

EU Customs Practice Group

June 2013

EU CUSTOMS POLICY

UCC developments

On 12 June 2013, the EU published the Regulation that provides for a delay of the full implementation of the Modernised Customs Code (MCC) until 1 November 2013. This delay is deemed necessary to avoid a legal gap after the original MCC implementation date would have lapsed on 24 June 2013, as it was not considered technically feasible to finish all procedural steps on the EU's Union Customs Code (UCC) by that date.

The Regulation on the EU's UCC is expected to be formally adopted by the European Parliament (EP) and the Council in September, and published in the EU's Official Journal in October of this year. It is anticipated that the UCC will be implemented on 1 May 2016, but full transition to new IT systems will take until 2020.

TARIFFS

Update on duty suspensions/tariff quotas

(a) July 2013 Round

On 29 June 2013, the EU published the Regulations updating the EU's list of Duty Suspensions and Tariff Quotas that will be applicable as of July 2013. The amending Duty Suspensions Regulation (**Regulation 626/2013**) terminates 15 duty suspensions, revises 22 existing duty suspensions and introduces 80 new duty suspensions for various product sectors. The Tariff Quota Regulation (**Regulation 627/2013**) introduces 10 new and amends 5 existing tariff quotas.

(b) January 2014 Round

The second meeting of the Economic Tariff Questions Group (ETQG) discussing the January 2014 Round took place on 13-14 June 2013.

EU excludes certain countries from the General Market Access Regulation

On 18 June 2013, the EU published the regulation regarding the exclusion of certain countries from the list of regions or states in the EU's Market Access Regulation, in order to put pressure on them to take the necessary steps towards ratification of interim Economic Partnership Agreements (EPAs). As a result, certain African, Caribbean, Pacific (ACP) countries such as Ghana, Kenya, Rwanda and Tanzania will no longer benefit from duty preferences under the Market Access Regulation as from 1 October 2014.

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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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Regulation on the reinstatement of GSP benefits for Burma/Myanmar adopted

On 29 June 2013, the EU published the regulation reinstating GSP preferences for Burma/Myanmar. Accordingly, the EU is again granting duty-free and quota-free access to the EU markets for all products originating in Burma/Myanmar, except for arms and armaments, under the Everything But Arms (EBA) regime.

These GSP benefits will apply retroactively from 13 June 2012, when the International Labour Organisation (ILO) decided to lift some of its restrictions on the country.

FTA Update

(a) EU-US

On 14 June 2013, the EU Foreign Affairs Council adopted the negotiating mandate for the EU-US Transatlantic Trade and Investment Partnership (TTIP). The TTIP negotiations were officially launched at the G8 summit on 17 June 2013. The first round of negotiations will take place during the week of 8 July, followed by a second round in the autumn. The negotiating trade partners have stated that they aim to conclude negotiations by the end of 2014.

(b) EU-Japan

The EU and Japan held a second round of negotiations during the week of 24-28 June 2013. The parties were scheduled to discuss the elimination of tariff and non-tariff barriers, and are expected to exchange market access offers in the upcoming third round scheduled for 21-25 October 2013.

(c) EU-Canada

The EU confirmed in the context of the G8-summit that the EU-Canada FTA negotiations are in their final stages. While recent progress has been made on outstanding issues relating to intellectual property rights protection and rules of origin, work is still needed on agricultural market access, financial services and public procurement.

(d) EU-Colombia

Colombia's Congress adopted the EU-Colombia/Peru FTA on 4 June 2013, allowing for expected provisional application of the FTA as of July 2013 (subject to confirmation by the EU).

(e) EU-Singapore

Following conclusion of the negotiations in December 2012, the European Commission is currently planning to initial the EU-Singapore FTA in the early autumn, following which it will launch the signature and ratification process in the EU.

(f) EU-Vietnam

The fourth round of negotiations is expected to be held on 2-5 July 2013 in Brussels.

