

EU Customs Practice Group

February-March 2012

EU CUSTOMS POLICY

Commission's proposal for amendment of the MCC

On 20 February 2012, the European Commission finally issued its proposal to amend the Modernised Customs Code (MCC).

The amendments contained in the Commission's proposal affect provisions of the MCC that are no longer in line with the changes introduced into the current Customs Code (with respect to transport safety and security), or that have proved difficult to implement (e.g. the provisions relating to temporary storage or entry of data in the declarant's records). The MCC will also be renamed and henceforth will be called the Union Customs Code (UCC).

The proposal further aims to adapt the MCC to the Lisbon Treaty and to indicate which legislative procedure should be used to adopt more detailed provisions. For the majority of the detailed provisions to be adopted, the Commission proposes that these detailed provisions be adopted in "delegated acts" rather than "implementing" acts.

No exact date is mentioned in the recast proposal as regards the full implementation of the MCC. Instead, the Commission proposes that the recast regulation and the articles conferring delegating or implementing powers to the Commission enter into force 20 days after its publication. Delegated and implementing acts can then be adopted afterwards.

The implementation of the MCC articles requiring exchange of information by electronic means will be further delayed until 2020 (at the latest). The delay for most of the MCC provisions would appear to be early 2015 if the recast regulation is adopted before the original June 2013 implementing deadline in its current form, because the current Customs Code would be repealed 18 months after entry into force of the UCC.

The Commission's proposal is now being examined by the Council and the European Parliament (EP). The Internal Market and Consumer Protection (IMCO) Committee of the EP has appointed a rapporteur and shadow rapporteurs who will prepare a draft report on the recast proposal. The EP's Legal Affairs Committee will also provide an opinion.

At the Council level, the MCC recast proposal is being examined by the Working Party on the Customs Union. The Danish Presidency has requested Member States to submit their views.

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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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EP study on the implementation of the MCC

In February 2012, the EP made available an external study on the "Implementation of the Modernised Customs Code". The goal of this study was to examine the possible challenges and conditions relating to the implementation of the MCC. The study provides feedback from a legal-, IT- and operational perspective.

One of the main conclusions of the study is that the implementation of the MCC depends largely on the IT strategy that should be followed for the next decade, and that defining that IT strategy could take 1-2 years. The study also finds that preparing for full implementation at one single moment in the future will take too long. The consultants therefore recommend that the implementation of the MCC be carried out gradually.

The study was presented and discussed at the EP's IMCO Committee on 28 February 2012.

TARIFFS

Update on duty suspensions/tariff quotas

(a) July 2012 Round

The formal proposal reflecting the outcome of discussions in the Economic Tariff Questions Group (ETQG) of the ongoing July 2012 Round was not yet available when this newsletter was written.

(b) January 2013 Round

The first ETQG meeting of the January 2013 round is scheduled for May 2012. Over 200 new suspension applications and various tariff quota applications will be on the table, as well as more than 30 requests for the amendment or elimination of existing suspensions or tariff quotas.

Council and EP discuss EU GSP reform

The Council and EP have finished their first round of internal discussions on the Commission's proposal for the next EU GSP regime submitted in May 2011. Informal trilogue meetings will now take place between the Council, the EP and the Commission with a view to reaching agreement at first reading.

On 1 March 2012, the EP's International Trade (INTA) Committee adopted a report which approved the Commission's plan to review the EU's GSP regime. INTA supported the Commission's proposal to remove preferences for 96 countries, and to extend the product coverage and the applicable tariff reductions for the remaining beneficiaries. INTA nevertheless has proposed to introduce minor changes in the Commission's proposal with respect to product coverage, and has called for a lower threshold for the application of safeguards to protect the EU's textile and clothing industries.

The Council's GSP Working Party has also discussed the Commission's proposal in numerous meetings, but has not been able to propose amendments on various elements because of widely-diverging views amongst the Member State experts. The issue has therefore subsequently been lifted from the technical to the political level and was discussed at Ministerial level in the Foreign Affairs Council on 16 March 2012.

