

## EU Customs Practice Group

June-July 2012

### EU CUSTOMS POLICY

#### MCC/UCC recast proposal

An Article-by-Article reading of the Modernised Customs Code (MCC)/Union Customs Code (UCC) recast proposal took place in the Council's Working Party (WP) on Customs Union on 1 and 26 June and 3, 18 and 24 July 2012. When this issue was drafted, the Member States had discussed the first 77 Articles of the proposal in the WP. Member States have until 17 August 2012 to submit further comments. The Cypriot presidency hopes to complete the first technical reading of the recast proposal by November 2012 and submit a compromise text for discussion by the Member States by the end of 2012.

Within the European Parliament, the International Trade (INTA) Committee has also exchanged views on the proposal. A vote within the INTA Committee is scheduled for its session of 10-11 October 2012. The Internal Market and Consumer Protection (IMCO) Committee is scheduled to vote on the proposal on 29 November 2012, and a vote in the European Parliament's plenary session is set to take place in April 2013.

#### Multi-annual Strategic Plan and IT strategy

In July 2012, the Commission updated the EU's Multiannual Strategic Plan (MASP), which was introduced as a management and planning tool under eCustoms **Decision 70/2008** adopted four years ago. The new version (not publicly available) updates the planned timing on the introduction/updating of customs systems (including those required for the implementation of the MCC/UCC such as for centralised clearance). It now also includes a more detailed customs IT strategy aimed at achieving convergence between the hundreds of systems in operation in the 27 Member States, and making the introduction of new systems less costly and complex by using a service-orientated architecture.

#### Fighting fraud in the EU

On 11 July 2012, the Commission submitted a proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law. The proposal could be considered relevant for customs cases as customs duties form part of the EU budget and failure to pay the correct amount of customs duties affects the EU's financial interests.

The Commission proposes that Member States should be obliged to ensure that certain intentional behaviour leading to wrongful retention of funds from the EU budget qualifies as a criminal offence and be made subject to proportionate penalties. Legal persons could be held liable for offences committed for their benefit as well.

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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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## FISCALIS and CUSTOMS merge faces opposition

In June 2012, the Member States in various Council Working Parties (the Tax Questions group and the Customs Union group) and at the more political level of the Committee of Permanent Representatives opposed the Commission's proposal to merge the two programmes in place for tax (FISCALIS) and customs (CUSTOMS) into the new proposed FISCUS programme. They called for two separate legal acts instead for Customs 2020 and Fiscalis 2020.

Although following this request the Commission maintained its position against a split, it said it will present an amended proposal which will take the form of two legislative texts.

## TARIFFS

### Update on duty suspensions/tariff quotas

#### *(a) July 2012 Round*

On 27 June 2012, the Council published Council Regulations on tariff quotas (Regulation 551/2012) and duty suspensions (Regulation 552/2012) for the July 2012 round.

#### *(b) January 2013 Round*

The second meeting of the Economic Tariff Questions Group (ETQG) on the January 2013 Round took place on 11-12 June 2012. The third ETQG meeting took place on 12-13 July 2012. An additional fourth meeting of the ETQG could be held in September 2012 to finalise the discussion on some outstanding issues. A proposal will subsequently be presented by the Commission to the Council for adoption by the end of the year and to apply from 1 January 2013.

#### *(c) July 2013 Round*

Applications for a new duty suspension or tariff quota for the July 2013 round must be submitted by the EU Member States to the European Commission by 15 September 2012. The deadlines imposed by the Member States for companies to file applications are normally set at several weeks or even months before the final deadline. Applicants must therefore act quickly if they have not yet filed their request.

### Update on EU GSP Reform

On 13 June 2012, the European Parliament (EP) adopted a resolution on the Commission's proposal on the next GSP regime. This resolution reflects the compromise reached with the Council in May. Contrary to the Commission's initial proposal, the next GSP regime will only be applicable for 10 years, starting from 2014, except for the special arrangement for the least-developed countries which will continue to apply without an expiry date. The Parliament also demanded the inclusion in the new regime of threshold values triggering a safeguard procedure.

