

EU Customs Practice Group

November 2012

EU CUSTOMS POLICY

MCC/UCC recast proposal

Work has continued in the past month within the Council and European Parliament (EP) on the MCC Recast/Union Customs Code proposal. On 5 November 2012, the Cypriot Council Presidency circulated a compromise text to the Member States amending the European Commission's original proposal.

On 28 November 2012, the European Parliament's (EP's) Internal Market and Consumer Protection (IMCO) Committee considered numerous draft amendments to the Commission's proposal, but further work is required. A vote in IMCO on this text is now scheduled to occur on 18 December 2012.

Depending on the outcome of the on-going discussions in the Council and the EP, trilogue discussions between these institutions and the European Commission with the aim of finding agreement on the MCC Recast/Union Customs Code proposal, should start in the beginning of 2013. The vote in the EP's plenary session is currently scheduled to take place in April 2013.

TARIFFS

Update on duty suspensions/tariff quotas

(a) January 2013 Round

The formal proposals for the draft Tariff Quota and Duty Suspensions Regulations to be published in the EU's Official Journal for the January 2013 round were submitted by the Commission to the Council on 9 November 2012. Both drafts were discussed in the relevant Council Working Party on 19 November 2012, and the texts were agreed with a few minor technical amendments to the draft Duty Suspensions Regulation. The Regulations are expected to be published in December, before entering into effect on 1 January 2013.

(b) July 2013 Round

EU Member States must forward any objections against the requests for suspensions and quotas that were filed for the July 2013 Round to the European Commission by 10 December 2012, the date of the second meeting of the Economic Tariff Questions Group (ETQG). The third meeting will then follow in early 2013.

(c) January 2014 Round

Companies wishing to obtain a suspension or tariff quota in 2014 must get ready to file their application with their Member State in early 2013.

In this issue

EU CUSTOMS POLICY

MCC/UCC recast proposal

TARIFFS

Update on duty suspensions/tariff quotas

EU preferences adopted for Pakistan FTA update

CLASSIFICATION

Classification Regulations

CNEN amendments for static converters and sprouts

CN clarification of petroleum oils and seaweed

CJEU classification judgments on composite cables and set-top boxes
Nomenclature Committee

ORIGIN

Origin Committee

CJEU judgment confirms burden of proof for origin certificates

MISCELLANEOUS

Amendment to CCIPs relating to biodiesel

Regulation on export of cultural goods

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 Wetstraat - 1040 Brussels – Belgium
Tel: +32 2 239 26 20 / Fax: +32 2 219 16 26
www.whitecase.com

EU preferences adopted for Pakistan

On 14 November 2012, **Regulation 1029/2012** introducing emergency autonomous trade preferences (due to the extensive monsoon floods in 2010) for the years 2012 and 2013 for Pakistan was published. The Regulation introduces unlimited duty-free access for 49 products (mostly textiles), while applying tariff quotas for a further 26 products (including mostly textiles/leather/footwear products, but also undenatured ethyl alcohol). Listed 2012 tariff quotas apply from mid-November 2012 until end December 2012. For 2013, annual tariff quota amounts are listed.

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 weeks:

(a) Japan

On 29 November 2012, the Foreign Affairs Council for Trade adopted directives for negotiations on a free trade agreement with Japan, authorizing the European Commission to open the negotiations. In preparation for the Council meeting, intensive institutional discussions focussed on EU negotiating goals for issues such as Japanese non-tariff barriers and possible safeguard mechanisms for the car industry. The bilateral FTA negotiations are expected to be launched in the beginning of 2013.

(b) USA

While the final report of the bilateral High-Level Working Group with a possible recommendation on the launch of FTA talks was expected to be released in December, recent statements by EU Trade Commissioner, De Gucht, indicate that there may be delays. This is because Working Group discussions continue in December on the potential structure of an agreement and certain regulatory trade barriers to be resolved in the short-term as part of a confidence-building exercise.

