

EU Customs Practice Group

January - February 2013

EU CUSTOMS POLICY

MCC recast/UCC

On 24 January 2013, the European Parliament's Internal Market and Consumer Protection (IMCO) Committee decided to postpone its vote on giving EP negotiators a mandate to start trilogue negotiations with the Council on the pending UCC proposal; this was an effort to express IMCO's disappointment with the failure of the Council to establish its negotiating position by that time. In late January, the Council then agreed on its position on the basis of a revised compromise text prepared by the Irish Presidency.

On 21 February 2013, IMCO gave a formal mandate to its negotiators, but, at the same time, adopted a joint statement to clarify that the EP is prepared to ask the Commission to submit the draft UCC Regulation under the "ordinary legislative procedure" (which would entail two readings in the EP) if it feels that the negotiations with the Council "do not appear to allow a satisfactory conclusion of the negotiations by mid-March".

The first trilogue meeting was due to be held on 22 February 2013, and the plan is to have at least three more sessions in March and April. If all goes well, a vote in the EP Plenary Session would follow in May 2013.

Commission Communication on Customs Risk Management Security of the Supply Chain

On 8 January 2013, the European Commission published a Communication on Customs Risk Management and Security of the Supply Chain, in which it discusses how to increase supply chain security. The current gaps in the system are described, and a number of actions are proposed to improve the situation. The following aspects are of particular concern: the quality of the data for risk management purposes; the lack of a concerted effort to recognise Authorised Economic Operator (AEO) status and avoid duplication of checks; and the non-uniform implementation of risk management throughout the EU and inadequate information-sharing.

TARIFFS

Update on duty suspensions/tariff quotas

(a) July 2013 Round

The formal proposals containing amendments to the lists of Duty Suspensions and Tariff Quotas applicable from 1 July 2013 were not yet available when this report was written, but a discussion in the relevant Council Working Group is tentatively scheduled for the second half of May 2013.

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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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(b) January 2014 Round

The applications for the January 2014 Round have to be submitted by the Member States to the European Commission by 15 March 2013 and should soon thereafter be listed on the Commission's special webpage; this is to enable interested parties to contact their Member State authorities on these applications in anticipation of the first ETQG meeting discussing the January 2014 Round, to be held in mid-May. Because the 5-year cycle for many suspensions ends at the end of 2013, these will be on the table as well with a view to their possible renewal.

GSP Regime Developments

(a) Iran/Azerbaijan losing GSP status in 2014

On 21 February 2013, the Commission published **Regulation 154/2013**, which removes Iran and Azerbaijan from the list of GSP beneficiary countries as from 22 February 2014.

(b) GSP Plus rules adopted

Regulation 155/2013, published on 21 February 2013, lays down detailed rules for application for and granting of GSP Plus status. The list of GSP Plus countries under the EU's next regime (applicable as from 1 January 2014) has not yet been established.

(c) Myanmar/Burma

On 21 February 2013, the EP's International Trade (INTA) Committee considered a draft report on the Commission's proposal to re-instate GSP benefits for Myanmar/Burma, as well as a motion for a resolution. The EP rapporteur supports re-instatement of GSP benefits, while at the same time calling for reporting by European investors of their activities in Burma. This matter will be discussed further at a future INTA meeting.

FTA Update

(a) Thailand

On 28 February 2013, the Council formally endorsed EU FTA negotiations with Thailand. The EU-Thailand FTA negotiations were expected to be officially launched shortly thereafter, to be followed by stakeholder consultations by the EU.

(b) EU-Japan

The EU-Japan negotiations are expected to be launched officially at the EU-Japan Summit to be held on 25 March 2013, and the first round of talks should follow in the second half of April.

(c) EU-US TTIP talks announced

The EU and the US on 13 February 2013 announced their intention to launch negotiations on a Transatlantic Trade and Investment Partnership (TTIP) aimed, *inter alia*, at eliminating substantially all tariffs on bilateral trade. This development followed the release of a

bilateral High-Level Working Group Report recommending such negotiations, dated 11 February 2013. The European Commission is expected to present a draft negotiating mandate to the Member States in the second half of March 2013. The first round could be held in Summer 2013 and the ambitious aim is to conclude the negotiations by the end of 2014.