The EP did accept the Commission's proposal to decrease the number of countries eligible for GSP or GSP+ preferences, while increasing the amount of products that can benefit from such preferential treatment. Countries that will lose GSP preferences, based on a classification by the World Bank as high-income or upper-middle income countries, include Russia, Belarus, Saudi Arabia, Malaysia, Brazil and Argentina.

Countries that would no longer benefit from GSP benefits, but have already initialled a preferential trade agreement with the EU by the entry into force of the new Regulation, would still be able to benefit from the GSP scheme for a transitional period of two years.

### GSP preferences for Burma/Myanmar

On 13 June 2012, the International Labour Organisation (ILO) lifted its restrictions on the full participation of Burma/Myanmar in its activities and decided to review the progress on the elimination of forced labour in the country next year. Following the ILO decision, the EU announced that it will consider issuing a legislative proposal on the re-instatement of GSP preferences for Burma/Myanmar on the basis of this ILO report.

### FTA update

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

#### *(a) Japan*

On 18 July 2012, the European Commission adopted a draft mandate for opening free trade negotiations with Japan for discussion/approval by the Council after the summer.

According to the Commission, the draft negotiating mandate contains a provision that Japan should eliminate its non-tariff barriers in parallel with the elimination of tariff barriers in the EU. In addition, a safeguard is proposed authorising the suspension of negotiations, if after one year Japan is not showing sufficient commitment to dismantle non-tariff barriers as set out in a roadmap agreed with the EU.

#### *(b) US*

On 19 June 2012, the EU-US High-Level Working Group on Jobs and Growth, which was set up in November 2011 to study the potential scenarios for a new transatlantic free trade agreement, issued its interim report.

The report concludes that a comprehensive agreement that addresses a broad range of bilateral trade issues (including tariffs, regulatory/convergence issues and NTBs, services, investment and public procurement), as well as issues of common concern with respect to third countries (e.g. access to raw materials/energy) would, if

achievable, provide the most significant benefit to both countries.

This interim report has been endorsed at the highest political level by US President Obama, European Commission President Barroso and EU Council President Van Rompuy.

Meanwhile, the European Commission has also launched public consultations on the future of EU-US trade and economic relations. The results of this, and an earlier consultation, will be used for the Impact Assessment that the Commission is currently preparing.

The current ambitious aim from the EU side would be to start negotiations in 2013 and to finalise them in 2014.

#### (c) Colombia – Peru

On 26 June 2012, the EU signed the FTA with Colombia and Peru. The agreement will provisionally take effect once the European Parliament has given its consent and the ratification process is concluded in Peru and Colombia.

#### (d) Canada

European and Canadian negotiators stated in the context of an EP event in late June that good progress has recently been made in the areas of market access for goods, services, and procurement, but that no consensus has yet been found in certain areas, including on rules of origin. The goal is still to conclude the FTA negotiations before the end of 2012.

#### (e) India

A ministerial meeting between the Indian Minister for Commerce and Industry, Sharma, and EU Trade Commissioner, De Gucht, took place on 26 June 2012, following several other high-level meetings. Discussions focused on outstanding key market access issues in relation to services, tariff reductions and public procurement.

Further bilateral technical and senior-level meetings are scheduled for September and October 2012. After that, it is expected that another ministerial meeting will be held towards the end of 2012 to assess progress. The EU is still aiming for further commitments from India on, *inter alia*, tariff reductions for cars, wines and spirits, and on the issue of duty drawback.

#### (f) Singapore

On 18 July 2012, EU Trade Commissioner, De Gucht, and Singapore's Trade Minister, Lim, met to discuss progress in the on-going EU-Singapore FTA negotiations. Further chief negotiator meetings were held on the fringes of this ministerial meeting with the aim to settle outstanding issues. Agreement still needs to be reached on a number of issues, including rules of origin.