The Ministers have agreed to a compromise proposal by the Danish Council Presidency to accept the Commission's proposal with respect to country coverage, preference margin, and the GSP+ criteria. The compromise proposal does, however, propose the expansion of the product scope and introduces some amendments to the provisions on special safeguards. Furthermore, in order to allow businesses to prepare for the new GSP regime and to provide legal certainty, the Council wants to postpone the application of the new scheme until 1 January 2014. The Council has suggested amendments to allow countries that will be removed from GSP to transit smoothly from their status as GSP beneficiary to FTA partner enjoying FTA benefits.

FTA update

The following notable developments have occurred in relation to the EU's ongoing Free Trade Agreement (FTA) negotiations:

(a) Colombia – Peru

On 16 March 2012, the Council reached a political agreement on a draft decision approving the signature of a free trade agreement between the EU on the one hand, and Colombia and Peru on the other. Formal adoption will take place at a later Council session. The EP will have to give its consent to the conclusion of the FTA before it can be provisionally applied. Ratification by the national parliaments is necessary before the FTA can definitively enter into force. The EU has agreed to eliminate all tariffs as of the entry into force of the agreement, whilst Colombia and Peru will phase out their tariffs over a ten-year transitional period.

(b) Ukraine

On 30 March 2012, the Chief Negotiators of the EU and Ukraine initialled the text of the Association Agreement (the negotiations of which were concluded late last year). A Deep and Comprehensive Free Trade Agreement (DCFTA) will form an integral part of the agreement. The next step will be the completion of the legal verification of the text, including technical annexes and protocols. On the EU side, the Commission will then formally submit proposals to the Council and the EP for the signature and conclusion of the agreement.

(c) India

The EU-India summit was held on 10 February 2012. At the summit, EU and Indian leaders decided to push back the conclusion of the FTA negotiations until the autumn. Commission President Barroso stated that an agreement could be reached soon “*if there is some flexibility on the Indian side*”. He identified government procurement and services as the key outstanding issues. It is expected that another ministerial conference will take place at the end of the year, to conclude negotiations at the political level.

(d) Singapore

The EU-Singapore FTA negotiations are reported to have reached the final stages. Outstanding issues include services, public procurement, GIs and ASEAN cumulation for rules of origin. The negotiations could be concluded by the first half of 2012.

(e) Malaysia

The EU and Malaysia met on the sidelines of the ASEAN-EU Business Summit on 30 March 2012. Both sides reviewed the progress made in the bilateral FTA negotiations and discussed the future direction of the proposed FTA. It is expected that the finalisation of negotiations will not take place until the end of 2012 at the earliest. Outstanding issues include tariff reductions for, *inter alia*, palm oil and alcoholic beverages, non-tariff barriers, liberalisation in the services sector with respect to financial services, telecommunications, transport, and the temporary presence of natural persons, ASEAN cumulation for rules of origin, intellectual property rights and government procurement. The 7th round of negotiations between the EU and Malaysia is scheduled to take place on 17-20 April 2012, and the 8th round from 12-15 June 2012.

(f) Mercosur

On 12-16 March 2012, delegations from the EU and Mercosur held working meetings for the future negotiations of an association agreement between the EU and the region. The EU and Mercosur are expected to exchange offers on goods and services before the summer. The next negotiating round is scheduled for July 2012.

(g) Georgia and Moldova

Following the launch of negotiations on Deep and Comprehensive Free Trade Areas (DCFTA) by the EU, Georgia and Moldova, the first negotiation rounds between the parties took place in the second half of March 2012, following technical preparatory meetings with the two countries in January 2012. These DCFTAs will form part of the Association Agreements currently under negotiation. At present, Georgia enjoys preferential access to the EU market through the GSP+

regime, while Moldova enjoys Autonomous Trade Preferences.

(h) Armenia

On 20 February 2012, the EU decided to launch negotiations on a “Deep and Comprehensive Free Trade Area” (DCFTA) with Armenia. The DCFTA will form part of a broader Association Agreement that has been under negotiation since July 2010. The first negotiating round has not yet taken place. At present, Armenia has GSP+ status.

(i) Vietnam

On 31 March 2012, the EU and Vietnam concluded a scoping paper that covered the topics to be included in future FTA negotiations. The upcoming negotiations will cover both tariff and non-tariff barriers, trade in services, intellectual property rights and competition. Before the Commission can officially launch negotiations, it first has to obtain a formal negotiating mandate from the Member States.

