

EU Customs Practice Group

August-September 2012

EU CUSTOMS POLICY

MCC/UCC recast proposal

On 17 September 2012, the draft report on the proposal for the Modernised Customs Code (MCC) Recast Regulation was presented by Rapporteur Le Grip to the European Parliament's (EP's) Internal Market and Consumer Protection (IMCO) Committee (i.e. the lead committee in this matter). The draft report will now be subject to further discussion in the IMCO Committee, where a vote is scheduled for 29 November 2012. The vote in the EP's plenary session is currently scheduled to take place in April 2013.

An Article-by-Article reading of the MCC recast proposal in the Council's Working party (WP) on the Customs Union continued in August and September. The Cypriot Council Presidency is expected to produce a compromise text later this Autumn for consideration by the Member States' experts.

Amendments to the EU Customs Code Implementing Provisions

On 21 August 2012, the European Commission published new amendments to the EU's Customs Code Implementing Provisions (CCIPs) through **Regulation 756/2012** amending **Regulation 2454/93**. These amendments have been introduced to adapt the CCIPs to recent EU regulations related to, *inter alia*, exit summary declarations, new rules on EU statistics relating to external trade, and information in customs declarations related to the exemption from payment of VAT due upon importation. Most of these amendments will apply from 1 January 2013.

Amended proposal for the Customs 2020 programme

On 29 August 2012, the European Commission issued an amended proposal for the so-called "Customs 2020" Programme. The Commission had initially proposed the "FISCUS" programme which would merge the two existing programmes for tax ("FISCALIS") and customs ("CUSTOMS"). However, because the Member States unanimously opposed a merger of the two programmes, the Commission backtracked and issued two separate legislative proposals again for the two programmes.

TARIFFS

Update on duty suspensions/tariff quotas

(a) January 2013 Round

The formal proposal for the January 2013 round was not yet available when this newsletter was drafted, but should soon be submitted to the Council for adoption by the end of the year.

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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) July 2013 Round

EU Member States had to forward applications for a new duty suspension or tariff quota in the July 2013 round to the European Commission by 15 September 2012. The first meeting of the Economic Tariff Questions Working Group (ETQG) to discuss the requests submitted by the Member States should take place between 20 October and 15 November 2012.

GSP preferences for Burma/Myanmar

On 17 September 2012, the European Commission presented a proposal for a Regulation to reinstate GSP preferences for Burma/Myanmar under the EU's "Everything But Arms" (EBA) regime granting duty-free and quota-free access to the EU market for all products, except for arms and armaments. The Commission is proposing to reinstate tariff preferences retroactively as of 13 June 2012, the date of the adoption by the International Labour Organisation (ILO) of a Resolution lifting most of the ILO's restrictions for Burma/Myanmar.

The Commission proposal has been submitted to the Council and the EP for discussion and adoption.

Duty-free access for goods from Pakistan

On 13 September 2012, the EP approved a Commission proposal for a regulation to grant either an exemption from customs duties or tariff-rate quotas for 75 types of goods originating in Pakistan. However, as a condition for its approval, the EP inserted a safeguard clause to protect the EU's textiles, garments, ethanol and leather sectors, providing for the imposition of duties if EU imports of these products grow by 25% or more. The EP also inserted amendments which should enable the EU to withdraw these trade preferences should Pakistan impose restrictions on exports of raw materials used to produce goods covered by the regulation. Pakistan's trade preferences are also tied to its human rights performance.

This measure will apply from the date of publication of the regulation in the EU Official Journal until 31 December 2013.

FTA update

The following notable developments have occurred in relation to the EU's on-going or pending Free Trade Agreement (FTA) negotiations in recent months:

(a) Japan

Discussions on the Commission's draft mandate for free trade negotiations (which must be approved by the Council before negotiations can be launched) are currently on-going within the Council.

A roundtable on the EU-Japan scoping exercise took place within the EP's International Trade (INTA) Committee on 19 September 2012. The EP is expected to adopt a resolution on the possible launch of FTA negotiations as well, even if the Council alone is responsible for approving the Commission's negotiating mandate.

(b) USA

The EU and the US government have launched public consultations asking industry associations and other interested stakeholders for concrete suggestions on regulatory issues for a possible future trade agreement. Contributions have to be submitted by 31 October 2012. These contributions will subsequently be discussed at a meeting in the fall involving EU and US regulators, economic policy agencies and stakeholders.