Further chief negotiator meetings are scheduled to take place in the late Summer. Depending on the outcome of these discussions, a new ministerial meeting may be scheduled for the Autumn.

#### (g) Central America

On 29 June 2012, the EU and six Central American States signed a comprehensive association agreement consisting of three pillars, including trade. The trade component of the agreement focuses on tariff elimination, government procurement, services and investment. The agreement as a whole will enter into force as soon as it is ratified by all the parties. The trade provisions of this agreement will however enter into force at the end of 2012 or the beginning of 2013 following the consent by the European Parliament expected in the Autumn.

#### (h) Vietnam

On 26 June 2012, the European Commission officially launched free trade negotiations with Vietnam. These negotiations will cover tariffs, non-tariff barriers, procurement, competition and services. The first round of talks is scheduled to take place after the Summer. The European Commission also launched public consultations on an FTA with Vietnam. Replies to the Commission's questionnaire can be sent to the Commission until 17 August 2012.

#### (i) Armenia

On 19-20 June 2012, the EU and Armenia held a first round of negotiations on a Deep and Comprehensive Free-Trade Area. The two sides agreed to set up 14 working groups that will focus on the concrete chapters of a future agreement. Such agreement establishing a free trade area will be part of a broader association agreement which is currently being negotiated between the EU and Armenia. The next round of negotiations is scheduled to take place in early October 2012.

## CLASSIFICATION

### Classification Regulations

In June and July 2012, the following Classification Regulations were published:

- **Commission Implementing Regulation (EU) No 553/2012** – classifying an unthreaded article of steel (other than stainless steel) with a hexagon head that is to be further worked into finished goods of heading 7318 (screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel), as an unfinished article within the meaning of GIR 2(a) of CN code 7318 15 89.
- **Commission Implementing Regulation (EU) No 554/2012** – classifying a decorative sprig to be used as a candle decoration consisting of artificial flowers,

foliage and fruit under CN code 6702 90 00, as an article made of artificial flowers, foliage and fruit of other materials.

- **Commission Implementing Regulation (EU) No 491/2012** – classifying infant feeding bottles made of plastic (polypropylene) and graduated, with a silicone nipple and a protector, as “tableware and kitchenware” under CN code 3924 10 00.
- **Commission Implementing Regulation (EU) No 696/2012** – classifying insoles consisting of a flexible, forked spring section made of steel and an interchangeable cushioned pad made of various materials that are designed to reduce the burden on the feet and the whole body, as removable insoles under CN code 6406 90 50.
- **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 purposes of connecting machines within a local area network for signal transmission and reception under CN Code 8517 70 90, as a part of 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 a screen of the LCD technology.

### Explanatory Notes

- On 2 June 2012, the European Commission published an amendment to the Explanatory Notes to heading 2007 (jams, fruit jellies, marmalades, etc).
- Also on 2 June 2012, the Commission replaced a paragraph in the Explanatory Notes to heading 2309 (preparations of a kind used in animal feeding).
- On the same date, the Commission published an amendment to the Explanatory Notes to subheadings 0714 90 11 and 0714 90 19 (heading 0714 covers, amongst others, arrowroot, salep, Jerusalem artichokes, and similar roots and tubers).
- On 27 June 2012, the European Commission published an additional Note 4 to Chapter 95 that applies with respect to combinations consisting of one or more articles of heading 9503 (Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls; other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds) combined with items of other headings. The note specifies that the

classification of such combinations is to be determined by the items of heading 9503, and that the other components are not taken into account.

- Also on 27 June 2012, a note to Chapter 87 was published to provide a definition of derailleur gears for bicycles under subheading 8714 99 50.
- An amendment published on 27 June 2012 replaces the existing Explanatory Notes with respect to printed circuits (heading 8534 00), and amends the text with respect to heading 8544 (insulated (including enamelled or anodised) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors).
- On 4 July 2012, the Commission published 5 Explanatory Notes to replace existing Explanatory Notes to heading 0102 (live bovine animals).
- On 24 July 2012, the Commission amended the text in the Explanatory Notes to subheading 0806 20 10 (Currants) and added two additional Explanatory Notes (0806 20 30 – Sultanas, and 0806 20 90 – Other).

