

EU Customs Practice Group

November 2013

EU CUSTOMS POLICY

Greek Presidency Customs Priorities

Greece, which will hold the EU Presidency during the first six months of 2014, has announced that it will focus on the following matters in the customs area:

- Proposed amendments to **EU Regulation 515/97** on mutual assistance between the Commission and Member States in customs and agricultural matters (see below);
- An imminent proposal to introduce EU legislation on customs penalties; and
- Negotiations on customs matters in Joint Customs Cooperation Committees with third countries (including Japan, China and South Korea), focussing on intellectual property cooperation and supply chain security.

Customs 2020

On 21 November 2013, the European Parliament (EP) adopted a resolution on the amended proposal for an EU Regulation establishing an action programme for customs in the EU for the period **2014-2020** ('Customs 2020'), thereby paving the way for formal adoption of the Regulation. Customs 2020 will 'take over' from the current Customs 2013 programme and aims to further facilitate and enhance cooperation between customs authorities within the EU on the basis of a set of general, specific and operational objectives.

The general objective of Customs 2020 is to support the functioning and modernization of the customs union in order to strengthen the internal market through cooperation. Its specific objectives are to support the customs authorities in the protection of the EU's financial and economic interests by fighting against fraud, protecting intellectual property rights, increasing safety and security, protecting citizens and the environment, improving the administrative capacity of the customs authorities, and strengthening the competitiveness of EU businesses.

The Commission's draft Customs 2020 Annual Work Programme for **2014** listing 50 projects and expected results is currently under discussion with the Member States.

In this issue

EU CUSTOMS POLICY

Greek Presidency Customs Priorities
Customs 2020

Mutual Assistance – Regulation 515/97

TARIFFS

Duty Suspensions and Tariff Quotas

GSP – Temporary Withdrawal/Safeguard Measures

GSP – GSP+ Country List

Information Technology Agreement

FTA Update

CLASSIFICATION

Classification Regulations

CNENs for All-terrain vehicles

Nomenclature Committee Developments

ORIGIN

Origin Committee Developments

PROCEDURES

Regular shipping services

EU-EFTA Transit Convention

Commission refers Belgium to Court

Customs Code Committee meeting on IPRs

EU Court of Auditors - deficiencies in customs supervision

7th Report on 'Own resources'

MISCELLANEOUS

Cooperation with Eastern Neighbouring Countries

EU meetings with Singapore and Australia

Russian measures affecting transit

WTO Panel on EU seal ban

WTO Panel on Russian recycling fees

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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Mutual Assistance – amendment of Regulation 515/97

On 25 November 2013, the Commission submitted proposed amendments to **Regulation 515/97** on mutual assistance between the administrative authorities of the Member States, and cooperation between the latter and the Commission to ensure correct application of the law on customs and agricultural matters. The aim of these amendments, which will now be considered by the Council and the EP for adoption, is to:

- address loopholes in existing systems for the detection of customs fraud (in particular origin fraud, misclassification, and misuse of the transit system);
- enhance customs risk management and supply chain security;
- allow faster investigations by the EU's Anti-Fraud office;
- clarify data visibility matters;
- streamline data protection supervision; and
- clarify the admissibility of evidence in national criminal proceedings.

TARIFFS

Duty Suspensions and Tariff Quotas

(a) January 2014 Round

On 11 November 2013, the Commission formally submitted its proposals for Regulations consolidating and updating the EU's list of Duty Suspensions and Tariff Quotas as of 1 January 2014. The two proposals were cleared in the relevant Council working group on 14 November 2013, and will be adopted by the Council in December.

(b) July 2014 Round

On 11-12 November 2013, the Economic Tariff Questions Group (ETQG) held its first meeting on applications for duty suspensions and tariff quotas for the July 2014 Round. It will meet for a second session on 9 December 2013.