(j) Philippines

A bilateral meeting between the EU and the Philippines took place on the fringes of the EU-ASEAN Summit in Cambodia in late March/early April. The two sides discussed the ongoing scoping exercise. According to the Filipino negotiators, negotiations could start in the fourth quarter of 2012 or early in 2013.

CLASSIFICATION

Classification Regulations

In February and March 2012, the following Classification Regulations were published:

Commission Implementing Regulation (EU) No 103/2012 – classifying modular screen panels, comprising several modules made of tiles and presented together with a processing system comprising a video-processor and a signal-processor (also known as a “LED wall”), as “other colour monitors” under CN code 8528 89 80.

Commission Implementing Regulation (EU) No 104/2012 – classifying a so-called “bicycle set”, consisting of a frame, front fork and two rims, which are packaged separately, as separate products. The frame is therefore classified under CN code 8714 91 10, the front fork under CN code 8714 91 30 and the rims under CN code 8714 92 10.

Commission Implementing Regulation (EU) No 105/2012 – classifying multifunctional machines (MFMs) comprising a scanner and an electrostatic print engine, operating either in an autonomous form as a copier or when connected to a network or an automatic data-processing machine, as a printer, scanner or for internet faxing, as “other machines which perform two or more

functions of printing, copying or facsimile transmission, not having digital copying as their principal function” under CN code 8443 30 80.

Commission Implementing Regulation (EU) No 106/2012 – classifying a so-called “round recliner” (i.e. a component of reclining mechanisms for motor vehicle seats used to adjust the angle of the back of the seat) as “other parts of seats of a kind used for motor vehicles” under CN code 9401 90 80.

Commission Implementing Regulation (EU) No 144/2012 – classifying a set-top box with the possibility to clip in an interchangeable hard disc as a set-top box with a communication function, under CN code 8528 71 15.

Commission Implementing Regulation (EU) No 145/2012 – classifying a set-top box into which a hard disk can be inserted and which is intended principally for receiving TV signals as a set-top box which has a communication function, under CN code 8528 71 15.

Commission Implementing Regulation (EU) No 146/2012 – classifying a set-top box comprising a tuner, hard disk, a Blue-Ray reader, a “smart card” reader and various interfaces, as a video recording or reproducing apparatus, under CN code 8521 90 00.

Commission Implementing Regulation (EU) No 211/2012 – classifying ethyl alcohol and gasoline blends with an ethanol content of 70% and a gasoline content of 30% as denatured ethanol, under CN code 2207 20 00.

Additional Note for set-top boxes with a communication function

On 23 February 2012, the European Commission published an Additional Note 3 to Chapter 85 to clarify the meaning of the terms “modem” and “interactive information exchange” for set-top boxes with a communication function in the context of CN code 8528 71 15.

Nomenclature Committee

(a) Mechanical/Miscellaneous Sector

The Mechanical/Miscellaneous Sector of the Nomenclature Committee met on 16-17 February 2012. The Member States delivered a favourable opinion on a draft Regulation for three-wheeled motor vehicles, but no opinion was delivered on the draft regulations for TV stands and MP4 clock-radios. The Committee also examined the classification of various products, including multi-switches intended for use in multi-subscriber systems for television reception via satellite, electronic hot-air-blowing guns, load cells, certain components for LCD modules, LED modules, key membranes and keypads for mobile phones, REM units, touch-screen monitors, video monitors, parts of seatbelts, medical tubes, and the adoption of CN

Explanatory Notes to Note 4 to Chapter 95, and a review of various classification regulations with respect to Chapter 95 (toys). The Commission also announced its plan to create a Project group on classification of audio/video products. The Group would discuss the explanatory notes with respect to the classification of digital cameras.

The next meeting of this sector is scheduled for 18-20 April 2012. During the meeting, the Committee will vote on draft CN Explanatory Notes with respect to Note 4 to Chapter 95 (toys), telecommunication cables, and derailleur gears as well as on draft classification regulations on video monitors, bolt blanks and Christmas articles. The experts will also examine the classification of, *inter alia*, steel wire clamps, connector parts, LCD monitors, Universal Dual Port car chargers, devices for recording via sequences and still images, audio-video players with reception apparatus for radio-broadcasting, multi-switches, load cells, monitors with touch-screen, PIR detectors, CCD sensors, and small LCD modules.

