 'Traffic Message Channel' (TMC) receiver, under CN code 8517 69 39 as other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired- or wireless network.

- **Commission Implementing Regulation 711/2013** – classifying an un-assembled plastic toy figurine which represents a wizard from a comic book series and forms parts of a collection together with other characters, under CN code 9503 00 95 as other toys of plastics.
- **Commission Implementing Regulation 722/2013** – classifying a wheel comprising of a plastic rim and a solid plastic tyre that can be mounted on various articles such as carriages for disabled persons, walkers/rollators and hospital beds, under CN code 3926 90 97 as other articles of plastics.
- **Commission Implementing Regulation 728/2013** – classifying a castor consisting of a rectangular stainless steel plate, a fork-shaped stainless steel housing, a rubber tyre and a plastic rim with a bearing, that can be mounted on various articles such as trolleys, hospital beds and other furniture, under CN code 7326 90 98 as other articles of iron or steel.
- **Commission Implementing Regulation 729/2013** – classifying a product consisting of green-lipped mussel powder, fit for human consumption, and presented in bags of 10 kg to 20 kg, under CN code 0307 99 80 as 'other flour or meal of mollusc, fit for human consumption'.

Explanatory Notes and Additional Note

On 5 July 2013, the EU published an amendment to the Combined Nomenclature Explanatory Notes (CNENs) on **footwear**, deleting the CNEN to headings 6402 (Other footwear with outer soles and uppers of rubber or plastics) and 6404 (Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials), as well as the last paragraph of the CNEN to heading 6403 (Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather). In addition, the CNEN to subheading 6404 11 00 (Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like) has been amended.

On 24 July 2013, an amendment was published with respect to the existing CNEN to CN code 3907 60 20 (covering **poly(ethylene terephthalate)** with a viscosity of 78 ml/g or higher) to specify how the viscosity number is to be calculated.

On the same day, a further CNEN amendment was published, substantially revising the CNEN to code 2402 10 00 (covering cigars, cheroots and cigarillos, containing **tobacco**) to clarify the key characteristics of these products.

On 12 July 2013, the Commission published a new Additional Note 5 to Chapter 21 of the CN with respect to the classification of **food supplements**, following a judgment of the Court of Justice of the European Union (CJEU) in the so-called ‘Swiss Caps’ cases. In accordance with this judgment, the Commission has clarified the scope of the term ‘food supplement’ in heading 2106, in particular for other food preparations presented in measured doses (such as capsules, tablets, pastilles and pills) and intended for use as food supplements.

Nomenclature Committee Developments

(a) Mechanical/Miscellaneous Sector

The report of the 113th meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee held on 20-21 June 2013 is now available. It shows that, the Committee delivered a favourable opinion on, *inter alia*, some of the above-mentioned Classification Regulations, and on the draft Classification Regulation with respect to a real-time clock module.

The Committee also discussed the classification of a significant number of video monitors. Draft Regulations will be prepared on these monitor products, some of which will be put to a formal vote during the 2-4 October 2013 session of the Committee, while others will only be voted on after entry into force of the pending FPD Regulation creating certain new headings.

The Committee also discussed cases for TVs fitted with electrical equipment and motor vehicles as collector’s pieces, and a draft CNEN on all-terrain vehicles. It concluded the examination of the classification of a heartbeat measuring equipment/wrist pulsometer. A draft regulation will be presented, for a formal vote, at one of the next sessions of the Committee.

The Commission further informed the Member States about its decision to endorse a recent WCO Classification Opinion on Insulated Gate Bipolar Transistor (IGBT), classifying this product under HS Code 8541 29. It also clarified the judgments of the Court of Justice of the EU (CJEU) on the classification of modems delivered in November 2012, and announced that a new case is pending before the CJEU on infrared thermal cameras.

The next Committee meeting is scheduled to take place on 2-4 October 2013. A Project Group will meet beforehand to prepare certain dossiers to allow swift discussion and conclusion at the formal meeting.

(b) HS/WCO Coordination Sector

The 114th meeting of the HS/WCO Coordination Sector of the Nomenclature Committee was held on 11 July 2013. The meeting report shows, *inter alia*, that the

Commission presented the results of discussions that took place during the 45th meeting of the HS Review Sub-Committee, and updated the Member States on the acceptance by the Commission of the recent WCO Opinion on IGBT modules. In addition, the Committee discussed the classification of non-dairy cream, and a preparation for use in animal feeding, as well as a possible amendment of heading 3901 (LLDPE) and Chapter 97 (works of art).

The next (116th) meeting of the HS/WCO Coordination Sector is scheduled to take place on 9-11 September 2013. During that meeting, the Committee will determine the EU position on items put on the agenda of the 52nd meeting of the HS Committee taking place in late September, and discuss the possible deletion of headings/subheadings with a low volume of trade.

(c) CN Sector

The 115th meeting of the CN Sector of the Nomenclature Committee took place on 17 July 2013. The agenda for that meeting includes discussions on the creation of new codes for motorcycle parts and for alufoil products, the simplification of CN codes 3102 50 10 and 3105 90 10 (natural sodium nitrate) and CN code 7325 10 (Other cast articles of non-malleable cast iron), the possible creation of codes for phosphonates under CN heading 2015, and a vote on the proposal on the classification of a “Real-time clock module”.