(c) Tariff suspension for Jet Fuel

On 4 November 2013, the European Commission submitted a proposal for a duty suspension on jet fuel to take effect on 1 January 2014. Currently, most jet fuel imports into the EU enjoy tariff reduction under the EU's Generalized Scheme of Preferences (GSP). However, many important supply countries will lose GSP eligibility on 1 January 2014. To avoid abrupt impact on EU prices

by application of the normal duty of 4.7%, the duty suspension is aimed to allow the EU air and oil industry some time to adjust. The suspension will be reviewed within five years. The Regulation was adopted by the Council in early December but publication in the Official Journal had not yet taken place when this newsletter was drafted.

(d) Jute and coconut-fibre products

On 28 November 2013, **Commission Implementing Regulation 1215/2013** was adopted to extend the EU's duty-free tariff quotas for certain jute and coconut-fibre products until the end of 2023. The tariff quotas are set out in **Council Regulation 32/2000**.

GSP – Temporary Withdrawal/Safeguard Measures

On 5 November 2013, the European Commission published its **Delegated Regulation 1083/2013** establishing the procedural rules on temporary withdrawal from EU GSP preferences and on the adoption of general safeguard measures under the GSP regime. Neither the Council nor the EP had objected to the draft Regulation, thereby enabling its adoption.

GSP – GSP+ Country List

In recent months, a number of Members of the EP's International Trade (INTA) Committee have sought to introduce a motion for a resolution to block the Commission's delegated act establishing the list of countries which will benefit from so-called GSP+ preferences under the new GSP regime as of 1 January 2014. The reason behind the motion was that the MEPs wanted the Commission to prepare separate delegated acts for each GSP+ country, rather than listing them all in one delegated act. However, on 5 November 2013, the INTA Committee voted to reject this motion but a vote will take place in the EP Plenary Session in December. The Council has already decided not to object to the draft act.

Expansion of the Information Technology Agreement

On 21 November 2013, EU Trade Commissioner De Gucht urged China to withdraw its "excessive requests" for exclusions of IT products from the expanded multilateral Information Technology Agreement (ITA). According to De Gucht, China's demands are the main cause of currently stalled negotiations on expansion of the ITA list of products eligible for duty-free treatment.

FTA Update

a) Japan

During the EU-Japan Summit on 19 November 2013, Japanese Prime Minister Abe, European Council President Van Rompuy, and European Commission

President Barroso underlined the importance of continued progress in the FTA and Strategic Partnership negotiations, and instructed the negotiators to press forward to achieve their earliest possible conclusion.

b) US

During the week of 11 November 2013, a 'mini round' of negotiations for a Transatlantic Trade and Investment Partnership (TTIP) Agreement between the EU and the US took place, to 'catch up' on lost time after the US Government shutdown in October. The third round will take place in Washington the week of 16 December 2013.

c) Vietnam

On 4-8 November 2013, the fifth round of EU-Vietnam FTA negotiations took place in Hanoi. All chapters of the proposed FTA were discussed, and the parties held in-depth talks on market access for goods and public procurement. The next round of negotiations will take place in Brussels in January 2014. The EU hopes to conclude the negotiations with Vietnam by late 2014.

d) Ukraine

On 21 November 2013, the Ukrainian government stopped its preparations to sign an Association Agreement with the EU. Various EU leaders tried but failed to convince Ukrainian President Yanukovich to change his mind at the Vilnius Summit on 28-29 November 2013. The EU's proposal for an EU-Ukraine Association Agreement remains on the table, and discussions will take place with Ukraine about the bilateral relationship.

e) Georgia and Moldova

On 28-29 November 2013, at the Vilnius Summit, both Georgia and Moldova initialled their Association Agreements with the EU, which include Deep and Comprehensive Free Trade Agreements. The negotiations were concluded in mid-2013, but the Agreements are not yet in effect. First, they must be signed and approved by the EU institutions, which is expected to occur next year.

f) India

In response to a question posed by a member of the EP, Commissioner De Gucht has recently said that FTA negotiations with India are nearly finished, but the EU wants improved Indian market access for cars/car parts and alcoholic beverages before the talks can be wrapped up.

g) Guatemala

The trade provisions of the EU-Central America FTA will start to apply provisionally for Guatemala as of 1

December 2013. They are already applied with respect to the other parties to the agreement (Panama, Costa Rica, El Salvador, Honduras and Nicaragua).