(b) CN Sector

The CN Sector of the Nomenclature Committee met on 27 March 2012. During the meeting, the Committee discussed, *inter alia*, the introduction of a possible new code for ephedrine in Chapter 29 (organic chemicals), the modernisation of Chapter 51 (wool, hair and woven fabric), and a possible amendment of CN code 7601 20 (aluminium alloys). The Commission also provided information on the revision of **Regulation 2658/87**, which is the basic Regulation containing the Common Customs Tariff (CCT – updated annually in October for the subsequent calendar year) and the rules on matters affecting the classification of goods. **Regulation 2658/87** is being updated to reflect the procedural changes introduced by the Lisbon Treaty and to remove the legal basis of taking classification decisions, as this will be included in the MCC. The Commission also asked the Member States to reflect on further improvements to the basic regulation and the feasibility of updating the CCT twice a year.

(c) HS/WCO Coordination

On 29 February – 2 March 2012, the HS/WCO Coordination Sector met and discussed, *inter alia*, a possible amendment of heading 84.13 (pumps) and heading 39.09 (MDI), a possible amendment of Chapter 27 (mineral fuels, mineral oils, bituminous substances, mineral waxes) concerning the references to test methods, the possible amendment of Section XI (textiles) in the HS 2017 review cycle, and a possible amendment of headings 41.04, 41.07 and 41.14 (leather) for HS 2017. With respect to a possible amendment of Chapter 72 (Iron and Steel) and heading 73.02 (Railway or tramway track construction material) for HS 2017, the Committee found that a presentation of the proposal to the WCO secretariat was inappropriate. As regards a possible amendment of Chapter 84

(machine tools) for HS 2017, the Committee approved the insertion of a subheading in heading 84.56 for machine tools operated by plasma arc processes and water-jet cutting machines and agreed to delete the criterion of positioning of at least 0.1 mm in subheadings 8460.1 and 8460.2.

The next meeting of the HS/WCO Coordination sector will take place on 14-15 May 2012.

(d) Textiles

On 9-10 February 2012, the Textile Sector of the Nomenclature Committee met and delivered a favourable opinion on Classification Regulations for, amongst others, radioactive protective garments, panel curtains and plastic suitcases with wheels. The Committee also examined the classification of wooden perfume bottle boxes, bracelets, garlands with artificial textile flowers, filter rods (cigarette filters) and the criteria identifying flip-flop sandals for men or women. The Classification of protective sleeves for mobile phones was also addressed, as well as requests received from industry for proposals to be submitted by the EU in the context of the 2017 HS review cycle.

(e) Agriculture/Chemical Sector

On 14-16 March 2012, the Nomenclature Committee's Agriculture/Chemical Sector met. The agenda contained a vote on, *inter alia*, a draft Commission Implementing Regulation concerning the tariff classification of a plastic infant feeding bottle. The Committee was also due to examine the classification of, *inter alia*, a heavy mineral oil named VGO, food supplements, encapsulated products containing colostrum, a product called "Partner cigarillos", mixtures of ethyl alcohol and ETBE, certain products containing ephedrine, and vitamin preparations. A discussion was also scheduled on the results of Project Groups concerning the food and chemical chapters of the HS/CN. Finally, further information was provided concerning the necessity to define the minimum content of fatty-acid mono-alkyl esters in the CN to subheading 2710 20 (Petroleum oils and oils obtained from bituminous minerals).

ORIGIN

European Parliament and Council clear Convention on pan-Euro-Mediterranean rules of origin

On 16 February 2012, the EP adopted a resolution giving its consent to the conclusion of the regional Convention on pan-Euro-Mediterranean preferential rules of origin (the PEM Convention). The Council subsequently authorised the conclusion of the PEM Convention on 26 March 2012.

The PEM Convention brings together all the rules of origin under the bilateral agreements (contained in origin protocols) and adopts one single and simplified

instrument to facilitate the Pan-Euromed cumulation of origin.

Diagonal cumulation between the EU and Balkan states

On 21 January 2012, the Commission published an overview of the dates of application of the protocols on rules of origin providing for diagonal cumulation of origin between the EU and various Balkan states. A protocol between Turkey and Croatia is still missing.

Diagonal cumulation allows goods originating in a third country to qualify as "originating" in the country of final manufacture.