(d) EU-Ukraine

On the occasion of the EU-Ukraine summit on 25 February 2013, the EU has indicated that the signature of the Association Agreement initialled in March 2012 could take place in November 2013, if Ukraine makes sufficient progress in a number of areas linked with the election system, justice and human rights. Ukraine has committed to carrying out the necessary reforms by May 2013.

(e) EU-India

During the EU-India Ministerial meeting on 30 January 2013, the Parties failed to conclude their FTA talks, but efforts are continuing to do so later this year. In fact, recent reports indicate that efforts are on-going to resolve outstanding issues relating to, *inter alia*, market access for cars, services and public procurement, in order to conclude the negotiations in the coming months – all in an attempt to finalise the talks before India is expected to enter into general elections in 2014.

(f) EU-Canada

The EU and Canada were not able to conclude their negotiations on a Comprehensive Economic and Trade Agreement (CETA) on the occasion of the Ministerial meeting on 7 February 2013, but the target is to conclude in the coming months through continued talks at chief negotiator level.

(g) EU-Mercosur

On 17 January 2013, the EP adopted a resolution calling for progress in the EU-Mercosur FTA negotiations in anticipation of the EU-Latin America (CELAC) summit at the end of January. During the summit, EU President Van Rompuy said the rapid conclusion of an Association Agreement would open new possibilities and consolidate trade, and agreement was struck during the summit to exchange market access offers before the end of 2013.

(h) EU-Korea

On 25 February 2013, the EU issued the annual implementation report for the EU-Korea FTA. While the report concludes it is too early to tell the real effects of the FTA, it is noted in the report that EU exports to Korea have shown a higher increase than Korean exports to the EU following the provisional application of the Agreement on 1 July 2011.

CLASSIFICATION

Classification Regulations

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

- **Commission Implementing Regulation 41/2013** – classifying a plastic doll with movable limbs filled with small sweets, under CN code 9503 00 21 as a doll.
- **Commission Implementing Regulation 42/2013** – classifying a set in the form of a plastic capsule containing a spinning top and chewing gum, under CN code 9503 00 95 as “other plastic toys”.
- **Commission Implementing Regulation 43/2013** – classifying an electric breast vacuum pump, under CN code 8414 10 89 as a vacuum pump.
- **Commission Implementing Regulation 69/2013** – classifying two types of “digital media receivers” (one of which is incomplete but considered to have the essential character of the complete product), under CN code 8521 90 00 as video recording or reproducing apparatus, and a “digital audio streamer” under CN code 8519 89 19 as a sound reproducing apparatus not incorporating a sound recorder.
- **Commission Implementing Regulation 70/2013** – classifying a bulk product consisting of ethyl alcohol and ethyl tertiary butyl ether (ETBE), under CN code 2207 20 00 as denatured ethyl alcohol.

CN Explanatory Notes on alcohol products

On 26 January 2013, the Commission published new Explanatory Notes (ENs) to the Combined Nomenclature as regards the classification of fermented alcohol-based beverages to reflect European Court jurisprudence.

CJEU Judgment on Classification of MFMs in HP Case

On 17 January 2013, the Court of Justice of the EU (CJEU) issued its judgment in Case C-361/11, *Hewlett-Packard Europe BV*, involving the customs classification of multi-functional machines (MFMs). The main question referred to the CJEU related to the validity of classification of the MFMs under CN code 8443 31 91 (with 6 % duty) as copying machines, applied as of 2007 when this CN code was introduced into the EU tariff. Hewlett-Packard (HP) claimed that the MFMs were subject to duty-free treatment before 2007 (under a CN code which was removed in 2007) and argued that because of the change in tariff codes and duty rate in 2007, the European Commission had exceeded its powers by modifying the duty rate (from 0 to 6%) applicable to HP’s MFMs imported in 2009.

In the judgment, the CJEU concluded that under existing EU case law, the MFMs in question could not have been classified under CN code 8471 60 20, but rather as electrostatic photocopying apparatus under CN code 9009 12 00 (subject to 6 % duty), before 2007 and because of this pre-2007 classification, the duty rate for the subject MFMs remained unchanged before and after 2007 at 6 %.