CLASSIFICATION

Classification Regulations

During November, the following Classification Regulations were adopted:

- **Commission Implementing Regulation 1156/2013** – classifying certain incomplete LCD televisions without a tuner but with a slot allowing incorporation of a tuner after importation as complete TVs, under CN code 8528 72 40;
- **Commission Implementing Regulation 1212/2013** – classifying two types of heartbeat measuring equipment, under CN codes 9031 80 38 and 9031 90 85;
- **Commission Implementing Regulation 1228/2013** – classifying a wine bottle holder box made of plastic and paperboard, under CN code 4202 92 19;
- **Commission Implementing Regulation 1229/2013** – classifying a 'cat scratcher' product as a textile product, under CN code 6307 90 98;
- **Commission Implementing Regulation 1230/2013** – classifying a type of food supplement tablet as a medicament, under CN code 3004 90 00;
- **Commission Implementing Regulation 1231/2013** – classifying treated distillate aromatic extract (TDAE) used as a plasticizer in rubber products, under CN code 2707 99 99; and
- **Commission Implementing Regulation 1232/2013** – classifying a kind of non-alcoholic beverage containing various fruit juice concentrates, under CN code 2202 90 10.

CNENs for All-terrain vehicles

On 14 November 2013, the Commission amended the EU's Combined Nomenclature Explanatory Notes (CNENs) for codes 8701 90 11 to 8701 90 90 covering "all-terrain vehicles". It removed the requirement that vehicles falling under these headings can only seat one.

Nomenclature Committee Developments

(a) Mechanical/Miscellaneous Sector

The 124th meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee is scheduled for 13

December 2013. The Member States will vote on draft classification regulations and CNENs for monitors with touch screens, (medical) LCD monitors, video monitors, devices for recording video sequences and still images, high-speed cameras, a control unit without touch-screen, and on a regulation updating existing Classification Regulations on monitors. Products for examination by the Committee include wheels for sliding systems (and the scope of subheading 8302 20), HDMI splitters and HDMI switches, articles for coronary angioplasty, silicon bottle tops, an exhaust-gas turbocharger, turbine wheels and turbine housings, pick-up trucks, electric skateboards, sub-assemblies for LCD TV sets, media servers, biplane aircrafts, snowmobiles, electric filters, cartridges for game consoles and fittings for central heating.

(b) Textiles Sector

The Textiles Section of the Nomenclature Committee met on 14-15 October 2013 and discussed issues relating to cat scratchers, various types of boxes, textile pet baskets, pillow pumps, curtain rails, perpetual calendars, tennis racket strings, bed liners, textiles snow chains, and floor coverings.

(c) Agriculture/Chemical Sector

The 123rd meeting of the Agriculture/Chemical Sector of the NC Committee was set to meet on 5-6 December 2013. The agenda included, among other things, shower gels, the possible creation of new subheadings under heading 3824 90 for chemicals, concentrated fruit and vegetable juices, glucosamine, eye washes, and the classification of chemical products subject to tariff suspensions and products subject to REACH restrictions.

ORIGIN

Origin Committee Developments

The recently released report of the 207th meeting of the Origin Committee (26-27 September 2013) shows that the Committee discussed Pan-Euro-Med (PEM) matters (including the list rule for buttons of heading 9606) and was debriefed by the Commission on FTA negotiations with Eastern African Countries, Ukraine, Moldova, Georgie, Armenia, and Thailand. A Turkish request to extend bilateral cumulation in FTAs of the EU and Turkey to materials originating in Turkey and the EU respectively was discussed again as well before its transfer to the Council's Trade Policy Committee. The Origin Committee discussed guidelines on Approved Exporters and problems relating to acceptance of origin declarations by third countries, where South Korea was said to be a specific point of concern. In addition, the Committee discussed a working document on the direct transport/non-alteration rule, and discussions with South Korea on the possible replacement of the current FTA direct transport

rule with a non-alteration rule. Draft non-preferential origin rules for solar panels were discussed, and a specific case relating to Chinese aluminium road wheels which have undergone some processing in a third country.

