

EU Customs Practice Group

October 2013

EU POLICY

UCC Developments

On 9 October 2013, the EU adopted the Union Customs Code (UCC), which was published the next day (followed by a corrigendum on the date of full implementation a few weeks later). The UCC is the new EU framework law in the area of customs which has repealed the 1992 Community customs code as of 30 October 2013. The articles of the UCC providing the legal basis for the adoption of detailed implementing rules took effect on that day, but full implementation in the form of detailed rules must still be prepared. The general anticipated date of application of the UCC including such rules is 1 May 2016. On that day, the substantive provisions of the UCC will therefore apply after the adoption of more detailed implementing provisions, but there is scope for further delay (until 2020) to allow the full transition to electronic exchange and storage of data. Until the delegated and implemented acts with detailed UCC rules are adopted, the exact changes that will take place on 1 May 2016 remain unclear.

The UCC introduces new measures to complete the transition to a paperless/electronic customs environment, and provisions to expand and reinforce customs procedures for Authorized Economic Operators (AEOs), including centralised clearance.

TARIFFS

Duty Suspensions and Tariff Quotas

(a) July 2014 Round

On 28 October 2013, the Commission published on its dedicated webpage an updated list of the duty suspensions/tariff quota applications filed for the July 2014 Round. These applications will be discussed during a series of three ETQG meetings. The first ETQG meeting will take place in on 11-12 November 2013, and the second meeting on 9 December 2013.

(b) Tariff suspension for Flat Panel Displays

On 5 October 2013, the EU published the Regulation introducing a special autonomous duty suspension for certain flat panel displays (FPDs) to apply as of 25 October 2013. The suspension is not time-limited and is available for FPDs able to display signals from automatic data-processing machines with an acceptable level of functionality.

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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.

White & Case LLP – Avocats-Advocaten
rue de la Loi, 62 Wetsstraat – 1040 Brussels – Belgium
Tel: +32 2 239 26 20 / Fax: +32 2 219 16 26
www.whitecase.com

GSP – GSP+ Country List

As reported previously, in August the Commission submitted a draft delegated act with the list of GSP+ countries to apply from 1 January 2014. On 14 October 2013, the International Trade (INTA) Committee of the European Parliament held an exchange of views on the draft delegated act, and a draft motion for a resolution calling for the adoption of separate delegated acts for each country has been planned for a vote during the November meeting. GSP+ preferences are available to GSP beneficiary countries that meet certain criteria related to sustainable development and good governance.

GSP – Procedural Rules on Temporary Withdrawal

On 22 October 2013, the EU Council decided not to object to the Commission's delegated act establishing the procedural rules on temporary withdrawals from EU GSP preferences and on the adoption of general safeguard measures. As there was no objection from the European Parliament either, the Delegated Implementing Act was published in the Official Journal (and entered into force) in early November.

e-Commerce moratorium

On 30 October 2013, the Commission published a proposal for a Council Decision on the position to be taken by the EU in the WTO on the extension of the moratorium on customs duties on electronic transmissions (i.e. the "e-commerce moratorium") agreed in 1998 and renewed every two years. The EU considers that e-commerce is a service and therefore should not be subject to customs duties.

EU determines position on the extension of the WTO waiver for Moldova

On 7 October 2013, the EU Council decided that the EU will request an extension, until 31 December 2015, of the WTO waiver on autonomous trade preferences granted by the EU to Moldova.

EU-FTA Update

(a) Japan

The third round of EU-Japan FTA negotiations took place on 21-25 October 2013 in Brussels. The following 13 working groups met: Trade in Goods (including Market Access, General Rules, Trade Remedies), TBT and NTBs, Rules of Origin, Customs and Trade Facilitation, SPS, Trade in Services, Investment, Procurement, IP, Competition Policy, Trade and Sustainable Development, and other issues (including General and Regulatory Cooperation, Corporate Governance and Business Environment, Electronic Commerce, Animal Welfare) and Dispute Settlement. In an official statement at the end of the round, the EU announced that parties made progress during this negotiation round.

The fourth round of negotiations is expected to take place in early 2014. An EU-Japan Summit is scheduled to take place on 19 November 2013 and will, among other things, review the progress made in the FTA negotiations.

(b) US

The second round of negotiations of the Transatlantic Trade and Investment Partnership (TTIP) was scheduled to take place in the week of 7-11 October 2013 in Brussels to focus on trade rules and the regulatory component of the TTIP. However, due to the US Government shutdown, the second round was suspended. Parties quickly started preparations to "catch up" on lost time and organised a so-called second 'mini-round' on 11-15 November, and are planning a third round before the end of the year. This will be followed by a stocktaking meeting between EU Commissioner De Gucht and USTR Froman in January 2014.