(d) Agriculture/Chemistry Sector

The report of the 112th meeting of the Agriculture/Chemistry Sector of the Nomenclature Committee, which took place on 5-7 June 2013, has been made available. During that meeting, the Committee, *inter alia*, examined the proposal concerning an amendment of the Explanatory Notes to the Combined Nomenclature (CNENs) concerning “Cigars, cheroots and cigarillos containing tobacco”, and delivered a favourable opinion on the draft measure amending the CNENs concerning the solvent used for measuring the viscosity of poly(ethylene terephthalate) (the subsequent publication of these CNENs is reported above, under Explanatory Notes). The Committee also discussed the tariff classification of gas obtained from biomass, a concentrate for the production of anti-freezing fluid, infant food, ethyl alcohol-based mixtures, products containing alpha-lipoic acid, “bromelain in tablets” and ‘food supplements’.

ORIGIN

Origin Committee Developments

While the report of the meeting is not yet available, the agenda of the 206th meeting of the Origin Committee (which took place on 15-16 July 2013) included, *inter alia*, issues related to the Pan-Euro-Med Convention, as well as a debriefing on FTA negotiations with Japan, Vietnam, and the US.

There was also a scheduled discussion on certain specific origin matters pending in relation to the following countries: the Eastern Partnership countries (Ukraine, Moldova, Georgia, and Armenia), Israel, Algeria, Morocco, Turkey, Mexico, Central America, Colombia. The Economic Partnership Agreements were on the agenda as well.

In addition, the Committee was set to discuss an amendment of the EU's non-preferential origin rules (the procedure applicable to the verification of proofs of origin issued by the authorities of Member States, where the proof of origin is issued by an exporting Member State which is not the Member State of establishment of the exporter), and the non-preferential origin for aluminium road wheels.

Diagonal Cumulation – updated Notices

On 19 July 2013, the Commission published updated notices showing the extent to which diagonal cumulation is, at present, possible under the Pan-Euro-Med origin rules and under the preferential arrangements with the Western Balkans. The previous versions of the charts were published in April 2013, and May 2012, respectively.

Derogations from the rules of origin for Colombia under the EU-Andean FTA

On 31 July 2013, in anticipation of the provisional application of the EU's FTA with Colombia from 1 August 2013, the European Commission published a regulation laying down the conditions for the application of the derogations from the standard rules of origin for certain import volumes under the FTA concluded between the EU on the one hand and Colombia and Peru on the other. These derogations apply to imports from Colombia within quotas for twelve products categories (certain plastic products (of heading 3920), various certain clothing/textiles articles, and certain articles of iron or steel).

The origin quota amounts are laid down in an Annex to the Regulation, and they will be managed on a first-come-first serve basis.

PROCEDURES

EU customs formalities for ships

On 8 July 2013, the European Commission issued a Communication ("Blue Belt: a Single Transport Area for Shipping"), announcing steps to ease customs formalities for ships in an effort to reduce costs and administrative hurdles for the sector. Concrete proposals as regards intra-EU shipping were already submitted to the Customs Code Committee in June 2013, while for ships that call in third country ports, the Commission is planning to table a proposal later this year.

MISCELLANEOUS

Customs Enforcement of IPRs – new Regulation published

On 29 June 2013, the EU published **Regulation 608/2013** on customs enforcement of intellectual property rights (IPRs), which will soon repeal the existing Regulation adopted in 2003 concerning customs action against goods suspected of infringing IPRs. The new Regulation should strengthen and clarify the existing provisions and broaden the scope of IPRs covered by the Regulation, while at the same time introducing simplified procedures for the destruction of goods and for small consignments. Most of the new provisions will apply as of 1 January 2014.

EU brings WTO case against Russia on car recycling fee on imports

On 9 July 2013, the EU requested consultations in the World Trade Organisation (WTO) with respect to Russia's recycling fee on vehicles, which it considers to be an intolerable import measure. The US, China, Japan, Turkey and Ukraine have requested to join the consultations, and on 24 July 2013 Japan filed its own request for consultations.

EP concern on customs irregularities

On 3 July 2013, the EP adopted a resolution on the EU's Annual Report 2011 on the protection of the EU's Financial Interests. As regards customs aspects, it deplores the finding of "serious deficiencies in national customs supervision". It reminds the European Commission of its obligation to put systems in place allowing Member State authorities to act uniformly, and also requests consideration of the possibility of setting up a team of EU customs officials specialised in customs fraud to operate alongside national customs authorities.

Ports of Barcelona, Valencia and Hong Kong join the EU-China Smart and Secure Trade Lanes Pilot Project

The European Commission announced that Barcelona, Valencia, and Hong Kong will participate in the EU-China Smart and Secure Trade Lanes Pilot Project (SSTL), launched in 2006 to test security measures applied to shipments and containers throughout the entire journey, and to facilitate better data exchange and mutual recognition on key customs issues between the EU and China. The operational phase began in 2007 with the customs administrations of China, the Netherlands and the United Kingdom exchanging electronic information on sea containers. In 2011 the number of participating ports increased from 3 to 9. On the EU side, the SSTL project now covers: Rotterdam, Felixstowe, Antwerp, Genoa, Hamburg, Le Havre, Barcelona and Valencia.

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