The Court also considered whether it could possibly invalidate the subject customs classifications under existing WTO principles, including the WTO Panel Report adopted in 2010 on correct EU classification of certain information technology products (including MFMs) under the Information Technology Agreement. The CJEU acknowledged that the WTO Panel had concluded that certain MFMs, including those before the Court, could not be classified under relevant subheadings in light of their features and characteristics – and that the EU had recognised this circumstance by amending relevant tariff lines (including CN code 8443 31 91) as part of the implementation of the WTO Panel Report in 2011. However, the Court still concluded that it was unable to declare the classifications for HP’s products invalid based on these principles and circumstances, mainly because of existing case law establishing that WTO rules can, as a general rule, not be directly applied by EU Courts.

Nomenclature Committee Developments

(a) Mechanical/Miscellaneous Sector

The report of the 97th meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee (NC) of 22-23 November 2012 has been made available. The Committee adopted favourable opinions on classification regulations for digital media receivers and a digital audio streamer, and on electric breast pumps, and certain toys (meanwhile formally adopted and published – see above). It also discussed, among other things, the classification of seatbelt parts, all-terrain vehicles, wheelchair/rollator parts, certain electronic systems for cars, components for LCD modules for use in cars, TV covers/frames, body composition analysers, massaging equipment, devices for recording video and still images, small LCD modules for MP3/MP4 players, LED lighting products, and E-tablets. The Committee was also informed of the work of the project group (PG) on audio-video products, and a meeting was announced of the PG on monitors and on general classification meetings in the first half of March 2013.

The next meeting of the Mechanical/Miscellaneous Sector took place on 6-8 February 2013. The agenda contained discussions on many of the products discussed in November and high-speed cameras, discussed by the PG on audio-video products. New products on the table included professional CD players/mixers, real-time clock modules, rear-view cameras, Traffic Message Channel receivers, and

printed circuit boards. In addition, the Committee was due to be informed on the state of play of the multicomponent (MCO) definition and the expansion of the Information Technology Agreement (ITA), and the work of the PG on vehicles.

(b) HS/WCO Coordination Sector

The report of the NC Committee's 101st meeting of the HS/WCO Coordination Sector in December 2012 shows that the Committee discussed, *inter alia*, possible amendment of the ENs to Chapters 29 and 38 (peroxides), headings 69.07 and 69.08 (ceramic tiles), 73.18 (fasteners) and 73.04-73.06 (steel tubes), as well as the classification of LED products, and the results of the HS Review Committee meeting.

The following meeting of this Sector took place during the week of 20-22 February 2013 to prepare for the 51st session of the HS Committee taking place in March. It also continued the discussion on steel tubes and considered a possible amendment of subheading 8708 21 (involving safety seatbelt parts).

(c) Combined Nomenclature Sector

The report of the NC Committee's 102nd meeting of the Combined Nomenclature Sector in December 2012 shows that the Committee discussed, *inter alia*, the transposition of the CN Explanatory Notes and Classification Regulations into the 2013 CN, the simplification of heading 9619 (sanitary towels) and an Italian proposal to consider new CN codes for motorcycle parts.

BTI Contact List Updated

On 12 January 2013, an updated list was published with the contact details of the customs authorities responsible for receiving applications for Binding Tariff Information (BTI) in the 27 Member States.

ORIGIN

Pan-Euro-Med Convention Published

The Regional Convention on pan-Euro-Mediterranean preferential rules of origin, endorsed by the Euromed Trade Ministers in December 2009 and signed on behalf of the EU in April 2011, was published in the Official Journal on 26 February 2013.

The pan-Euro-Med (PEM) Convention contains the preferential origin rules to replace the Origin Protocols under the various trade agreements between countries of the pan-Euro-Med Region. The regional convention approach should allow faster amendment of these rules, and future accession of third parties. The initial Contracting Parties to the Convention are the EU, the four EFTA States (Iceland, Liechtenstein, Norway, Switzerland), the Faroe Islands, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine Authority, Syria, Tunisia, Turkey, Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Montenegro, Serbia, and Kosovo. The

PEM countries are at present discussing a revision of the product-specific rules.

Origin Committee Developments

The reports of the 200th and 201st meeting of the Origin Committee have been made available. During these sessions (held on 17-18 September, 2012, and 29 October 2012, respectively), the Committee discussed issues related to the Pan-Euro-Med (PEM) Convention (including its implementation, diagonal cumulation, and draft Rules of Procedure for the PEM Joint Committee) and the EU-Korea FTA (including origin verifications, direct transport, outward processing zones/Kaesong, and a new practice of using origin statements on non-commercial documents). Agenda items to update the Member States on the state of play of pending FTA origin rules negotiations between the EU and Malaysia and Vietnam were postponed for lack of time, and the negotiations update focussed on other non-Asian FTAs (e.g. Canada, Mercosur, EPA). The Committee also discussed a request by India with respect to practical arrangements related to origin verifications by email. Finally, the Committee discussed the possibility of introducing a database for recording verification requests sent by the Member States' customs authorities to third countries under preferential arrangements with the aim of at least approximating verification procedures in the Member States (e.g. using a model letter requesting verification and storing data in the same way).

