

EU Customs Practice Group

March 2013

EU CUSTOMS POLICY

Recast MCC/UCC developments

Trilogue meetings involving the EU institutions have taken place on the draft Union Customs Code (UCC) Regulation, with the initial trilogue sessions focussing mainly on explaining the rationale for use of delegated vs. implementing acts. The next trilogue meeting is scheduled to take place in the second half of April. Even if institutional UCC agreement is reached in the second half of April, it may still not be feasible to finalise all the necessary procedural steps (up to publication of the adopted Regulation in the Official Journal and its entry into force) before the 24 June 2013 deadline established by the Modernised Customs Code (MCC). As a result, the European Commission is working on a solution to “bridge” the small time gap that may arise between the MCC deadline and UCC entry into force, seemingly involving MCC deadline extension until November 2013.

TARIFFS

Update on duty suspensions/tariff quotas

(a) July 2013 Round

Pending discussions in the relevant Council Working Group, the formal proposals for the updated Duty Suspensions and Tariff Quota Regulations for the July 2013 Round were not yet available when this report was written.

(b) January 2014 Round

The applications for the January 2014 Round had to be communicated by the Member States to the European Commission by 15 March 2013, and these applications are now listed in the Commission’s dedicated database. The first Economic Tariff Questions Group (ETQG) meeting discussing the January 2014 Round (which includes possible renewal of a wide range of existing suspensions) is to be held in mid-May.

(c) Proposal on autonomous duty suspensions for flat screens imminent

The long-awaited Commission proposal to create an autonomous duty suspension for certain flat screen products is expected to be submitted to the Council for adoption in the first half of April. Following pending adoption, it is expected to enter into force on 1 June 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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GSP Regime Developments

(a) Myanmar/Burma

On 22 March 2013, the European Parliament's (EP's) International Trade (INTA) Committee adopted a draft report on the Commission's proposal to re-instate GSP benefits for Myanmar/Burma. The INTA Committee supports the Commission's proposal to bolster reform in Myanmar by re-instating trade preferences, but the draft report highlights the fact that forced labour is still of EP concern, particularly in the military sector. The issue will be considered at the EP's plenary meeting in May 2013, after which the proposal could be formally approved by the EU Member States in the Council. After formal adoption and publication, the resulting regulation is expected to apply retroactively as from July 2012 when the International Labour Organisation (ILO) lifted restrictions on cooperation with Myanmar/Burma.

(b) Bolivia

On 19 March 2013, the Commission published a notice announcing the termination of its investigation into the effects of the denunciation by Bolivia of the UN Single Convention on Narcotic Drugs. The investigation could have led to withdrawal of GSP+ tariff preferences for Bolivia. The Commission considered the fact that Bolivia acceded to the Convention again on 10 February 2013, and that rules and obligations under national law towards illicit drugs have remained substantially unchanged after 29 June 2011 (i.e. when Bolivia deposited an instrument of denunciation of the UN Convention with the UN Secretary General). The Commission therefore concluded that there had been no weakening in the effective implementation of those legal provisions and that GSP+ benefits for Bolivia should therefore not be withdrawn.

Commission amends list of biological or chemical substances subject to duty relief

On 7 March 2013, the Commission adopted a Regulation adding two substances (Titanium silicon carbide powder of a purity by weight of 99 % or more, and Morpholino phosphorodiamidate oligomers (morpholino oligonucleotides)) on the list of biological or chemical substances that benefit from relief of customs duty when imported for non-commercial purposes under the EU's duty relief regulation. The Commission considered that there is currently no equivalent production within the customs territory of the EU while concluding that these two substances should benefit from duty relief. At the same time, one substance – Decamethonium bromide (INN) – has been removed from the list.

FTA Update

(a) EU-Japan

On 25 March 2013, the EU and Japan officially launched negotiations for a free trade agreement (FTA). The first

round of negotiations will be held in Brussels from 15 to 19 April 2013.

(b) EU-US

On 12 March 2013, the EU College of Commissioners agreed on a draft mandate for negotiations on an EU-US Transatlantic Trade and Investment Partnership (TTIP). This draft mandate is being discussed by the Member States and a decision by the Council on possible adoption is expected in June 2013. The EP is working on a resolution on the subject as well in order to make its views known before the Council adopts the negotiating mandate. Subject to pending EU Council adoption and completion of US notification procedures, the first round of negotiations between the EU and the US could be held in July 2013. The ambitious aim is to conclude negotiations by the end of 2014.

