

EU Customs Practice Group

May 2013

EU CUSTOMS POLICY

UCC – provisional agreement

On 29 May 2013, the European Parliament's (EP's) Internal Market and Consumer Protection (IMCO) Committee endorsed the compromise text on the EU's Union Customs Code (UCC) agreed with the Council in recent trilogue meetings. The EP must still vote on the text in its Plenary Session before it can be adopted and enter into effect.

The EP also adopted a resolution on 23 May 2013 supporting the European Commission's proposal to delay the full implementation of the Modernised Customs Code (MCC) from 24 June 2013 until 1 November 2013. This delay should avoid a legal void after the original MCC implementation date lapses on 24 June 2013, as it will technically not be feasible to finish all procedural steps on the UCC by that date. The Council is expected to formally agree on the proposal soon.

TARIFFS

Update on duty suspensions/tariff quotas

(a) July 2013 Round

On 21 May 2013, the Council Working Party discussed the formal proposals containing amendments to the lists of Duty Suspensions and Tariff Quotas for the July 2013 Round. These amendments are likely to be adopted before the end of June and will apply as of 1 July 2013.

(b) January 2014 Round

The first meeting of the Economic Tariff Questions Group (ETQG) discussing the January 2014 Round took place on 13-15 May, 2013. The second meeting is scheduled for 13-14 June 2013.

Proposal on autonomous duty suspensions for flat screens

On 13 and 21 May 2013, the Council's preparatory working groups discussed the European Commission's proposal to introduce an autonomous suspension for flat-panel displays capable of displaying signals from automatic data-processing (ADP) machines with a sufficient standard of performance for the user (falling under CN code 8528 59). Certain Member States have opposed the Commission's proposal, thereby causing a delay in its final adoption.

In this issue

EU CUSTOMS POLICY

UCC – provisional agreement

TARIFFS

Update on duty suspensions/tariff quotas

Proposal on suspensions for flat screens

Impact study of EU Suspensions Scheme

EU Market Access Regulation – exclusions

GSP – South Sudan and Netherlands Antilles

GSP – Burma/Myanmar

GSP – Bangladesh

FTA Update

CLASSIFICATION

Classification Regulations

Nomenclature Committee developments

ORIGIN

Origin Committee developments

EU-Peru FTA – origin rule derogations

MISCELLANEOUS

Croatia Neum Corridor Regulation

AEO self-assessment questionnaire

Customs enforcement of IPRs

EU Seaports 2030 Initiative

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.

Study on the impact of the EU Tariff Suspensions Scheme launched

The European Commission has announced the launch of a study to evaluate the impact of the EU's Tariff Suspensions Scheme from 2007-2011 on the competitiveness of EU businesses. The Commission is aiming to use the results of this study to review and improve the EU's Tariff Suspensions Scheme.

EU excludes certain countries from the General Market Access Regulation

On 13 May 2013, the Council endorsed the amendments adopted by the EP in a draft regulation regarding the exclusion of certain countries from the list of regions or states in the EU's Market Access Regulation. The purpose of the draft Regulation is to exclude those ACP countries that have not yet taken the necessary steps towards ratification of interim Economic Partnership Agreements (EPAs) with the EU. The result of these pending amendments is that countries such as, for example, Ghana, Kenya, Rwanda, and Tanzania would no longer benefit from duty preferences under the Market Access Regulation.

The date of exclusion resulting from the amendments agreed by the EP and the Council is expected to be delayed until 1 October 2014.

South Sudan and Netherlands Antilles – EU GSP Regulation amended

On 29 May 2013, the Commission adopted **Regulation 496/2013** amending the list of GSP beneficiary countries in Annex I of the current GSP Regulation. This amendment reflects South Sudan's independent status and the dissolution of the Netherlands Antilles.