(c) Canada

Following technical working sessions (including on rules of origin) held in September, the EU is hopeful that it is entering the final stage of trade negotiations with Canada in the coming months to enable conclusion by the end of the year. Outstanding European demands include patent protection for pharmaceuticals, investment protection and agricultural market access.

(d) India

The EU and India have previously announced their intention to complete FTA negotiations by December 2012, but recent discussions within the EU institutions indicate that it may take longer than that due to the uncertain political climate in India. A chief negotiators' meeting was held in August – during which outstanding issues relating to car tariffs, services and public procurement were discussed – and a round of bilateral negotiations at senior level is expected towards November or December. In the meantime, the EU has welcomed the Indian government's recent move to allow foreign direct investment (FDI) in aviation and increased clarity in single-brand retail.

(e) Malaysia

Technical Working Groups focussing on a number of technical negotiating areas met in Kuala Lumpur in September 2012. At the same time, the EU has indicated that it does not expect substantial political progress in these negotiations until after the expected upcoming elections in Malaysia.

(f) Singapore

Following recent chief negotiator meetings, the EU foresees imminent conclusion of its FTA negotiations with Singapore, even if certain outstanding issues relating to services and rules of origin still require further discussion.

(g) Central America/Peru and Colombia

While the EP is expected to vote on formal consent to the FTAs signed by the EU with Central America and Peru/Colombia in the coming months, institutional discussions on the implementation of the bilateral safeguard clause and the stabilisation mechanism for bananas in the same agreements are on-going.

(h) Mercosur

While exchange of market access offers is still pending, the next round of trade negotiations is scheduled to take place in Brasilia in October 2012.

(i) Vietnam

Following the official launch of these negotiations on 26 June 2012, the first formal round of negotiations between the EU and Vietnam will take place during the week of 8 October 2012.

CLASSIFICATION

Classification Regulations

In August and September 2012, the following Classification Regulations were published:

- **Commission Implementing Regulation (EU) No 697/2012** – classifying a so-called “transformer module with RJ 45 plug”, designed for a 10/100 BASE-T Ethernet network and for placement onto a printed circuit board for the purpose of connecting machines within a local area network for signal transmission and reception, under CN code 8517 70 90 as a part of an apparatus for communication in a wired or wireless network.
- **Commission Implementing Regulation (EU) No 698/2012** – classifying 3 types of so-called “multimedia centres for motor vehicles”, under CN code 8528 59 40 as other colour monitors with an LCD technology screen.
- **Commission Implementing Regulation (EU) No 714/2012** – classifying a flexible keypad membrane made of silicone containing electrical contact elements for incorporation into a particular model of mobile phone and a so-called “keyboard flex assembly”, under CN code 8517 70 90 as parts of a mobile phone.
- **Commission Implementing Regulation (EU) No 715/2012** – classifying a product consisting of, *inter alia*, powdered barley grass, honey, powdered wheatgrass and powdered alfalfa presented for retail sale in tablet form and used as a food supplement, under CN code 2106 90 98 as a food preparation not elsewhere specified or included and used as a dietary supplement to maintain general health or well-being.

- **Commission Implementing Regulation (EU) No 716/2012** – classifying both lactose-reduced colostrum powder in gelatine capsules and colostrum powder in capsules of hydroxypropyl cellulose, under CN code 1901 90 99 as food preparations for goods of headings 0401 to 0404.
- **Commission Implementing Regulation (EU) No 726/2012** – classifying a so-called “remote elevator monitoring unit”, used for monitoring the functioning of lift operations and detecting any malfunctions, under CN code 9031 90 85 as part of a checking instrument.
- **Commission Implementing Regulation (EU) No 727/2012** – classifying cultures of micro-organisms consisting of, *inter alia*, maltodextrine, corn starch and micro-crystalline cellulose, presented in gelatine capsules and put up for retail sale, under CN code 2106 90 98 as a food preparation not elsewhere specified or included.
- **Commission Implementing Regulation (EU) No 749/2012** – classifying “Chitosan” prepared from crustacean shells, consisting of amino polysaccharides, presented in gelatine capsules and put up for retail sale, under CN code 2106 90 92 as a food supplement for human consumption.
- **Commission Implementing Regulation (EU) No 750/2012** – classifying “Propolis” consisting of vegetable resins and vegetable waxes, waxes, essential oils, and pollen, collected by bees, presented in gelatine capsules and put up for retail sale, under CN code 2106 90 92 as a food supplement for human consumption.
- **Commission Implementing Regulation (EU) No 894/2012** – classifying a made-up article consisting of rectangular strips of nonwovens of synthetic filaments (polyethylene) solidified with a binder and linked to each other by perforation points to be used as tear-resistant bracelets for the identification of people primarily by colour coding, under CN code 6307 90 98 as an ‘other made-up textile article’.

