

## EU Customs Practice Group

April 2013

### EU CUSTOMS POLICY

#### UCC Developments – provisional agreement

On 23 April 2013, the negotiators of the European Parliament (EP) and the Council reached a provisional agreement on the EU's Union Customs Code (UCC). The compromise must still be endorsed by the EP's Internal Market and Consumer Protection (IMCO) Committee (and subsequently at the Plenary Session) and by the Council's political level before the UCC can be adopted and published.

Meanwhile, on 10 April 2013, the European Commission proposed to the EP and Council to delay the full implementation date of application of the Modernised Customs Code (MCC) from 24 June 2013 until 1 November 2013. This amendment to the MCC should provide sufficient time to finalise, adopt and publish the UCC and avoid the legal void that would arise after the original MCC implementation, as it will technically not be feasible to finish all these procedural steps on the UCC before the Summer. The MCC amendment proposal is expected to be adopted swiftly by the Council and the EP.

### TARIFFS

#### Update on duty suspensions/tariff quotas

##### (a) July 2013 Round

The Commission has formally submitted its proposals for the Duty Suspensions and Tariff Quota Regulations for the July 2013 Round, which the Council will adopt before the end of June. The Commission proposes to introduce 80 new suspensions, while 4 duty suspensions will be no longer available, and 22 existing suspensions will be modified. The Commission also proposes to open 9 new tariff quotas, end 2 existing tariff quotas at the end of 2013, and to amend the description/codes for 3 existing tariff quotas.

##### (b) January 2014 Round

The Commission has made available information on the duty suspensions applications for the January 2014 Round on its dedicated webpage, introduced a while ago to make the process more transparent. The first Economic Tariff Questions Group (ETQG) meeting discussing the January 2014 Round will take place in May 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.*

## Proposal on autonomous duty suspensions for flat screens

On 10 April 2013, the European Commission formally proposed the introduction of an autonomous suspension for flat panel displays capable of displaying signals from automatic data-processing (ADP) machines with a sufficient standard of performance for the user (falling under CN code 8528 59). The proposed Regulation would be of unlimited duration and enter into force on 1 June 2013. The Commission's proposal is still being discussed in the relevant Council preparatory bodies (including in the Working Party on the Customs Union of 24 April 2013).

## Commission increases additional customs duty rates for certain US products

On 18 April 2013, the Commission published **Regulation 349/2013** which amends the rate of additional customs duty originally imposed on certain products originating in the US by **Regulation 673/2005**.

**Regulation 673/2005** was adopted in 2005 to impose an additional customs duty for certain products following the EU conclusion that the US had failed to bring the Continued Dumping and Subsidy Offset Act (CDSOA) in compliance with its obligations under the WTO Agreements. The additional duties are adjusted annually to the level of nullification or impairment considered caused by the CDSOA.

The Commission has found that the level of nullification or impairment for the fiscal year 2012 should be increased to approximately USD 60.8 million. The Commission has therefore amended the rate of additional duty for four products listed in Annex I to **Regulation 673/2005** to 26% as from 1 May 2013.

## FTA UPDATE

### (a) EU-Japan

The first round of negotiations on an EU-Japan FTA, which was hailed by the European Commission as a "success", was held in Brussels on 15-19 April 2013. The next round of negotiations will likely take place in Tokyo on 24-28 June 2013, and a third round is expected to follow in the Autumn.

### (b) EU-US

On 25 April 2013, the European Parliament's (EP) International Trade (INTA) Committee adopted a draft resolution supporting the opening of talks on an EU-US Transatlantic Trade and Investment Partnership (TTIP), while calling for the exclusion of the cultural sphere from these trade talks. This draft resolution will be put to vote in the EP's plenary meeting of May 2013. Meanwhile, recent institutional discussions between the Commission and Member States on the draft negotiating mandate have focussed on the inclusion of cultural diversity and investment protection in future bilateral talks. The

Foreign Affairs Council (Trade) meeting for which it is aimed that the EU's TTIP negotiating mandate will be adopted has now been scheduled to take place on 14 June 2013. The first round of negotiations between the EU and the US could be held in July 2013, followed by a second round in the Autumn. The ambitious aim is to conclude negotiations by the end of 2014.