On 18 October 2013, France failed to raise support from other EU Member States during an EU Council meeting to allow the declassification and publication of the Commission's TTIP negotiating mandate.

(c) Canada

While certain technical issues remain to be settled, the EU and Canada reached a political agreement on the EU-Canada Comprehensive Economic and Trade Agreement (CETA) on 18 October 2013. The text of the Agreement is not expected to enter into force as part of provisional application until 2015 at the earliest. First, the FTA text must go through steps involving legal scrubbing, initialling, translation and signature.

More than 99% of tariffs will be eliminated under the CETA. Most tariffs for industrial goods and agricultural and fishery products will be removed directly upon entry into force of the Agreement, while a few tariffs will be eliminated gradually over a maximum period of seven years.

(d) South-Korea

In October, the EU and South-Korea continued discussions on the extension of FTA tariff preferences under the EU-Korea FTA to Croatia, but a compromise is still outstanding. Korea reportedly has requested EU concessions, possibly in the form of trade preferences to products coming from the Kaesong industrial complex in North Korea.

CLASSIFICATION

2014 Common Customs Tariff published

On 31 October 2013, the EU published **Commission Implementing Regulation 1001/2013**, containing the Union's Common Customs Tariff (CCT) for 2014. As every year, certain new classification codes will be

introduced, and the product scope for certain existing codes will change.

Simplified tariff structure for certain sanitary articles

On 28 October 2013, the European Commission issued a proposal to simplify the tariff and nomenclature structure for certain sanitary articles, including sanitary towels (pads) and tampons, napkins and napkin liners for babies, under CN code 9619 00. These changes should take effect, following adoption and publication of a legislative act, from 1 January 2014.

Nomenclature Committee Developments

(a) Mechanical/Miscellaneous Sector

The report of the 118th meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee held on 2-4 October 2013 shows that the Committee delivered favourable opinions on draft Classification Regulations for incomplete TVs, a type of heartbeat measuring equipment (but failed to do so for another type), and on a draft Explanatory Note for all-terrain vehicles. Other products discussed include: covers/frames for TVs, high-speed cameras, control units with touch-screen, devices for recording video sequences and still images, LED floodlights, rear-view cameras, professional CD players/mixers, TV simulators, toy helicopters, radio-controlled and remote-controlled socket sets, HDMI splitters, screws and implants for surgical use, and angioplasty articles.

(b) HS/WCO Coordination Sector

The report of the 116th meeting of the HS/WCO Coordination Sector of the Nomenclature Committee of 9-11 September 2013 was made available in October. During that meeting, the Chairman presented items on the agenda of the 52nd meeting of the HS Committee in order to determine the EU's position. The Committee also rejected a proposal to delete certain headings/subheading with respect to textiles. The Committee further agreed with a proposal for a possible amendment of subheading 57.04 (floor tiles), which it will ask the HS Review Sub-Committee to consider. Other issues discussed include a possible amendment of a Note to Chapter 59 on corsets, and changes to headings 39.07 (PET), 39.07 (Polymers of ethylene, in primary forms), 39.01 (LLDPE), 69.07 and 69.08 (ceramic tiles), and a possible amendment of Chapter 97 (Note 2) with respect to works of art. The Committee was also informed that consultations are taking place on a WCO Recommendation to amend Article 8 of the HS Convention (concerning the procedure for amending the HS or adopting guiding instruments).

The next meeting of the HS/WCO Coordination Sector was scheduled for 5-6 November 2013. The agenda includes a determination of the EU's position on items on the agenda of the 46th meeting of the HS Review Sub-Committee, the approval of a communication

endorsing HS Committee opinions and Explanatory Notes, and a discussion on the possible deletion of headings/subheadings with a low volume of trade. A possible amendment of the heading with respect to laser diodes, and of Note 2 regarding the scope of heading 59.03 (Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902) will also be discussed.

(c) Agriculture/Chemistry Sector

The 119th meeting of the Agriculture/Chemistry Sector of the Nomenclature Committee took place on 17-18 October 2013. The Committee delivered various favourable opinions, including on a proposed amendment of the Explanatory Notes related to gas obtained from biomass. No opinion was delivered on a draft Classification Regulation for a concentrate for the production of anti-freezing fluid and for treated distillate aromatic extract. The Committee also examined the tariff classification of tobacco refuse presented in bulk and suited for smoking, infant food, treated distillate aromatic extract, ethyl alcohol-based mixtures, bromelain in tablets, vitamin preparations, thermal stuffed animals, preparations based on organic pigments, and pet food bowls. The Committee further examined the creation of new CN codes in subheading 3824 90 (other prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included).