Resolutions on the reinstatement of GSP benefits for Burma/Myanmar adopted

On 23 May 2013, the EP adopted two resolutions supporting the European Commission's proposal to reinstate GSP benefits for Burma/Myanmar, while noting that the country's human rights situation remains fragile. Provided that the Council adopts the draft Regulation presented by the Commission, Burma/Myanmar would benefit from the so-called Everything but Arms Regime (EBA) granting duty-free and quota-free access to the EU market (with the exception of arms and armaments). These EBA benefits are expected to apply retroactively from 13 June 2012 (i.e. the date of the International Labour Organisation's (ILO) decision to lift some of its restrictions against the country).

Possible suspension of GSP benefits for Bangladesh

On 30 April 2013, the Commission and EU High Representative announced that the EU could deprive Bangladesh from its EBA benefits under the EU's GSP scheme if the authorities do not take action to improve

labour conditions in the country. The statement follows the collapse of a factory in Dhaka, resulting in the deaths of over 400 people.

Subsequently, on 28 May 2013, a joint EU-Bangladesh statement was adopted to safeguard EBA benefits while taking action to improve health and occupational safety standards.

FTA UPDATE

(a) EU-US

On 23 May 2013, the EP adopted a resolution supporting the opening of talks on an EU-US Transatlantic Trade and Investment Partnership (TTIP), while calling for the exclusion of the audio-visual sector from trade talks (also supported by Member States such as France in the EU Council). The formal adoption of the negotiating mandate is expected to take place during the Foreign Affairs Council (Trade) meeting of 14 June 2013.

It is expected that negotiations will officially be launched at the G8 summit, scheduled to take place on 17-18 June 2013. The first round of negotiations could then take place during the week of 8 July, followed by a second round in the autumn. Parties aim to conclude negotiations by the end of 2014.

(b) EU-Ukraine

The European Commission has issued a proposal for a Council Decision on the conclusion, signing, and provisional application of the EU-Ukraine Association Agreement, which includes a Deep and Comprehensive Free Trade Area. The signing of the Association Agreement is scheduled to take place at the end of 2013, during the Eastern Partnership summit.

The signing of the Association Agreement, for which negotiations were already concluded in 2011, has been delayed several times, mainly for political reasons.

(c) EU-India

Negotiations between the EU and India for an FTA are still on-going and remain in the final stages. Bilateral meetings held on 15 May 2013 did not result in resolution of the key outstanding issues, relating to such areas as financial- and retail services, market access for automobiles, professional visas and intellectual property data exclusivity.

(d) EU-Thailand

The first round of negotiations between the EU and Thailand took place on 27-31 May 2013.

(e) EU-Canada

EU-Canada FTA negotiations remain in the final stages. Another bilateral meeting took place on 16 May 2013 in an attempt to resolve the key outstanding issues, including on such matters as agricultural market access, rules of origin and public procurement.

(f) EU-Malaysia

It is expected that negotiations between the EU and Malaysia will start up again in the near future, following Malaysia's general elections of 5 May 2013.

CLASSIFICATION

Classification Regulations

In May 2013, the following EU Classification Regulations were published:

- **Commission Implementing Regulation 442/2013**
– classifying so-called 'Shiromiso' paste which is obtained by the fermentation of a mixture of steamed soya beans and steamed rice and used as an ingredient in traditional Japanese dishes (but cannot be eaten on its own), under CN code 2103 90 90 as other mixed condiments and mixed seasonings.
- **Commission Implementing Regulation 443/2013**
– classifying a food product sold in retail packages, presented as small arch-shaped bites, flavoured with cheese and composed of maize meal, vegetable oil, cheese powder, milk powder, salt, starch and dextrose, under CN code 1904 10 10, as prepared foods obtained by the swelling or roasting of cereals or cereal products.
- **Commission Implementing Regulation 444/2013**
– classifying a yellow-brown protein concentrate powder used for animal feeding obtained from defatted soya beans and consisting of, *inter alia*, proteins, moisture and starch/glucose, under CN code 2309 90 31 as other preparations of a kind used in animal feeding.

