

EU Customs Practice Group

August-September 2013

EU POLICY

UCC Developments

The European Parliament (EP) and the Council adopted the compromise text on the Union Customs Code (UCC) on 11 September 2013 and 27 September 2013, respectively. The UCC must still be published in the Official Journal of the EU before it can enter into force by 1 November 2013. The detailed implementation of the rules laid down in the UCC will then follow in so-called “delegated” and “implementing” acts, which are expected to be adopted sometime in 2015.

The UCC foresees a complete transition to electronic exchange and storage of data, harmonizing time limits and the rules on the right to be heard, allowing longer periods for temporary storage, merging certain special procedures (inward processing, processing under customs control and destruction of goods), and introducing certain new simplifications (for Authorized Economic Operators only) such as self-assessment and reduced comprehensive guarantees. Full implementation of the UCC is foreseen for 1 May 2016, but there is scope for further delay (until 2020) to allow the full transition to Electronic Customs.

Commission proposal on customs infringements and sanctions

On 19 September 2013, the European Commission presented its plans to issue a proposal to lay down an EU legal framework on customs infringements and sanctions to the Member States. No details are available at this stage on this proposal, which was already announced in late 2012 in the Commission Communication on the State of the Customs Union.

TARIFFS

Duty Suspensions and Tariff Quotas

(a) January 2014 Round

The Commission has released information on the applications for Duty Suspensions (DS) and Tariff Quota (TQ) Regulations for the January 2014 Round, including whether or not an application has been given a positive opinion by the Member States in the Economic Tariff Questions Group (ETQG) on its dedicated webpage. The formal proposals for the DS and TQ Regulations are expected to be submitted to the Council in October/November.

(b) July 2014 Round

155 DS and 13 TQ applications have been filed for consideration in the July 2014 Round, and these are listed on the Commission's dedicated webpage. The first of three ETQG meetings to consider these applications will be held on 11-12 November 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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Flat Panel Displays suspension

On 26 September 2013, the Council adopted **Regulation 953/2013** creating a special autonomous suspension for certain flat panel displays (FPDs). The Regulation will enter into force on 25 October 2013, and grants an indefinite suspension for FPDs able to display signals from automatic data-processing machines with an acceptable level of functionality.

EU-Central America FTA – Provisional Application

On 31 July 2013, the European Commission announced in Official Journal Notices that the free trade part of the Association Agreement concluded between the EU and Central America will provisionally apply with respect to Nicaragua, Panama, and Honduras as from 1 August 2013. On 28 September 2013, notices were published announcing that the agreement will provisionally apply as from 1 October 2013 for Costa Rica and El Salvador as well.

GSP Plus Country List

On 28 August 2013, the European Commission submitted a draft delegated act to the Council and the EP establishing the list of countries which are to benefit from so-called “GSP Plus” preferences (available to GSP beneficiary countries that meet certain criteria related to sustainable development and good governance) under the EU’s new GSP regime that will apply from 1 January 2014. Armenia, Bolivia, Cape Verde, Costa Rica, Ecuador, Georgia, Mongolia, Paraguay and Peru applied for renewal of their current GSP Plus status, while Pakistan submitted a new application. The Commission considered that all these countries satisfy the GSP Plus criteria established in the new EU GSP Regulation. Unless the Council or the EP blocks the adoption of the act in the coming months, these countries will enjoy GSP Plus status as of 1 January 2014. It has meanwhile been reported in the Philippine press that the Philippines intends to apply for GSP Plus status as well.

GSP – Procedural Rules on Temporary Withdrawal and Safeguard Measures

The European Commission has also submitted a draft delegated act establishing the procedural rules on temporary withdrawals from EU GSP preferences and on the adoption of general safeguard measures. The Council and EP now have a few months to determine whether or not to block the draft act. Otherwise, the Commission can formally adopt the act.

FTA Update

(a) EU-Japan

The third round of negotiations between the EU and Japan is scheduled to take place on 21-25 October 2013. The Chief Negotiators of Japan and the EU already met in Tokyo on 16 September 2013 to prepare for this negotiation round. In addition, a meeting took

place between EU Trade Commissioner De Gucht and Japanese Minister for Economy, Trade and Industry Motegi on 24 September 2013 to prepare for the round and to add extra impetus to the negotiations. After this meeting, it was announced that the Parties will exchange offers on goods and services “as soon as possible”, so that the most difficult issues relating to these offers can be discussed already during the EU-Japan Summit in November.

(b) EU-US

The second round of negotiations for a Transatlantic Trade and Investment Partnership (TTIP) was scheduled to take place in the week of 7-11 October 2013 in Brussels, followed by a third round before the end of the year, and a stocktaking meeting in January 2014 between EU Commissioner De Gucht and USTR Froman. However, due to the US government shutdown, the round was cancelled at the last minute, so the sequence of events may be affected.

(c) EU-Canada

The EU’s and Canada’s negotiators have been meeting intensely over the past few months to work out a final deal. In August, negotiators from both sides drew up a “break-out package” on outstanding issues, but, in late September, the two sides were still discussing the final issues (reportedly relating to agricultural tariff rate quotas and geographical indications; and the level of protection for investments in financial services).