Commission report on the issuing of BTI

In September 2012, the European Commission published a report on the first phase of the exercise to monitor the issuing of Binding Tariff Information (BTI) and the application of the relevant legal EU provisions in the EU Member States covering the years 2007 and 2008.

The main inconsistencies identified in this report relate to the uploading of BTI applications in the database, the notification of receipt of applications and samples, and the attachment of images and keywords to issued BTI. The report makes about 40 recommendations to the

Member States in 11 areas, ranging from general recommendations on staffing, as well as on reducing so-called “BTI shopping”, and the role of customs laboratories.

CJEU rules on the classification of children’s sleeping bags

On 6 September 2012, the Court of Justice of the European Union (CJEU) issued a judgment (in Case C-524/11, *Lowlands Design Holding v. Minister van Financiën*) responding to a reference for a preliminary ruling by a Dutch court regarding the customs classification of various sizes of children’s sleeping/romper bags. The question was whether these products should be classified under CN 9404 30 00 covering ‘sleeping bags’, or whether the product of size 110 cm intended for young children should be classified under subheading 6211 42 (covering “tracksuits, ski suits and swimwear; other garments [...] of cotton”) and those of size 86 cm for babies under subheading 6209 20 00 (covering “babies’ garments and clothing accessories [...] of cotton”). The CJEU found that the product should be classified under CN codes 6211 42 and 6209 20 00 on the basis of the characteristics of the upper part of the products (which looks like a garment rather than a sleeping bag), and based on the reasoning that the Explanatory Notes to heading 6209 include a number of articles for young children that are similar to the products at issue.

Nomenclature Committee

(a) Mechanical/Miscellaneous Sector

The 93rd meeting of the Mechanical/Miscellaneous sector of the CN Committee took place on 27-28 September 2012. The agenda of that meeting featured discussions on draft Commission regulations and CN Explanatory Notes related to party poker sets, hand-bikes, crawler carriers, paper stickers, water-proof plywood, multi-switches, electronic hot air blowing guns, load cells, PIR detectors, audio-video players with reception apparatus for radio-broadcasting, steel wire clamps, Universal Dual Port Car Charges, the CNEN applicable with respect to static converters, USB cables and CCD sensors.

The Committee was also expected to examine the classification of, *inter alia*, upper and lower covers for a safety seat-belt buckle, certain all-terrain vehicles, covers and frames for TV, and connector parts, wheels as parts of wheelchairs and rollators, fun massagers, connector parts, anti-stress balls, and ornamental screws; in addition, it was scheduled to discuss the state-of-play of the proposed ex-out (i.e. the use of the prefix “ex” in the CN) for certain monitors in subheading 8528 59.

(b) HS/WCO Coordination

A meeting of the HS/WCO Coordination sector of the Nomenclature Committee took place on 10-12 September 2012. The report of that meeting is not yet available, but the agenda included, *inter alia*, discussions on the possible amendment of Chapter 84 (machine tools) and heading 73.18 (fasteners). The Committee was further scheduled to discuss the possible misalignment of the Notes to Section XVI (Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles) and the Explanatory Note to heading 84.87 (Machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, not specified or included elsewhere in this chapter). The possible misalignment of Note 2 to Chapter 64 (footwear, gaiters and the like; parts of such articles) and the Explanatory Notes to Section XV (base metals and articles of base metal) were also on the agenda.

Other topics included, *inter alia*, mutual information on tariff matters and the setting-up of the Combined Nomenclature 2013 with associated countries, and the consultation between the EU and associated countries with a view to preparing the 50th meeting of the HS Committee of the WCO.

(c) Agriculture/Chemical Sector

The 94th meeting of the Nomenclature Committee’s Agriculture/Chemical Sector will take place on 3-5 October 2012. During that meeting, the Committee is scheduled to deliver an opinion on the draft measures regarding the classification of, *inter alia*, cleansing wipes, certain beauty preparations of heading 3304, and the introduction of an amendment of Additional note 2 to Chapter 27 (mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes).