On 15 May 2013, the EU also published a Regulation amending over 80 Classification Regulations issued between 1977 and 2012 to update the classification codes and related justifications laid down in those regulations. This new Regulation further repeals four existing classification regulations.

Nomenclature Committee developments

(a) Mechanical/Miscellaneous Sector

The report of the 108th meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee that took place on 17-19 April 2013 has been made available. During that meeting, the Committee delivered a favourable opinion on the draft Classification

Regulations with respect to ornamental screws and upper- and lower covers for a safety seatbelt buckle. The classification of products such as rear-view cameras, LED floodlights, shower doors, all-terrain vehicles, and wheels for sliding systems was also the subject of a first examination. The Committee further concluded discussions with respect to the classification of, *inter alia*, multilayer wooden panels, grooved pipes, LED modules, real-time clock modules, heartbeat measuring equipment, traffic message channel receivers and printed circuit boards.

The next meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee is scheduled to take place on 20-21 June 2013. The agenda for that meeting includes a vote on over 10 Classification Regulations or Explanatory Notes with respect to some of the above-mentioned products. The Committee will also continue examining the classification of products such as video monitors, LCD monitors, incomplete televisions, heartbeat measuring equipment/wrist pulsometers, and rear-view cameras. New items that are scheduled for a discussion include flame detectors, TV simulators, HDMI splitters, exhaust-gas turbochargers, radio-controlled sockets, pick-up trucks and screws and implants for surgical use.

(b) HS/WCO Coordination Sector

The 109th meeting of the HS/WCO Coordination Sector of the Nomenclature Committee took place on 16-17 May 2013. The report for that meeting shows that the Committee determined the EU position on items put on the agenda of the 45th meeting of the HS Review Sub-Committee and presented the results of discussions that took place during the 51st meeting of the HS Committee. The Committee also agreed to send a note to the HS Committee with respect to the possible misalignment between the English and the French version of the HS Explanatory Notes to Sub-chapter VII, part (c) with respect to peroxides. The Committee further discussed the possible amendment of heading 78 (fasteners) and headings 41.04, 41.07 and 41.14 with respect to leather, and the classification of products such as a drum housing for a combined harvester-thresher.

(c) CN Sector

The report of the 107th meeting of the CN Sector of the Nomenclature Committee that took place on 25-26 March 2013 has recently been made available. During that meeting, the Committee examined, *inter alia*, the possible simplification of the structure of heading 9619 (Sanitary towels (pads) and tampons, napkins and napkin liners for babies, and similar articles, of any material), an Italian proposal for new codes for motorcycle parts, the possible simplification of the nomenclature under subheading 2704 00 (electrodes), the merging of two codes related to natural sodium nitrate (31025010 and 31059010) a draft proposal for an amendment to the Combined Nomenclature (and the

Explanatory Notes) related to 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), not elsewhere specified or included). The Committee also voted on a draft Regulation to update/repeal existing regulations (which has already been published – see above).

(d) Agriculture/Chemistry Sector

The 112th meeting of the Agriculture/Chemistry Sector of the Nomenclature Committee was scheduled to take place on 5-7 June 2013. The agenda for that meeting shows that the Committee was planning to issue an opinion with respect to the Commission proposal concerning an amendment of the Explanatory Notes with respect to, *inter alia*, subheading 2402 10 00 (Cigars, cheroots and cigarillos, containing tobacco) and subheading 3907 60 20 (Poly(ethylene terephthalate)). The Committee was further set to conclude discussions with respect to the tariff classification of gas obtained from biomass, a concentrate for the production of anti-freezing fluid, bromelain in tablets, infant food, tobacco refuse food supplements and vitamin preparations. In addition, a debriefing on various food and chemical chapters and Project Group meetings was on the agenda.