### Classification Opinions

On 19 June 2012, the European Commission published the amendments to the classification opinions approved by the WCO HS Committee. These amendments relate to the classification of, *inter alia*, cartridges for an electronic cigarette (3824 90) and assemblies of two multi-positional electrical switching devices arranged on two sides of a mounting bracket designed for mounting on the steering column of a motor vehicle (8537 10).

### CJEU ruling on semiconductor polishing pads

On 19 July 2012, the Court of Justice of the European Union (CJEU) found in a French reference for a preliminary ruling (Case C-336/11, *Rohm & Haas*) that polishing pads intended for exclusive use for semiconductor wafer-polishing machines, but imported separately from such machines, should be classified under heading 3919. The Court reasoned that those pads could not be classified under the parts heading 8466 because they should not be considered as parts or accessories suitable for use solely with these wafer-polishing machines because the functioning of those machines is not dependent on the presence of the polishing pads.

### CJEU ruling on blood albumin

On 12 July 2012, the CJEU issued a judgment following a request for a preliminary ruling by the Netherlands on the classification of blood albumin prepared for therapeutic or prophylactic uses. In Case C-291/11

(*Staatssecretaris van Financiën v. TNT Freight Management*), the Court found that blood albumin which does not itself have a therapeutic or prophylactic effect, but which was produced for the preparation of products having such an effect, which is essential to that preparation and which may only be used for that purpose, should be considered as having been prepared for therapeutic or prophylactic use and concluded that it should therefore be classified under tariff subheading 3002 10 10 as a blood product. The Court rejected classification as albumin under Chapter 35, referring to an exclusion Note to that Chapter.

## Nomenclature Committee

### (a) Mechanical/Miscellaneous Sector

The public report of the meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee that took place on 21-22 June 2012 reports the adoption of a favourable opinion on draft classification regulations regarding Fußelastic insoles, keypads, transformer modules with RJ 45 plugs, remote elevator monitoring (REM) units, and three types of DVD multimedia centres for motor vehicles (some of which have meanwhile been published – see elsewhere in this newsletter).

The Committee further examined the classification of body-composition analysers, connector parts, steel-wire clamps, and Universal Dual Port car chargers, USB cables, CCD sensors, audio-video players with reception apparatus for radio-broadcasting, metal boxes for champagne bottles, ornamental screws, party poker sets, hand-bikes, crawler carriers and anti-stress balls.

In addition, the Commission presented a draft CNEN amending the current CNEN to subheading 8504 40 30 (statistic converters of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof).

The Committee was also informed that the vote on a draft Regulation on video monitors was postponed, and that the possible creation of a special subheading for video monitors operating solely or principally with automatic data-processing machines currently being explored internally, was suspended pending internal discussions.

The Commission was asked questions on the legal value and adoption procedure for “statements” and promised to examine these internally.

### (b) CN Sector

The Combined Nomenclature (CN) Sector of the Nomenclature Committee met on 24-25 July 2012. The agenda of that meeting featured discussions and a vote on a possible amendment of CN code 7601 20 (aluminium alloys), the possible simplification of Chapter 27 (mineral fuels, mineral oils and products of their

distillation, bituminous substances, mineral waxes) and the draft CN 2013.

The Committee was also scheduled to discuss, *inter alia*, the proposal for the creation of new CN codes for “Bio-Based Products” and the preliminary transposition of classification regulations into the 2013 version of the Combined Nomenclature.

During the previous meeting (in May 2012), of which the report has only recently been made available, this Sector also discussed the possible introduction of new codes for certain rare-earth metals.