(d) EU-Singapore

On 20 September 2013, EU Trade Commissioner De Gucht and Singapore’s Minister of Trade and Industry Lim initialled the text of the EU-Singapore FTA. The text was then released to the public. The FTA negotiations between the EU and Singapore were concluded in December 2012. Negotiations on the investment protection chapter are still on-going, and the plan is to integrate this into the text of the agreement before its final adoption. It is expected that the trade provisions will apply provisionally from sometime in the second half of 2014.

(e) EU-Thailand

The second round of negotiations between the EU and Thailand took place on 16-20 September 2013 in Chiang Mai, Thailand. A wide range of issues was discussed, including goods, rules of origin, services and investment, public procurement, intellectual property, trade remedies, and trade and sustainable development. Prior to the third round of negotiations (scheduled to be held in Brussels on 9-13 December 2013), both sides aim to set out parameters for modalities for goods and exchange requests for services, investment and procurement. Market access offers for goods are expected to be exchanged next year.

(f) EU-Malaysia

On 11 September 2013, the EP adopted a resolution with a recommendation to the European Council, the Commission and the European External Action Service (EEAS) to increase their involvement in the talks on an EU-Malaysia partnership and cooperation agreement. The latest (seventh) round of negotiations between the EU and Malaysia was held in April 2012. No date has yet been set for a new round of talks, because the EU is waiting for Malaysia to determine its negotiating position following the general elections of May 2013 and its involvement in Trans-Pacific Partnership negotiations. Malaysia will lose its GSP preferences under the new EU GSP regime as of 1 January 2014.

(g) EU-Armenia

On 3 September 2013, Armenia announced that it will join the Eurasian Customs Union of Russia, Belarus and Kazakhstan. As a result, the Deep and Comprehensive FTA which Armenia concluded with the EU on 24 July 2013, and for which initialling was foreseen in late November 2013, will not materialize as the EU considers the two to be incompatible.

(h) EU-South-Korea

The EU and South-Korea are discussing the extension of FTA tariff preferences under the EU-Korea FTA to Croatia. Contrary to the European Commission's expectations, South-Korea did not automatically do so on 1 July 2013 (and argued it is not legally required to do this). Negotiations are therefore on-going between the two sides to achieve this extension.

CLASSIFICATION

New Classification Regulations

In August and September 2013, the following EU Classification Regulation was published:

- **Commission Implementing Regulation 766/2013** – classifying a liquid product based on fermented milk products with added fruit and cereal flakes intended for direct consumption as a beverage, under CN code 2202 90 95, as 'other non-alcoholic beverages'.

Nomenclature Committee Developments

(a) CN Sector

The report of the 115th meeting of the Combined Nomenclature Sector of the Nomenclature Committee held on 17 July 2013, has been made available. In the framework of the draft Combined Nomenclature (CN) for 2014, the Committee, *inter alia*, accepted the Commission's proposal to create new codes for wooden coffins, motorcycle parts and for alufoil products. The Committee also adopted simplified CN codes for articles of non-malleable cast iron and glass mats/voiles, and adopted a favourable opinion on the entire draft CN

2014. The Commission provided further clarifications on the proposal to simplify CN codes for natural sodium nitrate and issued an opinion on the Commission's proposals with respect to real-time clock modules.

(b) Mechanical/Miscellaneous Sector

The 118th meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee took place on 2-4 October 2013. The report for that meeting has not yet been made available. The agenda contained an opinion on draft Commission Regulations and CN Explanatory Notes with respect to incomplete televisions, all-terrain vehicles and heartbeat measuring equipment/wrist pulsometers. The Committee was also scheduled to examine the classification of, *inter alia*, hose connectors, covers and frames for TVs, high-speed cameras, control units with touch screen, devices for recording video sequences and still images, LED floodlights, rear view cameras, water dispensers, professional CD players/mixers, TV simulators, flame detectors, toy helicopters, radio-controlled socket sets, and remote-controlled socket sets, HDMI splitters, beach cleaning machines, screw and implants for surgical use, aluminium telescopic handles, articles used for coronary angioplasty and certain LCD monitors.

(c) Agriculture/Chemistry Sector

The 119th meeting of the Agriculture/Chemistry Sector of the Nomenclature Committee is scheduled to take place on 17-18 October 2013. The agenda indicates that the Committee will be asked to issue opinions, *inter alia*, with respect to a classification regulation for a product containing alpha-lipoic acid, a concentrate for the production of anti-freezing liquid and treated distillate aromatic extract (TDAE), as well as on an amendment to the Explanatory Notes as regards liquefied gas. The Committee is further scheduled to conclude examination of the tariff classification of, *inter alia*, tobacco refuse, infant food, ethyl alcohol-based mixtures, bromelain in tablets, vitamin preparations, and shower gels for washing hair and skin.