Origin Committee meeting

The report of the Origin Committee meeting of 15-16 September 2011 has recently been issued. The report provides an update on various FTA negotiations and issues with respect to origin rules that have arisen under the EU-Korea FTA. The Commission and the Member States also discussed the Regional Convention on pan-Euro-Med preferential rules of origin (PEM Convention), the revision of the list rules in the framework of that Convention, and the draft implementing provisions for the MCC.

The report of the meeting of the Origin Committee of 8-9 November 2011 has also been issued. The Committee prepared the meeting of the Pan-Euro-Med (PEM) working group that took place on 10 November 2011 and the EU's position on list rules for the PEM Convention. The Commission also provided updates on the FTA negotiations with India, Malaysia, Canada, and Singapore. There was also a de-briefing of a bilateral customs meeting under the EU-Mexico FTA that took place in October 2011.

Furthermore, in preparation of the first Joint Customs Committee meeting of the EU-Korea FTA (which took place in December 2011 – see below), the Origin section discussed the low share of EU imports into Korea that benefit from tariff preferences. The Commission explained that this could be the consequence of the EU operators' ignorance of the FTA and certain weaknesses in the operation of the Approved Exporter (AE) system.

The Commission announced that it was considering conducting a survey to identify the best practices and legal approaches of the national AE systems and to assess whether there are discrepancies in the Member States' approach towards the AE system. Concerning the direct transport rule, the Commission has proposed to Korea that it replace this rule with a non-manipulation clause (i.e. the requirement that goods shall not be altered or transformed in any way en route) inspired by the reformed GSP origin rules. The Commission has also invited the Member States to suggest to their operators that they collect evidence with respect to an

alleged overly-strict application by Korean customs of the FTA's rules on direct transport.

The Commission further emphasised that for evidence of direct transport under the GSP rules of origin, non-manipulation certificates can be issued by independent inspection companies, provided that these are considered reliable by the customs authorities of a Member State.

As regards the splitting of consignments on high-seas or in countries of transit, the Commission proposed to amend the existing regulation in order to provide for the possibility of issuing certificates of origin Form A retrospectively in the country of export of the product.

For non-preferential rules of origin, the Commission has collected the Member States' views on the possibility to introduce an amendment to the current implementing provisions of the Customs Code, in order to include detailed non-preferential rules of origin.

As a final matter, the Commission reported that the discussions on the harmonisation of non-preferential origin rules in the WTO's Committee on Rules of Origin were still in a deadlock.

First meeting of the Customs Committee of the EU-Korea FTA

Part of the report of the first meeting of the Customs Committee of the EU-Korea FTA, which took place on 10-11 December 2011, has recently been made publicly available. The report lists the key issues that have arisen under the FTA and sets out how these issues will be addressed (see also Origin Committee update above).

Furthermore, Korea has requested the EU to consider starting negotiations on a Mutual Recognition Agreement for Authorised Economic Operators (AEOs). The Commission has already negotiated such Mutual Recognition Agreements with the US and Japan.

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

VALUATION

Valuation Committee

The report of the meeting of the Valuation Committee of 30 September 2011 has been made publicly available. During the meeting, the Committee discussed the data elements required for customs valuation in electronic customs procedures under the future MCCIPs, the application of standard rules on decisions for customs valuation authorisations, such as the possibility to introduce binding valuation decisions. The idea to propose EU-wide Binding Valuation Information decisions remains under consideration but does not appear to be likely at short notice.

The Committee further discussed the Commission's proposal with respect to the conditions to be fulfilled in order to be granted simplifications for customs valuation. The proposed conditions are in line with what is required to obtain AEO status and include:

- (i) a record of compliance with customs and tax requirements;
- (ii) satisfactory management of commercial and transport records; and
- (iii) proven solvency.

The Commission has further clarified that fees related to the filing of new entry summary declarations (ENS) cannot be considered as part of the customs value.

The Committee also discussed an Italian case that concerned 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 that signed a licence agreement with another related third country company.

The Committee further examined various matters scheduled to be discussed at the WCO Technical Committee on customs valuation, such as the inclusion of royalties and licence fees paid to third parties in the customs value, the inclusion of fees paid for the distribution rights in the customs value, and the feasibility of using a transfer price study and an advanced pricing arrangement to examine the circumstances surrounding a sale between related parties.