ORIGIN

Origin Committee Developments

The report of the 206th meeting of the Origin Committee (of 15-16 July 2013) has finally been made available. The Committee discussed various Pan-Euro-Med matters (including rules of procedure for the Joint Committee under the Regional Convention on PEM origin rules, and a request to change the list rule for buttons of heading 9606). The Commission further proposed a form for reporting problems on acceptance of origin declarations by third countries and ways to swiftly take such problems up with those countries. The Commission presented draft non-preferential origin rules for solar panels (see below) in light of EU trade defence measures. It also discussed a case concerning non-preferential origin rules for aluminium road wheels.

The Committee also exchanged views on a Turkish request to extend bilateral cumulation in FTAs of the EU and Turkey to materials originating in Turkey and the EU, respectively. The Commission debriefed the Member States on FTA negotiations with various countries of the Eastern Partnership, Japan, Vietnam, the US, and the EPA countries. It also reported back on the bilateral customs cooperation meetings with Israel (28 May 2013) and Algeria (8 June 2013). Origin matters under the EU-Mexico FTA were also discussed, including the direct

transport rule, and the extension of preferences to Croatia after amendment of the Origin Protocol). The Commission also gave a state-of-play on the origin aspects of the EU-Central America Association Agreement, and the EU-Colombia/Peru Agreement.

The agenda of the 208th meeting of the Origin Committee, held on 28 October 2013, has recently been published. It includes, *inter alia*, a number of pan-Euro-Med (PEM) related issues, a modification of the Customs Code Implementing Provisions to distinguish proofs of origin issued or made out under a Deep and Comprehensive Free Trade Agreement (DCFTA) or Autonomous Trade Measures (ATM) in a single partner/beneficiary country, problems raised by economic operators on acceptance of origin declaration/invoice by third country authorities, and a debriefing on EPA negotiations and the 9th EU-Chile Special Committee on Customs Cooperation and Rules of Origin. The Committee was also scheduled to discuss Cambodia's request for a transitional period in implementing new GSP-EBA (Everything but Arms) rules on ASEAN cumulation, and a request by Sri Lanka and Indonesia for cross-regional cumulation of origin.

Derogations from the rules of origin applicable to imports of certain products from Central America

On 12 and 22 October 2013, the European Commission published a series of regulations on derogations from the rules of origin laid down in Annex II to the EU-Central America Association Agreement. These derogations will apply within the specified quotas for certain products including ignition wiring sets, certain electric conductors, certain plastic materials, aluminium foil, and certain textile products.

GSP – Bonaire, Sint Eustatius and Saba, Curaçao, Sint Maarten and South Sudan comply with GSP requirements

On 8 October 2013, the EU announced that Bonaire, Sint Eustatius and Saba, Curaçao, Sint Maarten (Dutch part) and South Sudan have complied with the requirement to communicate the names and addresses of their governmental authorities empowered to control invoice declarations and issue Form A certificates, and shared specimen impressions of the stamps used by those authorities.

As regards South Sudan, in order to benefit from GSP preferences, goods have to be exported on or after 1 January 2013. For products originating in the other countries, GSP preferences may be claimed for goods exported before 1 January 2013.

Incorrect use of stamps on origin certificates

On 24 October 2013, the Court of Justice of the EU (CJEU) issued its judgment in Case C-175/12, *Sandler AG v. Hauptzollamt Regensburg*, concerning the use of a disparate stamp on the movement certificate EUR.1

and related events. The applicant had applied for zero duty under the Cotonou Agreement, claiming Nigerian origin. In a post-clearance examination of the EUR.1 certificates, the German customs authorities found that the stamp on these certificates was different from the stamp specimen the Nigerian authorities had notified to the European Commission and charged import duties. The German customs authorities informed the applicant that presentation of a new EUR.1 certificate could allow repayment of these duties. However, when the applicant later presented the EUR.1 certificates bearing the correct stamps, the German authorities refused repayment on the ground that the preferential arrangement under the Cotonou Agreement had since expired. The applicant appealed and the Finance Court in Munich referred the matter to the CJEU for a preliminary ruling.