(g) EU-Ukraine

The EU is still aiming to sign the FTA concluded with Ukraine at the Eastern Partnership summit in Vilnius on 28-29 November 2013. The Commission has, however, warned Ukraine that time is running out for Ukraine to meet all the criteria for signature of the FTA at that time.

CLASSIFICATION

Classification Regulations

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

- **Commission Implementing Regulation 535/2013** – classifying half of a housing made of plastics designed to be used as a part of a locking mechanism of a safety seat buckle, under CN code 3926 90 97 as other articles of plastics.
- **Commission Implementing Regulation 540/2013** – classifying a screw made of stainless steel designed for use in wood and wood panels, under CN code 7318 12 10 as a wood screw of stainless steel.
- **Commission Implementing Regulation 615/2013** – classifying a cylindrical article made of aluminium alloy that is used as a part of the retracting unit of a safety seatbelt, under CN code 7616 99 90 as other articles of aluminium.
- **Commission Implementing Regulation 616/2013** – classifying an article made of rigid moulded plastic, consisting of three or four arms, that is used as a hand-operated article for massaging the body, under CN code 9019 10 90 as a massage apparatus.

Nomenclature Committee developments

(a) CN Sector

The report of the 110th meeting of the CN Sector of the Nomenclature Committee that took place on 30 May 2013 has been made available. During that meeting, the Committee examined, *inter alia*, the draft CN for 2014, an Italian proposal for new codes for motorcycle parts, the possible creation of new CN codes for alufoil products under headings 7612 and 7615, and the possible simplification of CN codes 3102 50 10 and 3105 90 10 (natural sodium nitrate). The Commission also stated that it proposes merging the subheadings under CN code 7325 10 (Other cast articles of non-malleable case iron), leaving only 7325 10 00, and introducing a Czech proposal concerning the creation of a subheading in 2207 20 to cover simple mixtures of ethyl alcohol with petrol.

(b) Textiles Sector

The 111th meeting of the Textiles Sector of the Nomenclature Committee took place on 3-4 June 2013. The report of that meeting shows, for example, that the Committee delivered a favourable opinion on a proposed amendment to the CN Explanatory Notes concerning sports footwear (headings 6402, 6403, 6404 and code 6404 11 00).

WCO Rulings, Opinions and Explanatory Notes

On 26 June 2013, the European Commission published its regular Communication listing the references to the HS Explanatory Notes (HSEs) amendments and the Compendium of Classification Opinions approved by the WCO in September 2012. As a consequence, Binding Tariff Information (BTI) that is incompatible with these WCO interpretations ceased to be valid from 26 June 2013, and Member States can no longer issue BTI that contradicts these HS tools.

ORIGIN

Origin Committee developments

The public report of the 204th meeting of the Origin Committee (held on 8-9 April 2013) shows that the Committee discussed, *inter alia*, cumulation of origin under the Pan-Euromed (PEM) Convention, new language for the non-alteration rule under FTAs, the future use of the Registered Exporter (REX) identifying number and changes required in existing legislation for the introduction of the REX system, and the exchange of information between Member States on verifications of origin.

The Commission also informed the Member States on the origin rule discussions during the first round of FTA negotiations held between the EU and Japan in April 2013. The Committee further discussed an Indian request to handle verifications of origin by email, and was informed about a request by Sri Lanka and Indonesia to benefit from cross-regional cumulation under GSP with respect to tobacco products.

PROCEDURES

EU-Switzerland Agreement on Customs Security Measures

On 27 June 2013, a decision of the EU-Switzerland Joint Committee was published amending Annexes I and II of the EU-Swiss Agreement on Customs Security Measures to reflect amendments made in EU legislation concerning customs security measures.