### (c) EU-India

Negotiations between the EU and India for an FTA are reported to remain in the final stages without conclusion. A meeting between the Indian Commerce Minister Anand Sharma and EU Trade Commissioner De Gucht took place on 15 April 2013, while chief negotiator meetings are currently on-going and another ministerial meeting is set to take place in June 2013. In response to Indian calls for EU services-related concessions, the EU has, according to press reports, indicated that it is ready to make an "ambitious" offer on temporary work visas for Indian professionals. Other outstanding issues include intellectual property rights and geographical indications, other services areas including banking, investment, government procurement, and market access for wines, spirits and cheese, automobiles and textiles.

### (d) EU-Vietnam

The third round of FTA negotiations between the EU and Vietnam was held in Ho Chi Minh City on 23-26 April 2013. Most important during this round was the exchange of tariff offers, with the EU's offensive interests focussing on product categories with high Vietnamese tariffs such as passenger cars, wines and spirits, steel and machinery. With respect to EU tariffs, sources confirm that Vietnam's interests mainly concern footwear, textile and fish products. The next round of negotiations is expected to be held in Brussels sometime in the Summer.

### (e) EU-Thailand

The first round of negotiations between the EU and Thailand is set to take place at the end of May. The stated aim is to conclude an agreement covering tariffs, non-tariff barriers, services, investment, procurement, regulatory issues, competition and sustainable development.

### (f) EU-Morocco

On 22 April 2013, the EU and Morocco commenced the first round of negotiations for a deep and comprehensive free trade area (DCFTA). The DCFTA is expected to update the existing association agreement and thereby deepen existing trade relations with respect to, among others, services, public procurement, investment, intellectual property rights and the simplification of customs procedures.

## CLASSIFICATION

### Classification Regulations

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

- **Commission Implementing Regulation 327/2013**  
– classifying patient treatment products in the form of rolls consisting of dried mugwort and other dried herbs, under CN code 1404 90 00 as vegetable products not elsewhere specified or included.
- **Commission Implementing Regulation 328/2013**  
– classifying a product in powder form consisting of calcium carbonate and starch that can be used in several different areas, e.g. human foodstuffs, medicaments, paint fillers and in the manufacturing of calcium tablets, under CN code 2106 90 92 as a certain food preparation, not elsewhere specified or included.
- **Commission Implementing Regulation 384/2013**  
– classifying an article composed of cellulose acetate fibres and components of flavourful oriental tobacco used in cigarettes designed to be cut up and to be used in the production of filter cigarettes, under CN code 5601 22 10 as articles of wadding of man-made fibres.
- **Commission Implementing Regulation 385/2013**  
– classifying wipes made of non-wovens that are impregnated with water, soybean oil, etc. and used to remove make-up, tone and purify skin, under CN code 3304 99 00 as a preparation for the care of the skin.
- **Commission Implementing Regulation 386/2013**  
– classifying a product consisting of recombinant human glycoprotein (laminin) in an aqueous storage buffer intended for coating cell culture vessels, under CN code 3504 00 90 as other protein substance of heading 3504.
- **Commission Implementing Regulation 387/2013**  
– classifying food supplements in the form of gelatine capsules containing, *inter alia*, powdered bark of cat's claw and ascorbyl palmitate, under CN code 2106 90 98 as food preparations not elsewhere specified or included.

### Explanatory Notes

On 4 April 2013, the EU added an explanatory note to CN codes 2707 99 91 (Oils and other products of the distillation of high temperature coal tar and similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents, used for the production of carbon) and 2707 99 99 ('other').

This new explanatory note clarifies the conditions for heavy oils (other than crude) obtained from the distillation of high-temperature coal tar or products similar to those oils.