The Commission further provided an update on the Project Group on Undervaluation, Risk Analysis and Control. The Project Group's guidelines and risk profiles for certain products such as textiles and footwear are available for testing during concrete customs control activities. The Chair of the meeting also informed the Member States that a study on valuation issues has been commissioned. Issues that will be considered in this study include controls with equivalent results, the avoidance of trade diversion and financial and trade interests.

The Valuation Committee held another meeting on 2 December 2011. The report of that meeting has also been made publicly available. The participants again discussed and proposed amendments to the MCCIP proposal with respect to data elements required for customs valuation in electronic customs procedures. The participants also continued the discussion on the application of standard rules on decisions and finalised a document on the Italian licence fee case.

The last meeting of the Valuation Committee took place on 9 March 2012. The Committee was scheduled to further discuss the application of standard rules on decisions and a range of issues raised during the WCO Technical Committee on Customs Valuation indicated above, as well as a request from Thailand concerning the treatment of bonus payments in the direct selling industry for valuation purposes. The Valuation Committee was also scheduled to discuss the addition of imported items used in the production of textile products to the price actually paid or payable for those goods. An update on the MCC recast, the Project Group on Undervaluation and the study on a strategy to address customs undervaluation problems was due to be provided as well.

PROCEDURES

CJEU rules that the lack of diligence on the part of the national customs authorities can justify the remission of a customs debt

On 22 March 2012, the CJEU delivered its judgment in a case concerning the remission of a customs debt where the authorities accepted an insufficient guarantee to cover that customs debt (Case C-506/09, *Portugal v Transnautica-Transportes e Navegação SA*).

In 1994, the Portuguese customs authorities processed 68 transit declarations for the movement of consignments of tobacco and ethyl alcohol by Transnautica, a Portuguese freight transportation company, under the external Community transit procedure. Under that procedure, goods may move from one point to another within the customs territory while only being released for free circulation at the customs office of destination. However, customs debt will be incurred if the goods are removed from customs supervision whilst in transit.

After conclusion of the transit procedure, the Portuguese customs authorities detected a number of irregularities and demanded the payment of the customs debt. Transnautica applied for the repayment of this customs debt once it found out that an employee had signed these transit declarations fraudulently for smuggling operations. National criminal proceedings launched against Transnautica were closed after it was found that the company was unaware of its employee's actions and the company's representatives were not involved in the fraud. Transnautica was denied remission in a Commission Decision of 2005. They successfully appealed that decision before the General Court (then still the Court of First Instance) in 2009. Portugal in turn appealed before the CJEU.

The CJEU upheld the judgment of the General Court and found that there was a lack of diligence in the form of a miscalculation of the customs debt on the part of the Portuguese customs authorities and dismissed Portugal's appeal. The customs authorities' lack of

diligence rendered Transnautica's internal monitoring procedures ineffective because without this miscalculation the 68 transit declarations could not have been issued. This lack of diligence therefore did give rise to a special situation justifying the remission of the customs debt. Although the legal battle has been very long (the facts underlying this case occurred almost twenty years ago), this case shows that companies denied remission/repayment of customs duties may find it worthwhile to examine whether there are solid arguments to invoke a lack of due diligence on the part of the customs authorities giving rise to a special situation.

Council adopts EU position to establish mutual recognition of the AEO/C-TPAT programmes

On 9 March 2012, the Council approved the draft decision establishing mutual recognition between the Authorised Economic Operator Programme (AEO) of the EU and the Customs-Trade Partnership Against Terrorism Program (C-TPAT) of the US. This formal bilateral decision will be taken within the EU-US joint customs cooperation committee later this year.

EU-Canada agreement on customs cooperation with respect to supply chain security

On 28 March 2012, the Commission presented its formal proposal for a Council Decision on the signing of an agreement with Canada on customs cooperation regarding supply chain security. This agreement (negotiated by the Commission since late 2009) builds on and expands the current 1998 Agreement between the EU and Canada on customs cooperation and mutual assistance in customs matters. The agreement provides the legal basis for cooperation in the area of, *inter alia*, risk standards, security controls, minimum standards for risk management techniques, etc. This agreement will be administered by the EU-Canada Joint Customs Cooperation Committee, which can, in due course, adopt implementing decisions, including on mutual recognition of trade partnership programmes (i.e. opening the door for MRAs such as those the EU has negotiated with the US and Japan). The Council now needs to authorise the signing of the agreement.