CJEU Ruling on the grant of lysine sulphate production refunds

On 20 June 2013, the Court of Justice of the EU (CJEU) issued a judgment in Case C-568/11, *Agroferm A/S v. Ministeriet for Fødevarer, Landbrug og Fiskeri*, with respect to the tariff classification of lysine sulphate and

the payment of production refunds which had been wrongly made to a Danish company (Agroferm). Agroferm had received production refunds between August 2004 and March 2006 for the manufacture of lysine sulphate, classified under CN heading 2922. The Danish Food Industry Agency found, however, that the products manufactured by Agroferm should not be classified as lysine-based products for the purpose of CN heading 2922 (as claimed by Agroferm) and that therefore, it was not entitled to production refunds. As a result, the Danish Food Industry Agency claimed that Agroferm should repay an amount of DKK 86.6 million, plus interest. Agroferm brought an action against this government decision before the local courts, which decided to stay the proceedings and refer the issue to the CJEU.

The CJEU first of all found that the lysine sulphate based product was designed as an additive, to be used in the production of animal feed and that therefore the product met the requirements of classification under CN heading 2309 as a preparation of a kind used in animal feed. Accordingly, it was not eligible for a production refund. The Court further argued that Agroferm could not rely on the principle of legitimate expectations (irrespective of its good faith), as the Danish customs authorities had no power to create such expectations in this specific case. This was because the product could not be classified under the CN heading or chapter indicated in the refund certificate, and such refunds were therefore contrary to European law.

General Court rules on the post-clearance recovery of import duties on lactoglobulin concentrates

On 5 June 2013, the General Court of the EU issued a judgment related to a dispute between a Danish importer of lactoglobulin concentrates (LGCs) and the European Commission (in Case T-65/11, *Recombined Dairy System A/S v. European Commission*). The dispute concerned the tariff classification of LGCs for which the Danish customs authorities had stated in a telephone call that a BTI did not need to be requested as the LGCs in question were largely identical to products for which a BTI had already been issued to the importer, classifying these LGCs under CN heading 3504. When the authorities later classified certain LGCs under a different CN heading and sought post-clearance recovery of duties, the Danish importer requested remission (i.e. a waiver from the post-clearance recovery of unpaid import duties) on the basis that the Danish customs authorities had made an error (under the "good faith" clause in Article 220(2)(b) of the EU Customs Code). The Commission found, however, that remission was not justified as the applicant had never requested a BTI for those products and no error had been made by the customs authority.

The General Court disagreed with the Commission and found that even though no BTI was requested, the Danish customs authorities had still committed an error as regards the tariff classification of the relevant product. This was because rather than correcting the tariff classification as soon as they knew it was incorrect, they waited one year to start the process of recovery of duties and did not swiftly revoke the original BTI on which the classification of other LGCs was based. It was therefore held by the Court that the Commission's Decision (stating that the remission of import duties was not justified) was unlawful in so far as it was based on the absence of a relevant error.

MISCELLANEOUS

Customs enforcement of IPRs

On 29 June 2013, the EU published the new Regulation on customs enforcement of intellectual property rights (IPRs). This new regulation repeals the existing regulation adopted in 2003 concerning customs action against goods suspected of infringing IPRs in order to strengthen and clarify the existing provisions by, amongst others, broadening the scope of IPRs covered by the Regulation and introducing simplified procedures for the destruction of goods and with respect to small consignments.

European Commission steps up fight against illicit trade in tobacco products

On 6 June 2013, the European Commission issued a Communication proposing a comprehensive EU strategy to fight the problem of illicit tobacco trade in the EU. The Communication refers to the key role that customs and tax authorities play in the fight against smuggling from third countries and the challenges that they face in fighting external and intra EU illicit tobacco trade. The implementation of this Strategy should be concluded by the end of 2015. The Commission plans to prepare a report on the issue in 2016.

EU institutions reach agreement on Customs 2020 Programme

On 26 June 2013, the European Commission, Council and EP reached agreement on the Customs 2020 Programme which aims to support cooperation among the EU customs authorities and facilitate networking and training of customs personnel. The agreement now needs to be endorsed by the Council and the EP.

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