The agenda for the 94th meeting also includes an examination of the proposed tariff classifications of a herbal product called “Moxa”, protein concentrates used for animal feeding, food supplements, cleansing wipes, mixtures of ethyl alcohol and ETBE, a heavy mineral oil named VGO, and a possible amendment to heading 39.01 regarding linear low-density polyethylene. The Committee was further set to have a first discussion on, *inter alia*, the update of classification regulations related to Chapters 27 and 38 (miscellaneous chemical products), taking into account the changes in the CN since their adoption, the classification of bromelain food supplements in tablets, certain alcoholic beverages of headings 2206 and 2208, and concentrates used for the production of anti-freezing preparations.

The Committee was further scheduled to discuss the results of the Project Group meetings in June and September 2012 concerning the chemical chapters of the HS/CN, and a “technical guidance note” on the classification of sets.

(d) Textiles

The next meeting of the Textile Sector of the Nomenclature Committee will take place on 15-16 October 2012. The agenda for that meeting indicates that the Committee is planning to issue an opinion on the classification of garlands with artificial textile flowers and a so-called protective sleeve of textiles. The Committee will also examine the classification of, amongst others, a paper cylinder holding components of cigarettes, graduated compression hosiery (e.g. stockings for varicose veins), and the possible simplification of heading 9619 covering sanitary products. The Committee will also be debriefed on a recent workshop on textiles and shoes.

ORIGIN

Origin Committee

The 200th meeting of the Origin section of the Customs Code Committee took place on 17-18 September 2012. The report of that meeting has not yet been made publicly available, but the agenda included a discussion on El Salvador's and Guatemala's request for a derogation from the EU's GSP rules of origin, and the entry into force of the regional Convention on Pan-Euro-Med preferential rules of origin. Delegations were also set to make comments on the exchange of letters between the EU, Norway and Switzerland providing that products with content of Norwegian, Swiss or Turkish origin shall be treated on their arrival in the customs territory of the EU as products originating in the GSP beneficiary countries, and on the mutual acceptance of replacement certificates of origin Form A or replacement statements of origin. The Committee was further scheduled to discuss the state-of-play of the rules of origin in the EU-Korea FTA, the general monitoring of rules of origin in preferential arrangements and the Commission's proposal for the implementation of a monitoring database, as well as rules of origin in FTA negotiations with Canada.

Notice to importers concerning Israel

On 3 August 2012, the European Commission published an updated warning notice to importers that products originating in Israeli settlements within the Occupied Territories cannot enjoy benefits under the EU-Israel Association Agreement. This notice is different from previous notices as it contains a link to an up-to-date list of non-eligible locations and their postal codes. As a result, importers will not be able to invoke the “good faith” clause when imports of products originating in listed locations are refused duty preferences.

PROCEDURES

Non-fulfilment of obligations linked to suspensive procedures results in customs debt

On 6 September 2012, the CJEU delivered its judgment in a case concerning the incurrance of a customs debt due to the non-fulfilment of obligations relating to the discharge of the inward processing relief procedure (Case C-262/10, *Döhler Neuenkirchen GmbH v Hauptzollamt Oldenburg*).

The CJEU found that there is no provision in the EU Customs Code or the CCIPs that supports the notion that it would be necessary to distinguish between an obligation which must be carried out before the discharge of the relevant customs procedure and an obligation which must be carried out after such a discharge.

The CJEU therefore concluded that the non-fulfilment of an obligation linked to the benefit of the inward processing procedure, which must be carried out after the discharge of that customs procedure, gives rise to a customs debt in respect of the entire quantity of the goods covered by that bill of discharge.

The CJEU came to a similar conclusion when it ruled in Case C-28/11 (*Distribution GmbH v Hauptzollamt Hamburg-Stadt*) that the non-fulfilment of the obligation to enter the removal of goods from the customs warehouse in the appropriate stock records at the latest when the goods leave the warehouse, can give rise to a customs debt, even if they have been re-exported.

MISCELLANEOUS

Update of EU-EFTA Convention on a common transit procedure

On 7 September 2012, the European Commission issued its proposal for a Council Decision on the position to be adopted in the EU-EFTA Joint Committee concerning the adoption of a Decision amending the Convention on a common transit procedure. The amendments replace the list of packaging codes in the common transit Convention pursuant to changes in the relevant UN Recommendation, and update the list of sensitive goods in accordance with changes in the Harmonised System nomenclature. These amendments do not change the original product coverage, however.

EU implements new restrictive measures against Syria on aircraft and vessel inspections

On 24 September 2012, the EU adopted a regulation implementing new requirements in relation to all goods leaving the customs territory of the EU for Syria. This regulation contains the obligation of Member States to inspect aircraft and vessels if there is a reasonable ground to believe that these transport prohibited items to Syria.

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