### (c) Heads of Tariff

The Heads of Tariff section of the Nomenclature Committee met on 24 May 2012. The report of that meeting indicates that the Nomenclature Committee discussed the recast of **Regulation 2658/87** on the Tariff and Statistical Nomenclature and on the Common Customs Tariff. A discussion on whether Annex I to that Regulation should be amended once every two years, instead of annually also took place.

The Committee also discussed the efficiency of the Binding Tariff Information (BTI) system. The Commission proposed to solve classification inconsistencies in the short term by using a structured workflow. The Commission also presented a working paper on the possible overhaul of the BTI system in the future containing three options, including the transfer of the entire BTI process from the Member States to the Commission.

The Committee exchanged views on the current and future review of the HS. The Commission further announced that it has finalised the draft global report on the first phase of monitoring visits that took place in the Member States on the BTI regime in 2007 and 2008, and which will soon be made available to the public.

Other items discussed included, *inter alia*, the European Court of Auditor’s assessment on the BTI process, the interpretation of classification-related CJEU judgments, and the uniform classification of new products.

### (d) HS/WCO Coordination

The HS/WCO Coordination sector of the Nomenclature Committee met on 14-15 May 2012. During that meeting, the Chairman presented the results of the discussions held in the 49<sup>th</sup> meeting of the WCO HS Committee which took place in March 2012. The Committee also determined the position of the EU for the 43<sup>rd</sup> meeting of the HS Review Sub-Committee.

The Committee further decided to maintain the *status quo* regarding heading 84.13 (pumps) and Note 3 to Chapter 85 (machines for domestic purposes). The Committee held an in-depth discussion on a possible

amendment of Section XI (textiles and textile articles) Chapter 64 (footwear), headings 41.04, 41.07, and 41.14 (leather) for HS 2017, and a possible amendment to heading 39.01 (polymers of ethylene, in primary forms). In addition, a discussion took place on the possible misalignment of the Notes to Section XVI and HS Explanatory Notes (HSEs) to heading 84.87.

Discussions also took place with respect to the possible amendment of Note 2 to Chapter 97 (works of art) and the HSEs to that Chapter.

The subsequent (90<sup>th</sup>) meeting of the HS/WCO Coordination sector took place on 4-5 July 2012. The Committee discussed the September 2012 meeting of the WCO HS Committee and the WCO's recommendations on the standard of units in quantity which is applied in the CN.

In addition, the Committee considered a proposal to further subdivide heading 8456 (machine-tools working by laser) into a subheading for flat products and one for other products.

In the context of the possible misalignment of the Notes to Section XVI and the HS Explanatory Notes to heading 84.87, the Committee decided to ask the WCO secretariat for historic information regarding these HSEs.

The Committee also continued to discuss the possible amendment of heading 73.18 (fasteners) and Note 2 and the HSEs to Chapter 97 (works of art). The possible amendments of heading 94.01 (seat covers) for HS 2017 were also examined, as well as the possible amendment of the HSEs to heading 48.19 (cartons, boxes, cases, bags and other packing containers) and heading 96.03 (brooms, brushes, etc.).

Discussions took place on the possible simplification of classification of INN products (pharmaceutical substances or active pharmaceutical ingredients). In addition, the Chairman informed the Committee on the discussions in the WCO Policy Commission on how to better reflect in the HS requirements the needs of international organisations with respect to the fight against fraud, or protection of the security, environment and public health.

#### *(e) Agriculture/Chemical Sector*

On 4-6 June 2012, the Nomenclature Committee's Agriculture/Chemical Sector met. During that meeting, the Committee delivered a favourable opinion on the draft measures regarding the classification of, *inter alia*, propolis in capsules, chitosan in capsules, capsules containing cultures of micro-organisms, and tablets consisting mainly of plant powders.