(d) Textiles

The next meeting of the Textiles Section of the Nomenclature Committee will take place on 14-15 October 2013. The agenda for that meeting contains a discussion of the classification of a wide variety of products, including a champagne bottle box made of cardboard, a mini pump/pillow pump, a small metal box, tennis racket strings and textile snow chains.

EU General Court judgments on "standing" in actions for annulment of classification regulations

On 12 September 2013, the General Court of the EU issued its judgment in Case T-457/11, *Valeo Vision v. Commission*, involving the customs classification of LED Electronic Cards. Valeo Vision, a French company active in the trade of lighting products for the automobile

industry, claimed that EU **Classification Regulation 603/2011** classifying LED Electronic Cards under CN code 8512 90 90 should be annulled, and the products should be classified under CN heading 8542 instead. The Court, however, ruled that the applicant lacked standing to file this claim, as it was not individually concerned by the classification. The General Court took the same view in a case with respect to the classification of stuffed vine leaves (Case T-380/11) in a judgment issued the same day.

ORIGIN

Origin Committee Developments

The report of the 205th meeting of the Origin Section of the Customs Code Committee of 13 May 2013 has recently become available, and shows that the Member States gave a favourable opinion on proposed amendments to the GSP rules of origin. The Committee also discussed the agenda of the PanEuroMed (PEM) Working Group meeting (which took place just after the meeting) and was debriefed on the status of rules of origin in FTA negotiations, with, *inter alia*, Eastern Partnership countries (Ukraine, Moldova, Georgia and Armenia), Japan, Vietnam, and Canada. The Committee also discussed the legislative amendments to be made to the EU GSP origin rules in order to implement the registered exporter (REX) system, the relationship between rules of origin and circumvention of trade defence measures, and a possible extension of bilateral cumulation in FTAs of the EU and Turkey to materials originating in Turkey and the EU, respectively. In addition, the Commission was asked to encourage third countries (e.g. India) to improve its level of cooperation with EU Member States on origin verification requests.

The 207th meeting of the Origin Committee took place on 26-27 September 2013. The agenda for that meeting contained various PEM-related issues, problems relating to acceptance of invoice declarations by certain third countries, the extension of cumulation for EU and Turkey materials in FTAs of these two parties, the direct transport rule, issues under the EU-Korea FTA, a debriefing on EU-Thailand negotiations, and guidelines on approved exporters. A proposal for a detailed rule for the interpretation of the last transformation rule for solar panels was also on the agenda.

Commission report on labelling requirements of textile/leather products

On 25 September 2013, the European Commission issued a report to the EP and the Council on the results of three assessment studies investigating the need for possible new labelling requirements of textile and leather products, for example with respect to country of origin or the presence of allergenic substances in textile finished products. As regards origin labelling, this report concludes that "made-in" related information is of interest to consumers, but that a textile-specific

discussion is, at the moment, inappropriate, given that the EU has recently proposed a new general regulation on product safety in which it is seeking to address origin labelling.

MISCELLANEOUS

Commission publishes annual report on customs detentions in 2012

On 5 August 2013, the European Commission published its annual report on detentions by the Member States' customs authorities of articles suspected of infringing intellectual property rights (IPRs). Around 40 million products were held at the EU borders in 2012, and nearly 90,000 detention cases were registered. The largest number of cases was tobacco-related and China was said to be the main source country of IPR infringing goods shipped to the EU.

Amendment to the TIR Convention

On 14 September 2013, the EU published certain amendments to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), which will enter into force on 10 October 2013. The amendments relate to the authorization for international organizations to take on responsibility for effective organization and functioning of an international guarantee system.

Concerns raised over Russian measure affecting TIR movements

An urgent meeting of the Customs Status and Transit Section of the EU's Customs Code Committee was held on 22 August 2013 to discuss a recent decision by Russia to no longer accept the international TIR guarantee as of 18 August 2013, and to require an additional guarantee for goods moved by road under cover of the TIR procedure. The Committee made certain recommendations into the TIR Executive Board (TIRExB). TIRExB held an extraordinary session on the matter in Geneva on 27 August 2013 and called for the withdrawal, or at least the postponement until the end of the year of Russia's decision. It also concluded that the Russian measure was in violation of key provisions of the TIR Convention.

Commission Report on Potentially Trade-Restrictive Measures

The European Commission issued its 10th Report on Potentially Trade-Restrictive Measures, covering the period from 2 May 2012 to 31 May 2013. As regards customs procedures, the report notes that Indonesia has burdensome importation procedures involving a requirement that traders must obtain an importer identification number to be able to import goods into the country, and are only allowed to import one category of goods.

The report also notes that importation of cellular phones in Indonesia has been tightened, including through port restrictions, pre-shipment controls and an obligation to pre-register before importation. In addition, the report notes that various countries had increased import tariffs for certain goods.

EU further decreases estimates for 2013 revenues from net customs duties

In its recent request for extra budget from EU Member States, the European Commission has further reduced its estimate for revenues from net customs duties to EUR 14.9 billion, taking into account the cashed amounts over the first eight months of 2013. The estimates made for the 2013 budget were already decreased in May 2013 in light of the accession of Croatia and recent economic forecasts.

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