(e) Textiles Sector

The 111th meeting of the Textiles Sector of the Nomenclature Committee was scheduled to take place on 3-4 June 2013. During that meeting, the Committee was expected to discuss, *inter alia*, its opinion with respect to the draft amendment to the Explanatory Note concerning sports footwear.

ORIGIN

Origin Committee developments

The public report of the 203rd meeting of the Origin Committee (held on 12-13 February 2013) shows that the Committee discussed, *inter alia*, the possible cumulation schemes in the context of the Pan-Euromed (PEM) Convention and related certification and proof of origin. The Committee further discussed creation of links in FTAs in order to refer to rules of origin laid down in the PEM Convention.

The Committee members were further informed about the status of rules of origin for FTA negotiations with Eastern Partnership Countries (Ukraine, Moldova, Georgia, and Armenia), Vietnam, Canada, EPA negotiations with ACP countries, as well as on discussions with Korea on various origin issues under the EU-Korea FTA.

The Committee also continued discussions on the necessary modifications of the GSP rules of origin due to the application of the new GSP scheme, and the

Commission introduced a working document on the way forward on origin certification (including self-certification) in free trade agreements, while proposing a strategy for ongoing and future FTA negotiations.

Finally, the Committee briefly discussed, *inter alia*, the possible impact of Turkey's accession to the Common Transit Convention on the functioning of the EU-Turkey customs union, the splitting of consignments in third countries and in the EU, and the sharing of origin-related information with certain FTA partners.

The Committee also discussed the increasing number of Binding Origin Information (BOI) requests and how Member State administrations are dealing with this (e.g., centrally or regionally); the Commission expressed its willingness to prepare best practice guides if Member States would find this useful.

Regulation concerning derogations to the applicable rules of origin for imports from Peru adopted

On 2 May 2013, the European Commission adopted a Regulation laying down the conditions for the application of derogations from the rules of origin set out in the FTA concluded between the EU and Colombia and Peru, specifically in the context of annual quotas for imports from Peru for a variety of products, including certain clothing items, and certain items from iron or steel.

MISCELLANEOUS

Croatia Neum Corridor Regulation

In light of the pending accession of Croatia to the EU, the EU Council adopted a Regulation laying down the rules under which the requirement for an entry and exit summary declaration is waived for goods exiting and re-entering the territory of Croatia when moved across the Neum Corridor. The Neum Corridor is the name for the part of the territory of Bosnia and Herzegovina reaching the Adriatic coast, which separates the area of Dubrovnik from the rest of the territory of Croatia.

AEO self-assessment questionnaire

On 2 May 2013, the European Commission's Taxation and Customs Union Directorate-General made an updated version of the self-assessment questionnaire for Authorised Economic Operators (AEO) and its explanatory notes available in 20 languages. The Commission recommends the submission of the self-assessment questionnaire together with applications for AEO status, although specific national provisions may require additional information or adoption of the model.

Customs enforcement of IPRs

On 16 May 2013, the EU Council adopted its position at first reading on the draft EU Regulation on customs enforcement of intellectual property rights. This new Regulation aims to, *inter alia*, broaden the scope of IPRs covered and introduce simplified procedures with regard

to the destruction of goods and with respect to small consignments. The Council, besides introducing a number of technical changes to the proposal, also found that the scope of the new Regulation should not be extended to cover parallel trade and overruns, and that the right to be heard should be granted in accordance with national law.

On 17 May 2013, the European Commission released a statement informing the EP that it accepted the amendments introduced by the Council. On 30 May 2013, the EP's IMCO Committee voted on its second reading position, approving the Council's position. The new Regulation still needs to be formally adopted and published before it can enter into effect.

European Commission launches Seaports 2030 Initiative

On 23 May 2013, the European Commission launched the Seaports 2030 Initiative to improve port operations and onward transport connections at 319 key seaports along Europe's coastline. The action plan proposed by the Commission supports, *inter alia*, administrative simplification in ports, turning the so-called "Blue Belt" initiative simplifying customs procedures in ports into practical effect.

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