(c) EU-Singapore

The European Commission reportedly estimates that legal scrubbing procedures will be completed to allow for initialling (and release of the draft text) of the EU-Singapore FTA in the late Spring. Negotiations on investment protection provisions are still on-going, but the Commission is aiming to incorporate the investment chapter into the FTA during the FTA adoption/ratification process.

(d) EU-Thailand

On 6 March 2013, the EU and Thailand officially announced the launch of bilateral FTA negotiations. A first round of negotiations is expected to take place in May 2013 in Brussels. The aim is to conclude a comprehensive agreement covering tariffs, non-tariff barriers, services, investment, procurement, regulatory issues, competition and sustainable development.

(e) EU-Vietnam

The third round of FTA negotiations between the EU and Vietnam is scheduled to take place in Brussels during the week of 23 April 2013. The Parties aim to conclude a comprehensive free trade agreement covering tariffs, foreign direct investment, procurement, disciplines on state-owned enterprises, trade in raw materials, sustainable development, and regulatory issues.

(e) EU-India

Following chief negotiator meetings held in March, a meeting has been scheduled between EU Trade Commissioner De Gucht and Indian Commerce and Industry Minister Sharma for 15 April 2013. It is hoped that the ministerial meeting will resolve key outstanding issues relating to services, tariffs and public procurement to enable conclusion of the negotiations and initialling of an agreement before India's general elections in 2014.

Imports from Peru start to enjoy benefits under EU-Andean FTA

As from 1 March 2013, the FTA between the EU on the one hand, and Colombia and Peru on the other, have started to apply provisionally with respect to Peru. As of that date, and depending on whether the applicable preferential origin rules are satisfied, imports from Peru into the EU (and vice versa) enjoy the duty preferences as foreseen in the FTA. Colombia is expected to start enjoying FTA tariff benefits later this year, once its internal ratification procedures have been completed.

CLASSIFICATION

Classification Regulations

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

- **Commission Implementing Regulation 273/2013** – classifying three types of so-called ‘body composition analysers’ with weighing and measuring components. The first product featuring a measurement system with 2 electrodes is classified as a personal weighing machine under Combined Nomenclature (CN) code 8423 10 90. The two other types of body composition analysers using specific 8-electrode measurement technology are classified under CN code 9031 80 38 as “other electronic measuring instruments”.
- **Commission Implementing Regulation 274/2013** – classifying a colour liquid crystal display (LCD) module designed for incorporation into a dashboard of a motor vehicle for displaying video signals, under CN code 8529 90 92 as a part suitable for use solely or principally with apparatus of heading 8528.
- **Commission Implementing Regulation 275/2013** – classifying an LCD module equipped with printed circuits for pixel addressing and a backlight, designed for incorporation in, for example, media players or radio receivers under CN code 8548 90 90 as electrical parts of machinery or apparatus, not specified or included elsewhere in Chapter 85.
- **Commission Implementing Regulation 276/2013** – classifying a decking board made of wood composite filler and recycled plastics (among other materials), under CN code 3918 90 00 as floor coverings of plastics.
- **Commission Implementing Regulation 277/2013** – classifying a plastic insulating body of a connector, intended to isolate and hold in place electric wires with connections or contact elements at the ends, under CN code 8547 20 00 as insulating fittings of plastics.
- **Commission Implementing Regulation 278/2013** – classifying a metal box with a detachable plastic

bottle-shaped inlay designed to be used as a package for a bottle of wine (but presented without the wine bottle), under CN code 7326 90 98 as other articles of iron or steel.

- **Commission Implementing Regulation 279/2013** – classifying a flexible tube made of polyamide with a transparent tail end, which is intended to be used by medical professionals to insert a ‘stent’ into the human body (but will not be left in the body after use), under CN code 3917 39 00 as other tubes of plastics.

CN Explanatory Notes

In March 2013, the Commission published the following amendments to the Explanatory Notes (ENs) to the Combined Nomenclature:

- With respect to CN subheading 9506 69 90 (covering balls other than golf balls and table-tennis balls), the Commission has clarified that a distinction should be made between so-called “anti-stress balls”, to be classified under that subheading, and “anti-stress items” which do not have the shape of a ball and are therefore to be classified under heading 9503.
- With respect to heading 9004 (covering spectacles, goggles and the like, corrective, protective or other), the Commission has clarified that cords, chains, etc. for such products should not be considered as parts or accessories belonging under the same heading. Such cords and chains should therefore be classified according to their constituent material.

