

## EU Customs Practice Group

December 2012

### EU CUSTOMS POLICY

#### MCC recast/UCC

On 18 December 2012, the European Parliament (EP)'s Internal Market and Consumer Protection (IMCO) Committee adopted a report proposing numerous amendments to the Commission's proposal for the Modernized Customs Code (MCC) recast/Union Customs Code (UCC). The agreed text will form the EP's negotiating position in the trilogue discussions with the Council and the European Commission.

In early December, the Council's General Secretariat urged the Member States to reach agreement on a Council compromise text no later than the first weeks of 2013 so that the trilogue meetings can start in January-February 2013, and publication of the adopted UCC can take place by the end of May 2013.

A revised compromise text was circulated by the Council Presidency on 11 December 2012, which is still under discussion in the Working Party on Customs Union. When agreed, this text will form the negotiating position of the Council in trilogue negotiations.

#### 2012 revision of the Electronic Customs Multi-Annual Strategic Plan

On 4 December 2012, the Commission issued the 11<sup>th</sup> revision of the electronic customs Multi-Annual Strategic Plan (MASP), which is the management and planning tool that sets down the strategic framework and the milestones to implement the electronic customs initiative. This revised version sets out a timeframe for gradually achieving the various IT systems required under the future UCC and other legislation.

The next update of the MASP will start in the second quarter of 2013.

#### Council Conclusions on the Progress on the Strategy for the Evolution of the Customs Union

On 10-11 December 2012, the Council adopted conclusions on the Progress on the Strategy for the Evolution of the Customs Union, welcoming the proposals for the MCC recast, for a new regulation concerning customs enforcement of intellectual property rights, and for the Customs 2020 programme. The Council also recognizes the increased role of customs authorities in contributing to safety and security, as well as the challenges linked with customs modernisation and IT implementation. The conclusions also call for more tangible benefits for Authorized Economic Operators (AEOs).

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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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## Council endorses Strategy for future customs law enforcement cooperation

On 6-7 December 2012, the Council endorsed a Strategy for future customs law enforcement cooperation. The Strategy confirms that the customs authorities are the lead agencies in combating cross-border crime and defines various strategic objectives, such as improving institutional and operational cooperation and ensuring effective information exchanges and management.

The Council's Customs Cooperation Working Party must now develop an Action Plan and the European Commission is invited to support the exercise financially, technically, and logistically, while the Member States are expected to execute the Council's recommendations.

## Commission Communication on the State of the Customs Union

On 21 December 2012, the EU Commission adopted a Communication on the State of the Customs Union in which it identifies the challenges the customs union faces, such as increased tasks for customs with reduced resources, as well as the inefficiency costs related to the duplication of efforts at various levels.

The Communication sets out priority actions for the customs union, including as the top priority the adoption and implementation of the UCC. Other 2013 priorities include, *inter alia*, a communication on risk management and supply chain security, a proposal on the approximation of customs penalties, and a review and possible amendment of the tariff suspensions/quota rules. The Commission will also review with the Member States how the customs union functions internally in order to ensure resource efficiency and high quality service across the EU and prepare a blueprint for reform in that area.

## TARIFFS

### Update on duty suspensions/tariff quotas

#### (a) January 2013 Round

The Duty Suspensions and Tariff Quota Regulations for the January 2013 round were adopted on 17 December 2012 and started applying on 1 January 2013. The new **Duty Suspensions Regulation 1232/2012** inserts, deletes and amends numerous suspensions. The new **Tariff Quota Regulation 1231/2012** replaces the entire list of tariff quotas with an updated version in which certain tariff quotas no longer appear, and retroactively increases the volumes for certain other tariff quotas from 1 July 2012.

#### (b) July 2013 Round

The deadline for the EU Member States to forward objections against requests for suspensions and quotas filed for the July 2013 round expired on 10 December 2012. 198 dossiers are on the table now. The third

meeting of the Economic Tariff Questions Group will take place in the second half of January 2013. Formal proposals from the Commission to the Council will as always follow in the second quarter of 2013.

#### (c) January 2014 Round

Companies wishing to obtain a suspension or tariff quota in 2014 must ensure to file their application with their Member State sometime in early 2013, depending on the applicable national deadline. The first ETQG meeting on January 2014 round applications will take place in April-May 2013.

## EU GSP – product graduation, beneficiary countries, GSP Plus procedures

On 18 December 2012, the European Commission published **Regulation 1213/2012** listing the GSP product sectors that will be “graduated” (i.e. not receive GSP preferences) under the new EU GSP regime when originating in certain countries. The countries for which certain product sectors will be graduated are China, Costa Rica, Ecuador, India, Indonesia, Nigeria, Ukraine and Thailand. Some product sectors are already graduated under the current GSP scheme; for the “added” sectors, preferential GSP duties will no longer be available from 1 January 2014.

The Commission further issued two draft delegated acts under the new EU GSP regime, which are now subject to scrutiny and possible blocking by the Council or EP. The first proposal removes (as from one year after entry into force of the act) Iran and Azerbaijan from the list of GSP beneficiary countries based on their World Bank classification as upper-middle income countries. The second draft act lays down the procedures for applications by GSP beneficiaries to obtain GSP+ status.