(c) Canada

At the Foreign Affairs Council for Trade meeting held on 29 November 2012, there were calls for finalizing the EU-Canada FTA negotiations in the coming months. A week before the meeting, EU Trade Commissioner, De Gucht, met with his Canadian counterpart in efforts to resolve final outstanding issues, including market access for agricultural goods, but the Commissioner reported to the Council that a final deal had not been reached. Accordingly, negotiations and ministerial meetings are expected to continue in January 2013.

(d) India

Public procurement offers have recently been exchanged between the EU and India as part of FTA negotiations, a development that is hoped be part of an effort to bring renewed momentum to the negotiations. It

is expected that it will become clearer whether negotiations could feasibly be concluded in the first half of 2013.

(e) Singapore

EU-Singapore FTA negotiations were also discussed at the Foreign Affairs Council for Trade meeting on 29 November 2012. It was confirmed that they are close to conclusion, with certain remaining outstanding issues (including on financial services). Negotiations are therefore expected to continue, with the aim of settling final outstanding issues in the coming month.

(f) Euro-Med: Morocco

As part of efforts to “upgrade” existing association agreements with the Euro-Med countries Egypt, Jordan, Morocco and Tunisia to enhance market access, the EU has recently launched scoping exercises to define the level of ambition of possible deep and comprehensive FTAs with these countries. At the Foreign Affairs Council for Trade meeting held on 29 November 2012, it was confirmed that the launch of such FTA negotiations with Morocco are imminent, whilst preparatory work on the other FTA negotiations continues.

CLASSIFICATION

Classification Regulations

The European Commission published the following Classification Regulations in November 2012:

- **Commission Implementing Regulation 1089/2012** – classifying a “multi-switch” (with intermediate frequency input interfaces, an output interface for terrestrial TV aerials, four outputs for connection to satellite receivers, and including an amplifier for compensating cable loss), under CN code 8543 70 90 as an apparatus not having a function specified elsewhere in Chapter 85.
- **Commission Implementing Regulation 1108/2012** – classifying a U-shaped bolt of galvanized steel used for holding, for example, two or more wires together within heading 7326 as other articles of steel.
- **Commission Implementing Regulation 1109/2012** – classifying a “CCD area image sensor” consisting of three fibre-optic plates with scintillators mounted on linearly-arranged charge-coupled device chips, used for X-ray imaging as a part of television cameras, under CN code 8525 80 19.
- **Commission Implementing Regulation 1110/2012** – classifying a “Universal dual-port car charger” comprising a car cigarette adapter, two USB interfaces and a light indicator as other static converters, under CN code 8504 40 90.

- **Commission Implementing Regulation 1111/2012** – classifying certain stickers used for decoration, under CN code 4911 91 00 as printed pictures.
- **Commission Implementing Regulation 1112/2012** – classifying a USB cable of 1m in length (with insulated twisted wires and USB connectors at both ends) as other electric conductors for a voltage not exceeding 1 000 V fitted with connectors, under CN code 8544 42 90.
- **Commission Implementing Regulation 1114/2012** – classifying a “minitrac” (i.e. a track-laying vehicle for the transport of goods, in this case excavated or other materials over short distances on rough terrain) with a compression-ignition internal combustion piston engine as a dumper designed for off-highway use, under CN code 8704 10 10.

CNEN amendments for static converters and sprouts

The Commission has published an amendment to the Combined Nomenclature Explanatory Notes (CNENs) for Chapter 7 (edible vegetables and certain roots and tubers). Published on 15 November 2012, this amendment clarifies the scope of products considered “sprouts” (i.e. vegetable sprouts and other sprouts) and the proper CN classification of a wide variety of sprout products.

On 29 November 2012, the Commission published another CNEN amendment, this time for static converters classified under CN code 8504 40 30. The amendment confirms that these products do not necessarily exclusively serve to convert the alternating current (AC) drawn from the mains supply into the requisite direct current (DC).

CN clarification of petroleum oils and seaweed

On 13 November 2012, the Commission added new text to clarify the scope of CN Chapter 20 as including seaweeds and other algae prepared or preserved by processes such as cooking roasting, seasoning and adding sugar (through **Commission Implementing Regulation 1055/2012**).