The CJEU reasoned that where preferential customs treatment was requested and granted at the time the goods are placed in free circulation and the preferential arrangement only expired during the post-clearance examination, repayment of the duty difference is not precluded on the basis that the preferential arrangement has expired.

Proposal to extend partial exemption from duty drawback prohibition

On 24 October 2013, the European Commission issued a proposal to extend the current partial exemption from the duty drawback prohibition in the Origin Protocols with Algeria, Egypt, Jordan, Morocco, Palestine and Tunisia until the end of 2015. In addition, the Commission wants to introduce a review clause to allow for a further extension beyond that date to take into account the evolution of duty rates in these countries.

Non-preferential origin rule for solar panels/modules

The European Commission has asked the Member States to vote on a draft Regulation introducing a specific non-preferential origin rule into the Customs Code Implementing Provisions for solar panels and modules. This effort stems from the fact that the Commission wants to ensure correct and uniform application of the EU's anti-dumping duties on these products when they originate from China.

On 28 October 2013, the Origin Committee delivered "no opinion" on this draft Regulation, which means that there were insufficient votes to either approve or reject the draft. The Commission has therefore submitted the draft to a special Appeal Committee foreseen under EU comitology rules in these circumstances, and the timing of a possible vote within this Committee is currently unclear.

MISCELLANEOUS

EU-China customs cooperation

On 25 October 2013, the Commission reported that customs cooperation was discussed in the context of the EU-China High Level Economic and Trade Dialogue, and the expectation is that a new Strategic Framework for Customs Cooperation for the period 2014-2017 will be agreed between the two trade partners soon.

Commission proposal on “made in” origin labelling

On 17 October 2013, the European Parliament's Committee on Internal Market and Consumer Protection (IMCO) endorsed the Commission's proposal for two draft regulations on product safety and market surveillance to replace the current EU Product Safety Directive. The IMCO Committee backed, amongst others, the Commission's proposal to require “country of origin” labelling (including for EU and imported products) to improve the traceability of products. The Committee further noted that EU manufacturers should be able to choose whether they want to use a “Made in EU” label or a label naming an individual EU Member State. Two Parliament rapporteurs will now start negotiations with the Council, with a view to reaching a so-called first-reading agreement on the proposal within the EU institutions. In the past, proposed legislation including origin labelling has been very controversial, including in the Council, so the outcome of these negotiations is currently unclear.

EU-EFTA Convention on a Common Transit Procedure developments

On 24 October 2013, the Council published a Decision on the position to be adopted in the EU-EFTA Joint Committee on transit for the modification of certain HS codes and package codes, in view of recent amendments to the Harmonised System Nomenclature, and revised recommendations of the UN Economic Commission for Europe.

On 18 October 2013, the EU also published technical amendments reflecting the accession of Croatia to the EU.

EU requests WTO Panel on Russian car recycling fee

On 10 October 2013, the EU formally requested the establishment of a WTO dispute panel with Russia on Russia's ‘recycling fee’ imposed on imported cars, as earlier consultations failed to resolve the matter. The EU is arguing that the Russian fee is discriminatory, as it is not imposed on cars produced in Russia or in other Member States of the Eurasian Customs Union (Kazakhstan and Belarus).

EU seminar on Customs Cooperation at the EU Eastern Border

On 24-25 October 2013, the EU's Lithuanian Presidency and the European Commission organised a high-level seminar on the strengthening of customs cooperation at the EU's eastern border in the framework of the Customs 2013 Programme. Participants in the seminar included the Commission's Director-General of DG TAXUD and Commissioner Šemeta, the heads of the Member States' customs administrations, experts from the candidate EU countries and Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, and Ukraine. The agenda included discussions on developing safe trade lanes and electronic exchange of information, the fight against contraband of excise goods, and the Common Transit Convention.

EU preparations for WTO Bali Ministerial

On 30 October 2013, the European Commission released a proposal for a Council Decision to authorise the Commission to support the adoption at the Bali Ministerial of decisions concerning a monitoring mechanism regarding special and differential treatment provisions for developing countries; tariff rate quota administration, and food security.

EU amends rules regarding the temporary import, export and re-import of portable musical instruments

On 1 November 2013, the EU Commission published a regulation under which portable musical instruments for use as professional equipment must no longer explicitly be declared to customs for the temporary importation procedure. This simplification also concerns portable musical instruments which have been declared for export and then have been re-imported and declared for release for free circulations as returned goods by travellers. The Regulation will enter into force on 21 November 2013.

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White & Case Brussels LLP
Rue de la Loi 62 Wetstraat
1040 Brussels
Belgium

www.whitecase.com

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