### Commission revokes Austrian BTI

On 24 April 2013, the European Commission published a decision ordering the Austrian customs authorities to revoke binding tariff information (BTI) that was issued for a product consisting of a transparent, yellow-brownish liquid with specific aromatic odour and a bitter, spicy-aromatic taste, having an alcoholic strength of 43% and consisting of a mixture of Camphor and other medicinal herb extracts with essential oils, a food colouring agent and alcohol. The Austrian customs authorities classified this product under CN code 3004 90 00 (other medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale), when the Commission had already adopted a Regulation classifying a similar product under CN code 2208 90 69 ('Other spirituous beverages'). The Commission has concluded that the Austrian BTI must cease to be valid to ensure equality between operators and the uniform application of the Combined Nomenclature.

### EU Guidelines on sets of goods

On 11 April 2013, the Commission published guidelines on the classification of goods put up in sets for retail sale. The guidelines provide that 'goods put up in sets for retail sale' are, as a general rule, goods that consist of at least two different articles that are, *prima facie*, classifiable in different headings; consist of products or articles put together to meet a particular need or carry out a specific activity; and are put together in a manner suitable for sale directly to users without repacking (unless the term "set" is in the wording of a particular CN code or other specific provisions apply, in which case these conditions are inapplicable). To further facilitate classification of sets, the guidelines also elaborate on relevant terms and contain examples.

### Nomenclature Committee Developments

#### (a) Mechanical/Miscellaneous Sector

The report of the 103<sup>rd</sup> meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee of 6-8 February 2013 reveals that the Committee adopted favourable opinions on classification regulations for connector parts, anti-stress balls, a metal box for a champagne bottle, a wood composite decking board, medical tubes, spectacle cords or chains, a body composition analyser, small LCD modules, and a subcomponent for LCD monitors. The classification of, *inter alia*, grooved pipes, multilayer wooden panels, trailer cycles, glass fibre mats, bacteria filters for

infusions, professional CD players/mixers, real-time clock modules, heartbeat measuring equipment, a handset for aircraft seats, traffic message channel (TMC) receivers and printed circuit boards was also examined. A discussion took place on a draft Regulation for three components (electronic units) used in the electronic control system of a motor vehicle, and on the work of the Project Group on audio-video products with respect to the classification of high speed cameras. The Committee also agreed with the proposed classification of upper and lower covers for a safety seatbelt buckle, swivel and fixed castors, control units with touch-screen, an exhaust gas temperature sensor and supported the proposal to amend the HS Nomenclature for LED lighting products.

A further meeting of the Mechanical/Miscellaneous Sector was held on 17-19 April 2013. The agenda included the examination of the classification of, *inter alia*, LED modules and floodlights, motor vehicles as collector's pieces, all-terrain vehicles XY, TV covers and frames, rear-view cameras, TV simulators, grooved pipes, heartbeat measuring equipment, flame detectors, a wrist pulsometer and HDMI splitters. The Committee was also scheduled to deliver opinions on the classification of, *inter alia*, ornamental screws, parts of safety seatbelts, and upper and lower covers for a safety seat-belt buckle.

#### **(b) HS/WCO Coordination Sector**

The next meeting of the HS/WCO Coordination Sector of the Nomenclature Committee will be held on 16-17 May 2013. The 51<sup>st</sup> meeting of the HS Committee will be discussed, as well as a draft Communication on relevant HS guidance to be taken into account by Member States when issuing Binding Tariff Information (BTI), the possible amendment of heading 73.18 (fasteners), headings 41.04, 41.07 and 41.14 (leather) and the classification of a drum housing for a combined harvester-thresher.

#### **(c) Textiles Sector**

The report of the 105<sup>th</sup> meeting of the Textiles Sector of the Nomenclature Committee of 4-5 March 2013 has been made available. During that meeting, the Commission submitted, *inter alia*, a revised version of the proposed draft classification regulation classifying a paper cylinder holding components of cigarettes under CN code 5601 22 10 as "articles of wadding of man-made fibres" (see above under "Classification Regulations"). The Member States were asked to check their BTI and to inform the Commission of those BTIs that were revoked in accordance with the draft regulation.