The Committee also examined a proposal for a classification statement on a herbal product called

"Moxa", a proposal for a new additional note to Chapter 21 with respect to food supplements, and the tariff classification of, *inter alia*, protein concentrates used for animal feeding, a product called "Partner cigarillos", a heavy mineral oil named VGO, mixtures of ethyl-alcohol and ETBE, cleansing wipes, shower gels, miso paste, various rubber products for pharmaceutical use, and semiconductor wafer transport boxes.

The Committee further endorsed the revised report of the Project Group concerning the chemical chapters of HS/CN from 30 January 2012, and 18 April 2012.

#### *(f) Textiles*

On 18 June 2012, the Textile Sector of the Nomenclature Committee met and discussed the draft Commission Regulations on the classification of a control strip – bracelet, and garlands with artificial textile flowers. The Committee also examined the classification of a paper cylinder holding components of cigarettes, protective sleeves of textiles, and stockings for varicose veins.

The Chair also provided information to the Member States on a pending Court case (C-180/12) on the classification of a certain fabric imported as rolled-up strips for the production of vertical blinds.

## ORIGIN

### Origin Committee

During June and July, the reports of two Origin Committee meetings were finally issued.

The report of the 196<sup>th</sup> Origin Committee meeting of 8 February 2012 reflects the presentation by the Commission of a proposal on the EU's position on list rules for the Pan-Euro-Med Convention. A debrief was also provided on the FTA origin rules negotiations with India, Singapore and Canada.

The Commission also presented Korea's proposed amendments to adapt the list rules in the Rules of Origin in the EU-Korea FTA to the HS 2012.

Origin issues under the EU-Mexico FTA were also discussed following complaints by Mexico that Member State customs authorities were rejecting proof of origin (for garlic in this case) without triggering requests for verification as foreseen in the Origin Protocol.

The Turkish delegation further presented Turkey's proposal to amend the provision of bilateral cumulation in bilateral FTAs of the EU and Turkey.

The Committee also discussed the application of the GSP list rules of origin to knitted and crocheted products of heading HS 6212.

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The Commission further announced that it would launch a survey on Member States' practices relating to issuing Approved Exporter Authorisations and that it was re-launching an inter-service consultation to find a compromise text regarding the possibility for Member States to decide to send proof of origin for verification in cases where a notice to importers has been published. The Commission finally also announced that it will present a revised version of the proposal as regards the splitting of consignments in the EU.

The report of the 197<sup>th</sup> Origin Committee meeting of 27 April 2012 reports the continuation of the discussion on the Pan-Euro-Med Convention (including the origin determination of motor vehicles classified under heading 8703 applying the territoriality principle). As usual, a debrief was provided by the Commission on the FTA origin rules negotiations with Canada, Singapore, and on the negotiations on Economic Partnership Agreements (EPAs) with African countries. In addition, various origin issues under the EU-Korea FTA were discussed (including updating the list rules to reflect the HS 2012, verification requests, and the splitting of consignments). Requests from Guatemala, El Salvador and Cape Verde for derogations from the GSP rules or origin were also on the table.

The 198<sup>th</sup> meeting of the Origin Section of the Customs Code Committee took place on 21 May 2012. The public report of that meeting is not yet available, but topics on the agenda included the usual update on ongoing FTA negotiations, on the splitting on consignments in the EU and in third countries under the EU-Korea FTA, a debriefing on a bilateral meeting under the EU-Chile FTA, and on the meetings with Bangladesh, Indonesia, and UAE as regards the monitoring of the management and administration of the GSP origin rules.

The Committee was also scheduled to discuss the impact of the amendments to the HS 2007 and HS 2012 on the GSP rules and the negotiations on rules or origin under the future agreements with Georgia and Moldova. In addition, issues under the EU-Israel FTA were on the agenda (with an updating of a warning notice to EU importers), and guidance on clarifying when there is "reasonable doubt" as to the preferential origin of goods was set to be revised.