PROCEDURES

Regular shipping services

On 6 November 2013, **Regulation 1099/2013** was published to introduce amendments to the EU's Customs Code for regular shipping services authorizations. The aim is to reduce the administrative burden on operators engaging in intra-EU maritime transport, as part of the 'Bleu Belt' initiative.

EU-EFTA Transit Convention

On 26 November 2013, the EU published the EU-EFTA Joint Committee Decision on Common Transit which modifies certain Harmonized System (HS) codes and package codes in line with recent amendments to the HS and revised recommendations of the UN Economic Commission for Europe.

Commission refers Belgium to Court

The Commission has decided to refer Belgium to the Court of Justice of the European Union (CJEU) for not respecting minimum opening hours of customs offices and charging additional and disproportionate fees for overtime work; for certain issues in relation to validation, invalidation and discharge of declarations, and handling of requests for repayment.

Customs Code Committee meeting on IPRs

On 11 November 2013, the Intellectual Property Rights Enforcement Section of the Customs Code Committee met to vote on the forms to be used under **EU Regulation 618/2013** on customs enforcement of IPRs, and to discuss various questions on this new Regulation. The Committee was also planning to discuss IPR customs enforcement for small consignments; the Action Plan concerning EU-China Customs Cooperation on IPR and cooperation with Hong Kong; and IPR customs enforcement in Turkey.

EU Court of Auditors reports deficiencies in customs supervision

The annual report of the EU's Court of Auditors (ECA) concerning the financial year 2012, issued on 11 November 2013, notes deficiencies in national customs supervision related to post-clearance audits and risk analysis in Belgium, Poland and Finland (i.e. the only countries visited by ECA for the report).

7th Report on 'Own resources'

On 27 November 2013, the European Commission issued a report on the operation of inspection arrangements for traditional own resources (including customs duties) for the period 2010-2012. This report reveals major shortcomings in the management and control of local clearance procedure; post-clearance recovery of duties in case of annulment of Binding Tariff Information (BTI); and in controls to verify the use of BTI grace periods.

MISCELLANEOUS

Cooperation with Eastern Neighbouring Countries

A progress report was issued on 21 November 2013 from the Commission to the Council on customs cooperation with the Eastern neighbouring countries (Russia, Ukraine, Moldova, Belarus, Kazakhstan, Armenia, Georgia, and Azerbaijan). The Commission claims 'substantial progress' has been made but adds that it is a long-term and ongoing process.

In late 2011, the Council adopted conclusions calling for the development of safe and fluid trade lanes; the promotion of risk management and the fight against fraud; and investments in customs modernization in these countries.

EU meetings with Singapore and Australia

From 28 November to 3 December 2013, EU Customs Commissioner Šemeta met with Ministers and top customs officials in Singapore and Australia to discuss, among other things, customs cooperation and trade facilitation.

Russian measures affecting transit

On 27 November 2013, the European Commission issued an Information note on Russian measures affecting TIR and transit movements as of 1 December 2013. The note explains the situation resulting from Russia's decision to terminate its agreement with national guaranteeing associations for TIR operations in Russia. Essentially, it will no longer be possible to use TIR carnets for goods directly transported to or from Russia. However, in early December, Russia announced that the termination will be postponed until 1 July 2014.

WTO Panel on EU seal ban

On 25 November 2013, the WTO published its final report in a dispute raised by Norway and Canada against the EU's ban on the importation and marketing of seal products introduced in 2010. The Panel concluded that the EU ban was justified on moral grounds, but the exception for seal products derived from traditional hunting by Inuit people was formulated and applied in a

discriminatory manner because Canadian Inuit were unable to benefit from this exception. Canada has announced that it will appeal the Panel report.

WTO Panel on Russian recycling fees

On 25 November 2013, the WTO accepted a request by the EU (and others) to set up a dispute panel to examine Russia's recycling fees for imported motor vehicles (see our October issue).

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