The most recent meeting of the Origin Committee (203rd session) took place on 12-13 February 2013. The agenda contained the PEM Convention, a debriefing on FTA negotiations with Vietnam, Canada and EPA, EU-Korea origin matters, and amendments to the GSP origin rules to reflect the publication of the new GSP regime.

Origin Labelling Discussion

On 17 January 2013, the EP adopted a resolution on "mandatory marking of origin for some products imported from third countries", in which it expressed its dissatisfaction about the European Commission's decision to withdraw a controversial 2005 proposal and calling for a new proposal. EU Trade Commissioner De Gucht addressed the EP while defending the Commission's decision, and announced that the Commission is not at present considering a new legislative initiative in this area. However, on 13 February 2013, the Commission issued proposals on product safety in which it again proposed the introduction of "made in" labels (for EU-made and imported products alike, this time). Various Member States are opposed to the idea of origin labelling and the discussion among the EU institutes promises to be difficult.

WCO Welcomes International Certificate of Origin Accreditation Chain

According to the International Chamber of Commerce (ICC), the World Customs Organisation (WCO)'s Technical Committee on Rules of Origin welcomed the International Certification of Origin (CO) Accreditation Chain on 22 January 2013, launched by the ICC World Chambers Federation in September 2012. Under this initiative, chambers of commerce can become accredited and entitled to include a quality label on the COs they issue. A non-public database listing all COs issued by accredited chambers will follow, allowing customs authorities faster online verification of the authenticity of COs.

PROCEDURES

CCIP Amendment on Use of Third Country ID Numbers

The Commission has adopted Implementing **Regulation 58/2013** amending the Customs Code Implementing Provisions with respect to use of third country identification numbers in entry summary declarations. This amendment allows third country AEOs to make use of facilitations under Mutual Recognition Agreements concluded between the EU and certain third countries.

EU-US Mutual Recognition Agreement – FAQ document

On 31 January 2013, the Commission published a document which has been developed jointly by the European Commission (DG TAXUD) and the US government (Customs and Border Protection) with Frequently Asked Questions on the mutual recognition agreement (MRA) signed 2012 between the EU and the US on Authorised Economic Operator and C-TPAT status which has now been implemented.

Neum Corridor Proposal

On 11 January 2013 – in anticipation of the accession of Croatia to the EU on 1 July 2013 – the Commission proposed a Council Regulation waiving the requirement to submit entry and exit summary declarations for EU goods that are moved across non-EU territory, in this case for the Neum corridor. The Neum corridor is part of the territory of Bosnia and Herzegovina accessing the coast of the Adriatic Sea dividing the land territory of Croatia into two parts, and is the only land transport connection between the area of Dubrovnik and the rest of Croatian territory.

MISCELLANEOUS

Status on Customs Enforcement of IPRs

On 24 January 2013, the EP's IMCO Committee endorsed a compromise text on the Commission's proposal for a new regulation on the customs enforcement of intellectual property rights (IPRs) agreed between the IMCO negotiators and the Council's negotiators in December. The Council also endorsed

this text just before Christmas at political level. The text is still awaiting endorsement in the EP Plenary, but the new regulation, once adopted and published, is expected to apply from 1 January 2014.

OECD/WTO Database on Trade in Value-Added

On 26 January 2013, the Organisation for Economic Co-operation and Development (OECD) and the WTO released its new database on trade in value-added. This new database analyses the value added by a country in the production of any good or service that is subsequently exported, and aims to provide a more complete picture of cross-country commercial relations relating to trade.

Role for Customs in Product Safety and Market Surveillance

On 13 February 2013, the European Commission released a package of initiatives to enhance product safety for non-food products, in which it sees an important role for customs authorities. The Commission wants to see joint enforcement actions by market surveillance and customs authorities, as well as improved checks at the border to avoid that unsafe products enter the EU market.

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