EU publishes amendments to TIR Convention

On 6 March 2012, the EU published a list of amendments to the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, which entered into force on 1 January 2012. The TIR procedure enables goods to move under customs control across international borders under cover of the TIR carnet, without payment of the duties and taxes that would normally be due.

MISCELLANEOUS

Report on mutual assistance for the recovery of claims relating to duties

On 15 February 2012, the European Commission published a report on the use of mutual assistance provisions between the EU Member States for recovery of claims relating to certain levies, duties, taxes and other measures (on the basis of **Directive 2008/55**). The report shows that between 2009 and 2010, requests for assistance relating to customs duties only represented 5% and 10% of all requests, respectively. As from 1 January 2012, **Directive 2008/55** has been replaced by **Directive 2010/24**, which has improved and enhanced the provisions on mutual assistance in this area.

Trade and Investment barriers Report 2012

On 21 February 2012, the European Commission published its "Trade and Investment Barriers Report 2012". This report examines trade barriers in six strategic partner countries of the EU (China, India, Japan, Mercosur, Russia and the US). In the customs area, the report discusses a number of matters, including the US "100% scanning" legislation, customs practices in Russia (and arbitrary interpretation of the law), and Brazilian customs controls on imports of certain products.

EU list of authorities empowered to issue export licences for cultural goods

On 10 March 2012, the EU published a list of the authorities within the Member States empowered to issue export licences for cultural goods. Photographs, films and negatives, antique items, archaeological objects, pictures and paintings, etc. are considered as cultural goods for which an export licence must be requested for export outside the EU under Council **Regulation 116/2009**.

EU-China IPR Seminar

On 27-28 February 2011, a seminar bringing together European and Chinese experts from various administrations engaged in the fight against IPR infringements was organised in Germany. Participants discussed cooperation between customs and other law enforcement agencies and how evidence and information gathered in one jurisdiction could be used in another jurisdiction. The seminar took place in the context of the EU-China Action Plan on IPR customs enforcement. Further to this seminar, the first meeting of the Joint Customs-Industry Working Group took place on 2 March 2012. The aim of this meeting was to strengthen cooperation between customs authorities and right-holders in both China and the EU.

IMCO Committee Votes on Customs enforcement of intellectual property rights

On 28-29 February 2012, the EP's IMCO Committee adopted a report on the Commission Proposal for a

Regulation concerning customs enforcement of intellectual property rights. The amendments proposed by IMCO in the report concern, *inter alia*, the scope of the proposal, the right of the holder of the goods to be heard prior to the goods' destruction, the definition of "small consignments", counterfeit medicines, the possibility of seizing goods in transit, and the burden of proof on consignors with respect to the final destination of goods in transit. The IMCO report has not yet been discussed in the EP Plenary session.

ACTA ratification delayed in the EU

On 22 February 2012, following severe criticism from the EP (and various NGOs), the European Commission announced that it would seek the opinion of the European Court of Justice (ECJ) on whether the Anti-Counterfeiting Trade Agreement (ACTA) – signed by the EU and 22 EU Member States in January – is in any way incompatible with European Fundamental Rights (such as the freedom of expression and information or data protection and the right to property including that of intellectual property). The Commission has agreed on the principle of making a legal submission to be put before the ECJ on 4 April 2012. The Commission has chosen a sufficiently broad legal question to allow the Court to conduct a detailed review of the different aspects. The Commission has repeatedly stated and remains convinced that ACTA will not change existing EU rules in any way, but it wants to settle this matter by submitting it to the scrutiny of the ECJ.

Meanwhile, the EP's INTA Committee rejected a proposal of the rapporteur for the Parliament to seek the opinion of the ECJ in addition and in parallel to the European Commission's Court referral. The INTA Committee considered that this additional referral would only delay the Parliament's final vote. At the next Committee meeting on 25-26 April 2012, the rapporteur is due to present his recommendation as to whether the EP should give its consent to ACTA. The final Committee vote is scheduled for 29-30 May 2012, and the Parliament as a whole is expected to vote on the issue during its June 2012 plenary session.