The 199<sup>th</sup> meeting of the Origin section took place on 3-4 July 2012. Based on the agenda available, during that meeting, the Committee was set to discuss, *inter alia*, the conclusions of the last WTO Committee on Rules of Origin, the non-preferential origin of spirits, the revision of the Pan-Euro-Med Convention, the state of play of the rules of origin provisions or issues under various existing FTAs and in pending FTA negotiations, and the negotiation of an Agreement between the EU, Norway and Switzerland on products originating from GSP beneficiary countries incorporating materials from Norway, Switzerland or Turkey.

## VALUATION

### Valuation Committee

The report of the meeting of the Customs Valuation section of the Customs Code Committee of 2 December 2011 has finally been issued. It reports that the Commission provided clarifications regarding the data elements required for customs valuation in electronic customs procedures under the future MCCIPs. The Commission also clarified the circumstances under which a declarant can obtain a waiver from the obligation to provide certain data.

The Commission further provided a revised version of the document on the application of standard rules on customs decisions to valuation matters under the MCC.

The Committee finalised the Commission's document on an Italian licence fees case concerning the non-inclusion of royalties and licence fees in the customs value of goods sold by a third country company to a related company established in the EU, which has signed a licence agreement with another related third country company.

The Commission also debriefed the Committee on Thailand's request concerning the treatment of bonus payments in the direct selling industry during the session of the WCO Technical Committee on Customs Valuation of October 2011.

An update was provided on the work of the Project Group on Undervaluation, Risk Analysis and Control and its decision to implement a Priority Control Action (PCA) on the valuation of certain products (mainly textiles) from some selected origins.

The 12<sup>th</sup> meeting of the Valuation Committee took place on 9 March 2012. A meeting report is not yet available, but the agenda indicates that the Committee was scheduled to further examine the standard rules on decisions, and certain issues that were addressed in the WCO Technical Committee on Customs Valuation. The Commission would also provide an oral report on the recast of the MCC, the work of the project group on undervaluation and on the study and strategy to address customs undervaluation problems.

The next meeting of the Origin Committee is scheduled for early October 2012.

## PROCEDURES

### CJEU rejects repayment of anti-dumping duties

On 14 June 2012, the CJEU determined in Case C-533/10 (*CIVAD*) that the unlawfulness of a Regulation cannot be considered a case of *force majeure*, and as a result the extension of the 3-year limit during which an importer can request the repayment of import duties is not permitted. The Court also found that national

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customs authorities cannot, on their own initiative, repay anti-dumping duties that were collected pursuant to an anti-dumping regulation that was found by the WTO Dispute Settlement Body to be in violation of the WTO Agreement.

#### **AEO/C-TPAT Mutual Recognition – information note**

The European Commission issued an information note related to the EU-US Decision signed on 4 May 2012 on the mutual recognition of the Customs-Trade Partnership Against Terrorism (C-TPAT) programme in the US and the Authorised Economic Operator (AEO) programme in the EU.

This note explains the steps to be followed by EU AEOs in preparation for the practical implementation of the EU-US mutual recognition.

#### **Infringement procedures against the UK and Bulgaria**

On 21 June 2012, the EU Commission announced that it is taking the UK to the EU Court of Justice over its refusal to compensate for duties on imports of fresh garlic from China its customs authorities failed to collect in the past due to the erroneous classification of the product as frozen garlic. The UK authorities however claim that UK customs took all necessary actions justified by this case.

The Commission also requested Bulgaria to put an end to certain duty and tax relief provisions contained in a bilateral agreement with the US concluded prior to Bulgaria's accession to the EU. If the legislation is not brought into compliance within two months, the Commission may refer the matter to the EU Court of Justice.

### **MISCELLANEOUS**

#### **5<sup>th</sup> EU-Japan Joint Customs Cooperation Committee**

On 27 June 2012, the 5<sup>th</sup> EU-Japan Joint Cooperation Committee (JCCC) took place in Brussels. The JCCC agreed to discuss a more permanent technical solution for the exchange of information regarding the mutual recognition of Authorised Economic Operators, as well as other potential benefits for reliable traders. The Committee also decided to explore more concrete collaborative projects in the area of risk management systems. Both parties agreed to continue cooperation in international fora regarding border enforcement and intellectual property rights, and to cooperate at the multilateral level on customs and trade facilitation matters.