On 29 November 2012, the Commission added new text to CN Chapter 27 establishing the minimum content of biodiesel for products classified under subheading 2710 20 (petroleum oils and oils obtained from bituminous minerals) (through **Commission Implementing Regulation 1113/2012**).

CJEU classification judgments on composite cables and set-top boxes

On 15 November 2012, the European Court of Justice (CJEU) issued its judgment in Case C-558/11 (*SIA*

Kurcums Metal v. Valsts ieņēmumu dienests) on the classification of certain composite cables and corrugated clips with rounded tips used in the production of deep-sea fishing equipment, referred to it by a Latvian court. The CJEU held that the cables had to be classified by means of General Interpretation Rule 3(c) – i.e. under the heading occurring last in numerical order among those that equally merit consideration – as it could not be established which of the two main materials of the cables provided the product with its essential character (i.e. the steel or the polypropylene). With respect to the clips, the Court concluded that they cannot be classified in the heading for nails, tacks, drawing pins, etc. as they do not have pointed tips. The CJEU also determined that the absence of one relevant CN code for steel cables in only the Latvian language version of a Regulation imposing anti-dumping duties would not excuse the cables in question from anti-dumping measures, as it clearly involved an editing mistake.

On 22 November 2012, the CJEU issued a further classification judgment in Joined Cases C-320/11, C-330/11, C-382/11 and C-383/11 (*Digitalnet OOD, Tsifrova komania OOD and M SAT CABLE AD v. Nachalnik na Mitnicheski punkt – Varna Zapad pri Mitnitsa Varna*) related to certain set-top boxes with a communication function, on the basis of questions referred to it by a Bulgarian court. The CJEU held that a set-top box will be considered to have a modem for gaining access to the internet – and thus be subject to duty-free treatment – if the modem component in question is “a device which, alone and without intervention of any other apparatus or mechanism, is able to access the internet and to ensure interactivity and an exchange of information in both directions”. In other words, the particular technique to achieve this internet access capacity is irrelevant in this context. The CJEU further clarified that, considering the wording of the relevant CN heading, the reception of TV signals and the presence of a modem allowing access to the internet are two equivalent functions that have to be performed in order for the product to be classifiable under CN code 8528 71 13 (and in the absence of one of these functions, the apparatus is classifiable under CN code 8528 71 19). The CJEU further confirmed that the customs authorities are not required to carry out a physical check of goods at inspections performed after customs release, and can therefore determine the classification of the product solely on the basis of written documents.

Nomenclature Committee

(a) Mechanical/Miscellaneous Sector

The 97th meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee was held on 22-23 November 2012. The agenda for that meeting shows that the classification of products such as all-terrain vehicles, swivel and fixed castors, multi-layer wooden panels, grooved pipes and professional CD players/mixers was scheduled for a first discussion.

Further examination was also expected on classification issues relating to TV covers and frames, control units with touch-screens and LCD module components. Finally, listed as subject to conclusion were classification issues relating to parts of safety seat belts, fun massagers, ornamental screws and small LCD modules.

(b) HS/WCO Coordination

The next meeting of the HS/WCO Coordination Sector of the Nomenclature Committee will be held on 18 December 2012. The agenda for the meeting indicates that the topics of discussion will include possible HS amendments relating to ceramic tiles, LED products, steel tubes and fasteners. Possible amendments to the HSEs for peroxides and steel tubes are also scheduled for discussion.

(c) Agriculture/Chemical Sector

The 98th meeting of the Agriculture/Chemical Sector of the Nomenclature Committee is scheduled to be held on 6-7 December 2012. According to the agenda for this meeting, a draft regulation on tariff classification of ethyl alcohol mixtures will be subject to a committee vote, whilst tariff classification of such products as maize flour snacks, miso, food supplements, human recombinant laminin and cat litter will be examined. Issues subject to a first discussion relate to fruit-vegetable preparations, bromelain, "Bittner Balsam" and cigars.