## **ORIGIN**

### **Origin Committee Developments**

The public report of the 202<sup>nd</sup> meeting of the Origin Committee (19-20 December 2012) shows that the Committee discussed, *inter alia*, the 'roadmap'

presented by the Commission which sets out the required steps for the Implementation of the Pan-Euromed (PEM) Convention and the revision of the PEM rules of origin. The Member States were also debriefed on the status of FTA negotiations with respect to origin rules with Malaysia, Vietnam, India, Canada, EPA negotiations with ACP countries, and with the Eastern Partnership countries (Ukraine, Moldova, Georgia, Armenia). The Commission also informed the Committee on the 2<sup>nd</sup> EU-Korea Customs Committee meeting held in November 2012.

The Commission furthermore explained the modifications of the GSP rules of origin required in anticipation of the application of the new GSP scheme from 1 January 2014. The Committee further discussed the delegations' comments on the working document concerning the exchange of letters between the EU, Norway and Switzerland providing that products with content of Norwegian, Swiss or Turkish origin shall be treated as products originating in GSP beneficiary countries and on the mutual acceptance of replacement certificates of origin Form A or replacement statements on origin. The direct transport rule, and in particular evidence for showing compliance with that rule, was also discussed.

The Commission also reported that it is examining the possible extension of bilateral cumulation of FTAs of the EU and Turkey to materials originating in the other Party.

The 205<sup>th</sup> meeting of the Origin Committee will take place on 13 May 2013. The agenda for the meeting includes, *inter alia*, the Pan-Euromed Convention, a debriefing on FTA negotiations with Japan, Vietnam, and on the EAC-EU EPA. Other issues on the agenda include the registered exporter (REX) system and the relationship between rules of origin and anti-circumvention measures in trade defence.

### **Updated diagonal cumulation notice**

On 17 April 2013, the European Commission published a notice with updated information concerning the date of application of rules of origin of the PEM convention, or the protocols on rules of origin providing for diagonal cumulation between the EU and, *inter alia*, Morocco, Jordan, Norway, Switzerland, Syria, Tunisia and Turkey.

## **PROCEDURES**

### **Exemptions from security data transmission in EU-Swiss movements**

On 4 April 2013, the Commission proposed an EU position to be adopted on the definition of the grounds for exemption from transmitting data pursuant to the EU-Switzerland Agreement on the simplification of inspections and formalities in respect of the carriage of goods and on customs security measures. This draft position proposes an exemption from transmitting



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security data for goods destined for a third country that leave Swiss customs territory through the customs territory of the EU and vice versa, when such indirect exports are made by air. The rationale behind this exemption is that the security level maintenance conditions are considered to be met in such a case because, prior to loading, air carriers subject the whole of an aircraft's cargo to the security checks set out in the Chicago Convention on International Civil Aviation.

### **Croatian Accession to the EU**

The Commission has made available an information document on the impact of Croatia's accession to the EU with respect to customs legislation for the benefit of economic operators and Member States' customs officials. Croatia will normally become the 28<sup>th</sup> EU Member State on 1 July 2013.

## **MISCELLANEOUS**

### **EU campaign against fake products**

On 19 April 2013, the Commission launched a campaign to warn consumers about the risks when buying counterfeit goods. As part of the European Union Action Plan for the period 2013-2017, customs officials are developing tailor-made approaches for monitoring parcel and postal traffic to tackle IPR infringements.

### **Commission proposal to amend EU trade defence instruments**

On 10 April 2013, the Commission proposed a series of amendments to the EU's basic anti-dumping (AD) and anti-subsidy (AS) regulation in the context of its EU Trade Defence Instrument (TDI) reform. Some of these are relevant to customs procedures.

To improve transparency and predictability, the Commission is proposing that provisional measures would not be imposed until two weeks after pre-disclosure to interested parties in order to allow importers time to deal with shipments already in transit and to increase predictability for all stakeholders when trade defence measures are about to be imposed.

To increase fairness, the Commission's proposal also foresees the possibility for reimbursement of duties collected during expiry review investigations in the event that the measures in question are not renewed. Such reimbursement would only be granted upon application to national customs authorities (i.e. no automatic refunds) and no interest would be paid. Commission guidelines on refund applications would be published on this in due course.

The Commission's proposal still has to be examined and approved by the EP and the Council, so the draft Regulation is unlikely to become law before 2014, and the final text may or may not contain the above changes.

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

[www.whitecase.com](http://www.whitecase.com)

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