#### **6<sup>th</sup> EU-China Joint Customs Cooperation Committee**

On 25 June 2012, the EU-China Joint Customs Cooperation Committee (JCCC) met and exchanged views on customs enforcement of intellectual property rights (IPRs), supply chain security and risk

management, fight against fraud and statistical cooperation between the EU and China.

The JCCC also extended the “Joint understanding on smart and secure trade lanes” (SSTL) pilot project which tests end-to-end supply chain security and involves the exchange of pre-arrival/departure security data between customs authorities, the use of eSeals, minimising controls upon import via recognition of controls at export, the application of minimum control standards, communication of control results, testing joint risk criteria, and Authorised Economic Operators (AEOs).

#### **Strengthening cooperation and info exchange on counterfeit goods**

According to the European Anti-Fraud Office (OLAF), the European Commission is planning to present a legislative proposal by the end of the year amending **Council Regulation 515/97** which sets up a customs information system to give the Commission direct access to the import-export database of the Member States, to the container-shipping line database and to provide access for Eurojust and Europol to Member States' data on seizures.

#### **EU customs goods seizures in 2011**

On 24 July 2012, the European Commission issued its annual report on customs action to enforce IPRs. This report shows that the Member States' customs authorities seized almost 115 million products suspected of violating IPRs in 2011. The most frequently detained articles include medicines, packaging materials and cigarettes. China continues to be the main source country for suspected counterfeit goods.

#### **EU Resolution on customs enforcement of IPRs**

On 3 July 2012, the European Parliament adopted a resolution on the Commission's proposal for a regulation modernising the 2003 EU legislation on the customs enforcement of IPRs. In this resolution, the Parliament proposes to introduce simplified procedures for small consignments suspected of infringing IPRs and the inclusion of products in EU transit in the scope of the legislation. Negotiations with the European Council on this proposal have not yet been completed.

#### **European Parliament rejects ACTA**

On 4 July 2012, the European Parliament's Plenary Session rejected the international Anti-Counterfeiting Trade Agreement aimed at fighting counterfeiting including by customs action. The EU will therefore not conclude this Agreement for the moment. The Commission has nevertheless confirmed that it will continue with the procedure initiated before the European Court of Justice on the compatibility of ACTA with the EU Charter of Fundamental Rights.

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### **2012 trade barriers report**

On 22 June 2012, the European Commission presented its trade barriers report, covering potential trade-restrictive measures identified for 31 of the EU's main trading partners, including the G20 countries, and including certain barriers in the customs area. The Commission found that there has been an increase in protectionism with a 25% rise of trade measures around the world in the last eight months. The Report also identifies 534 trade-restrictive measures that have been introduced since the 2008 crisis, and which are still in place today.

### **Impact of increased use of non-tariff barriers**

On 16 July 2012, the World Trade Organisation published the 2012 World Trade Report which examines why and how governments use non-tariff measures as well as factors that affect the use of these non-tariff measures, including for example in the area of customs valuation, customs procedures and rules of origin. The report found that non-tariff measures are the main source of concern for exporters, a conclusion the EU agrees with in general.

### **EU sanctions against Syria amended**

On 23 July 2012, as one of the recent amendments to the EU's sanctions against Syria, the EU Member States agreed to make inspections for suspected arms and internal repression equipment cargo obligatory.

### **Decrease of customs revenue in 2011**

On 20 June 2012, the European Commission announced that national contributions to the EU should increase by EUR 1.47 billion in 2012, due to a decrease in customs revenue. The main reason for this decrease is a lower estimated average tariff of 1.32% (instead of 1.45%), which would result in a decrease of customs duties with EUR 1.52 billion in 2012. This represents a decrease of 7.9% compared to the May 2011 forecast.

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