EU sanctions against Syria and Iran affecting imports/exports of goods

(a) Iran

On 23 March 2012, the Council adopted **Regulation 267/201** which replaces the previous **Iran Sanctions Implementing Regulation 961/2010** and implements the additional restrictions agreed by the Council on 23 January 2012 (reported on in our previous issue). As regards the import/export of goods, these restrictions include an oil and petrochemicals embargo, additional sanctions imposed on precious metals, diamonds and key equipment and technology for the petrochemical sector, the expansion of the list of dual-use items whose supply, sale or transfer is prohibited, and the prohibition of delivering Iranian denominated banknotes and coins

to the Central Bank of Iran. **Regulation 267/2012** clarifies the scope of a number of those restrictions, e.g. defining petrochemicals and banned petrochemical technology.

The Council further amended **Regulation 359/2011** specifically targeting internal repression by introducing new restrictions on the sale, supply, transport or export of telecommunications monitoring equipment, now including measures preventing the supply of equipment that might be used for internal repression (previously included in the Iran Sanctions Implementing Regulation but no longer included in the new **Regulation 267/2012**).

(b) Syria

With respect to Syria, the EU adopted further sanctions on 27 February 2012 in **Council Decision 2012/122/CFSP** and **Council Regulation 168/2012**. These new sanctions, as far as imports/exports of goods are concerned, prohibit transactions related to gold, precious metals and diamonds with the Syrian Government or to the Central Bank of Syria, and prevents access to EU airports of all cargo-only flights operated by Syrian airlines.

Updated Common Military List of the EU

On 22 March 2013, the Council updated and replaced the existing Common Military List adopted in February 2011. The equipment and technology listed in the Common Military List are subject to the rules with respect to export licence applications of **Council Common Position 2008/994/CFSP** under the Member States' military export controls regimes.

Regulation establishing export authorisations and import and transit measures for arms and ammunition

On 30 March 2012, the EU published **Regulation 258/2012** governing export authorisations, and import and transit measures for firearms and ammunition, for the purpose of implementing Article 10 of the 'UN Firearms Protocol'. The majority of these new rules will apply from 30 September 2013.

EU measures on Japanese food and feed imports

On 29 March 2011, the Commission published a new **Implementing Regulation 284/2012** on the special conditions governing the import of Japanese food and feed following the Fukushima accident. This new Regulation excludes certain products from the scope of restrictive measures and aligns the maximum levels for certain radionuclides with the maximum levels imposed by Japan. The levels of other radionuclides will no longer be subject to analysis.

WTO and OECD develop statistics on trade in value added

On 15 March 2012, the WTO and OECD signed a letter of understanding to develop statistics on trade in value added. The two organisations will create a publicly-available database of trade flows estimated in value added terms. The purpose of this initiative is to identify the contribution of each trade partner to the total value of the final good in the supply chain and is linked to the 'made in the world' initiative (on which we reported earlier).

EU expresses concern over Argentina's trade restrictive measures

On 1 March 2012, the Commission requested explanations from Argentina after the latter urged its companies to stop all imports originating from the UK in the context of a dispute over the Falkland Islands.

Furthermore, on 30 March 2012, the EU issued a joint statement with 13 other WTO members expressing concerns regarding what it said were trade-restrictive measures taken by Argentina. According to the statement, Argentina announced regulations requiring pre-registration, review and approval of each and every import transaction in January 2012. The statement urged Argentina to remove these trade restrictions. The EU also reiterated concerns that Argentina's customs officials use minimum values instead of transaction values as required by the WTO Customs Valuation Agreement in assessing duties on imports.

Argentina maintained that the measures were compatible with WTO rules, adding that it had undertaken new measures to facilitate the processing of imports.

EU joint customs operation on smuggled cigarettes

On 27 February 2012, the European Commission announced that between 18 and 27 October 2011, around 1.2 million cigarettes were seized in the first joint customs operation involving 24 Member States and certain non-EU countries targeting rail traffic along the eastern border of the EU. The seized cigarettes represent losses of approximately EUR 250,000 in terms of evaded customs duties and taxes, and the Commission estimated that annual losses in revenue due to the smuggling of tobacco products amounts to EUR 10 billion.

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