Nomenclature Committee Developments

(a) Mechanical/Miscellaneous Sector

The report of the 103rd meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee of 6-8 February 2013 has been made available. The Committee adopted favourable opinions on classification regulations for a wide range of products, detailed above in the Classification Regulations section. The Committee also examined the classification of grooved pipes intended to be used in sprinkler systems, multilayer wooden panels, trailer cycles, plastic toy figurines, glass fibre mats, toys representing a horse’s head attached to a wooden stick, bacteria filters for medical infusion systems, professional CD players/mixers, real-time clock modules, water dispensers, heart-beat measuring equipment, handsets for aircraft seats, traffic message channel (TMC) receivers, and printed circuit boards. The Committee further discussed, *inter alia*, a draft Regulation for three components (electronic units) used in the electronic control system of a motor vehicle, the outcome from the Project Group on audio-video products with respect to the classification of high speed cameras, and a draft

Regulation classifying a plastic housing part to be used as an outer cover of a safety seat-belt buckle.

The next meeting of the Mechanical/Miscellaneous sector of the Nomenclature Committee is scheduled to take place on 17-19 April 2013. The agenda for that meeting includes the submission of opinions on the classification of fun massagers, ornamental screws, parts of safety seatbelts, upper and lower covers for a safety seatbelt buckle, and a fireside companion set. The Committee is further scheduled to examine the classification of, *inter alia*, LED modules and floodlights, motor vehicles as collectors' pieces, all-terrain vehicles XY, TV covers and frames, rear-view cameras, TV simulators, flame detectors, wrist pulsometers and HDMI splitters.

(b) HS/WCO Coordination Sector

The report of the 104th meeting of the Nomenclature Committee's HS/WCO Coordination Sector held on 20-22 February 2013 has been made available. During this meeting, the chairman presented items on the agenda of the 51st session of the HS Committee in order to determine the EU position for this purpose. The Committee also discussed, *inter alia*, the possible amendment of headings 69.07 and 69.08 (ceramic tiles), headings 73.04 to 73.06 (steel tubes) and the corresponding explanatory notes, Chapters 54-55 (polypropylene) and heading 39.07 (viscosity number), the classification of so-called BIO-BLOK filters, and decided not to adopt any amendments for subheading 8708 21 (parts of safety seat belts). The next meeting will be held on 16-17 May 2013.

(c) Combined Nomenclature Sector

The 107th meeting of the CN Sector of the Nomenclature Committee took place on 25-26 March 2013. The agenda for that meeting included, *inter alia*, an Italian proposal for new CN codes for motorcycle parts, a possible simplification of the nomenclature under subheading 2704 00 (Electrodes) and CN codes 3102 50 10 and 3105 90 10 (Natural sodium nitrate) in the context of the 2014 Combined Nomenclature, and the possible creation of new CN codes for "bio-based" products (lubricants, succinic acid and 1.4-butandiol) and for alufoil under headings 7612 and 7615. The transposition of the CN Explanatory Notes into the 2013 Combined Nomenclature and the possible amendment of existing Classification Regulations to reflect the 2013 CN, were also among the topics on the agenda.

(d) Agriculture/Chemistry Sector

The 106th meeting of the Agriculture/Chemistry Sector of the Customs Code Committee took place on 6-8 March 2013. The report for that meeting indicates that the Committee delivered a favourable opinion on the tariff classification of, *inter alia*, cleansing wipes (CN code 3304 99 00), protein concentrates used for animal feeding, and a product consisting of calcium carbonate

and starch. The Committee further discussed the Commission proposal for an amendment of the EN to CN code 2402 10 00 (cigars, cheroots and cigarillos), and the EN to CN code 3907 60 20 with respect to the solvent used for measuring the viscosity of polyethylene terephthalate. The Committee also discussed a possible amendment of the HS, the HS Explanatory Notes and of the CN related to ethylene polymers and in particular relating to the possible creation of a new subheading for linear low-density polyethylene. The Committee further examined the tariff classification of a product called "bromelain", which is presented in tablets, gas obtained from biomass, and tobacco refuse. The Committee finally also examined the application of customs duties to goods presented in sets, and a proposal to amend the HS/HSEN on the tariff classification of food supplements.