(d) Textiles Sector

The 95th meeting of the Textiles Sector of the Nomenclature Committee was held on 15-16 October 2012. The report from that meeting has recently been issued. This report shows that opinions were issued on draft classification regulations on garlands with artificial textile flowers and a protective sleeve of textiles. A draft classification placing paper cylinder holding components of cigarettes under heading 5601 was discussed and supported by the majority of Member States present.

Other issues that were examined included CN wording clarifications for graduated compression hosiery and classification options for custom-made textile armchair or sofa covers. First discussions were also held on classification issues relating to tent roofs, jewellery boxes and ticks for downs or feathers. Finally, there was agreement among the Committee members that shoes with embedded GSP-tracking devices should be classified as footwear.

ORIGIN

Origin Committee

The 198th meeting of the Origin Section of the Customs Code Committee was held on 21 May 2012. The meeting report has just recently been made available. This report shows that the meeting involved preparations for the next Pan-Euro-Med working group meeting, along with status updates on the on-going Canada,

Malaysia, Mercosur and India FTA negotiations. Discussions were also held on various topics relating to the existing FTAs with Korea (splitting of consignments) and Chile (Special Committee on Customs Cooperation and Origin meeting held in March 2012), and application of GSP origin rules on certain fishery products. Briefings were also given on meetings with officials from Bangladesh, the United Arab Emirates and Indonesia on issues relating to preferential rules of origin.

The report from the 199th meeting of the Origin Section of the Customs Code Committee held on 3-4 July 2012 has also recently been made available. This report shows that, in relation to non-preferential rules of origin, rules relating to spirits produced in the EU from imported concentrates and discussions on a possible rules of origin hierarchy held at the WTO in Geneva were discussed. The Committee also discussed the possible revision of the pan-Euro-Med rules of origin in preparation for the October 2012 Working Group meeting, as well as issues relating to direct transport and Korean origin declarations with Swiss addressees under the EU-Korea FTA.

Status updates were given on the EU's FTA negotiations with India and Canada, and the Commission presented statistics on post-clearance verification requests of proofs of origin received from and sent to beneficiary countries in 2010 and 2011. Finally, certain origin certification-related issues, in light of Turkish additional duties on imports of certain textile products not originating in the EU, were discussed.

CJEU judgment confirms burden of proof for origin certificates

On 8 November 2012, the CJEU issued a judgment in Case C-438/11, *Lagura Vermögensverwaltung GmbH v. Hauptzollamt Hamburg-Hafen*, relating to GSP origin certificates, and where the burden of proof falls when the exporting country is unable – in this case, due to the fact that the factory has ceased production – to verify the accuracy of certificates. The Court's judgment confirms that it is very difficult for an importer to invoke the "good faith clause" to escape liability in such cases, as the burden still falls on the importer to prove that the certificate was based on a correct account of the facts by the exporter in order to obtain duty preferences. The Court acknowledged that this may be inconvenient for the importer, who otherwise acted in good faith, but that the EU cannot be made to bear the consequences of wrongful acts of suppliers of importers, and that importers must assess the risks involved in the market in which they are operating and accept them as normal trade risks.

MISCELLANEOUS

Amendment to CCIPs relating to biodiesel

On 27 November 2012, **Commission Implementing Regulation 1101/2012** was published, amending the Customs Code Implementing Provisions to allow the mixing of gas or fuel oils not containing biodiesel with gas or fuel oils containing biodiesel under the warehousing procedure.

Regulation on export of cultural goods

On 22 November 2012, the European Commission published **Commission Implementing Regulation 1081/2012** containing rules relating to licensing at EU export of cultural goods for implementation of **Council Regulation 116/2009**, and repealing a 1993 Regulation as from 12 December 2012.

Worldwide. For Our Clients.

38 Offices. 26 Countries.

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

www.whitecase.com

In this publication, White & Case means the international legal practice comprising White & Case LLP; a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, corporations and undertakings.