ORIGIN

Origin Committee developments

The 204th meeting of the Origin Committee is scheduled to take place on 8-9 April 2013. The agenda for the meeting includes, *inter alia*, the Pan-Euromed Convention, the start of the EU-Japan FTA negotiations, a debriefing on EPA negotiations, and a proposal for explanatory notes on EUR.1 certificates under the EU-Central America FTA pending its provisional application. The Committee is also scheduled to discuss the procedure applicable to verification of proofs of origin issued by the Member State authorities where the issuing and exporting Member State which is not the Member State of establishment of the exporter. Other issues on the agenda include the registered exporter (REX) system and the need for amendments to the GSP rules of origin in light of the new GSP Regulation, applicable as of next year.

Updated list of relevant postal codes for EU importers of goods from Israel

On 1 March 2013, the EU issued a revised list of non-eligible locations for the purpose of determining whether products are eligible for preferential tariff treatment under the EU-Israel Association Agreement.

Products produced in Israeli settlements located within the territories brought under Israeli administration since June 1967 cannot benefit from preferential tariff treatment under the EU-Israel Association Agreement. The exclusion of settlement goods from preferential treatment is based on postal codes specified in an EU list of non-eligible locations. This list has now been updated to reflect Israel's transition from a 5-digit to a 7-digit postal code system as of 1 February 2013.

PROCEDURES

EU-Canada agreement on customs cooperation on supply chain security

On 4 March 2013, the EU and Canada signed an agreement on customs cooperation on matters of supply chain security and risk management. This agreement builds on an existing customs cooperation agreement but also includes provisions reinforcing the customs related aspects for securing the logistics chain of international trade. The purpose of the cooperation agreement is to work towards mutual recognition of risk management techniques, risk standards, security controls, and trade partnership programmes (i.e. the EU's Authorised Economic Operator (AEO) programme, and Canada's Partners in Protection (PIP) programme).

Civil aviation - known consignor regime amendment

On 5 March 2013, the Commission adopted **Regulation 189/2013** to amend **Regulation 185/2010** which lays down a transitional period for the implementation of the requirements regarding the approval of "known consignors" in the field of civil aviation security. This amendment aims to harmonise the date of this transitional period with other dates in **Regulation 185/2010**.

MISCELLANEOUS

Status on customs enforcement of IPRs

On 11 March 2013, the EU Member States reached political agreement in the Council on a draft regulation providing for simplified procedures for customs action with regard to intellectual property rights (IPRs) enforcement. This new regulation will allow for the destruction of certain goods without formal and legal proceedings, and in certain cases without the agreement of the owner if certain conditions are fulfilled. A specific procedure allowing for the destruction of seized goods without the involvement of the right-holder will also apply for small consignments. The draft regulation further foresees customs intervention for other types of infringements not covered by the current EU rules, such as trade names and certain protected models and designs. It is expected to be formally adopted in the coming months, to allow for entry into force from 1 January 2014.

EU Commission Communication on smart regulation

On 7 March 2013, the European Commission published a Communication on "smart regulation", which is based on comments received from about 1000 small and medium-sized enterprises (SMEs) and business organisations in a recent public consultation. The Commission has identified the top 10 most burdensome EU laws for SMEs, which includes the EU's Modernised Customs Code. The Commission has announced that it will initiate follow up actions by June 2013 to respond to the SME concerns.

WTO Trade Facilitation Agreement

On 8 March 2013, the EU Development and Trade Commissioners announced that they have joined forces to help secure a WTO Trade Facilitation Agreement in an effort to increase trade's contribution to development. The EU hopes that such a Trade Facilitation Agreement could be finalised at the WTO's 9th Ministerial Conference to be held in Bali in December 2013.

General Court annuls Commission Decision rejecting the repayment of import duties

On 19 March 2013, the General Court of the EU Court of Justice issued its decision in *Case T-324/10, Firma Léon Van Parys NV v. European Commission*. In this judgment, the Court partly annulled a Commission Decision allowing post-clearance entry in the accounts of import duties involving remission of those duties for a customs agent, but not in the case of the importer (i.e. the applicant in this case). Accordingly, it agreed with the importer that the Commission failed to adduce sufficient evidence that the importer displayed a lack of due care in light of standard trading practice and, accordingly, obvious negligence when investigating if the applicant could benefit from remission of import duties. The case involved EU import licenses for Ecuadorian bananas discovered to involve forged Spanish licences following import.

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