## Duty-free imports for victims of Italian earthquakes

On 30 November 2012, the Commission adopted a Decision authorizing duty-free importation of goods intended to be distributed free of charge to victims of the earthquakes that occurred in Italy in May 2012. Duty-free treatment will only be granted for imports by approved State bodies or organisations until the end of 2012 and provided certain requirements are satisfied.

## 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) Singapore

The EU finally concluded its FTA negotiations with Singapore on 16 December 2012. Initialling of the FTA, after the necessary legal “scrubbing” has been performed, is expected to take place in Spring 2013, followed by the necessary ratification procedures at both ends (e.g. Council decision on signature and EP consent

to FTA conclusion). The FTA will cover trade in goods, services, investment, public procurement, intellectual property rights and geographical indications, sustainable development, green development, and other regulatory issues. Singapore will grant immediate duty-free access to all imports from the EU, while the EU has committed to eliminate tariffs on a vast majority of imports over a transitional period following the FTA's expected provisional application.

#### *(b) USA*

It is expected that the final report of the bilateral High-Level Working Group (HLWG) looking into the feasibility of an EU-US FTA will be issued towards the end of January or the beginning of February 2013. According to the Irish Presidency, the final report of the HLWG will recommend the launch of negotiations for a transatlantic trade agreement, in which case negotiations are expected to be launched at some point this year.

The EU work on the related EU-US FTA impact assessment is also nearing completion.

#### *(c) Canada*

Negotiations between the EU and Canada will continue in January 2013. The key outstanding issues involve agricultural market access, intellectual property rights, rules of origin, geographical indications and government procurement.

It is expected that the next steps in the negotiations will involve a series of technical meetings in the beginning of 2013, followed by a ministerial meeting in February.

#### *(d) Ukraine*

On 10 December 2012, the EU Council announced that it expects to conclude the Association Agreement with Ukraine (for which negotiations were finalized in late 2011 and the text was initialled in March 2012), including the establishment of a free trade area, by November 2013, on the occasion of the Eastern Partnership summit in Vilnius, Lithuania. However, at the same time, the Council reiterated the expectation that Ukraine shall refrain from introducing protectionist measures (notably Ukraine's request to raise maximum tariffs for over 300 products by renegotiating its WTO commitments). The EU is thus linking the establishment of an EU-Ukraine FTA to Ukraine's general tariff policy, as well as certain demands relating to the Ukrainian authorities' respect for human rights and the rule of law.

#### *(e) Colombia-Peru/Central America*

On 11 December 2012, the EP approved the two FTAs concluded between the EU and Peru and Colombia, and between the EU and six Central American countries. The EP gave its consent after agreement with the Council on safeguard regulations under these FTAs.

The two FTAs will be applied provisionally as soon as the partner countries have taken the necessary steps; the date of provisional application will be published in the Official Journal. The FTA with Peru and Colombia is expected to apply provisionally sometime in the first quarter of 2013, while provisional application of the Central America FTA is expected to come in the second quarter of 2013.

## CLASSIFICATION

### Classification Regulations

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

- **Commission Implementing Regulation 1123/2012** – classifying a so-called “passive infrared detector” consisting of a printed circuit assembly in a plastic housing, with an output signal of up to 30 V DC, 50 mA under CN code 8536 50 19, as a switch for a voltage not exceeding 60 V.
- **Commission Implementing Regulation 1124/2012** – classifying a hermetically-sealed weighing sensor or “load cell” incorporating a strain gauge in the form of a bridge circuit under CN code 9031 80 98.
- **Commission Implementing Regulation 1125/2012** – classifying an “electronic hot-air-blowing gun” that generates temperatures between 50 and 630 °C under CN code 8419 89 98, as machinery for the treatment of materials by a process involving a change of temperature.
- **Commission Implementing Regulation 1126/2012** – classifying a portable battery-operated multifunctional apparatus which is capable of radio-broadcast reception, sound and video recording and reproducing, voice recording and displaying still and video images under CN code 8527 13 99, as other apparatus for radio-broadcasting combined with sound recording or reproducing apparatus.
- **Commission Implementing Regulation 1127/2012** – classifying fine light tan, spray-dried powder in a stable and protected microencapsulated form composed primarily of refined tuna fish oil and sodium caseinate under CN code 2106 90 98, as a food preparation not elsewhere specified or included.
- **Commission Implementing Regulation 1128/2012** – classifying a so-called “waterproof plywood” panel made of sheets of wood glued together with a glue resistant to boiling water and used in construction, for example, for concrete shuttering under CN code 4412 32 10, as other plywood with at least one outer ply of non-coniferous wood.

- **Commission Implementing Regulation 1129/2012** – classifying a party poker set (containing playing cards, poker chips, a dealer chip and an instruction DVD) presented in a case under CN code 9504 40 00, as playing cards.
- **Commission Implementing Regulation 1130/2012** – classifying a cycle with three wheels, a frame, a seat, two footrests and two handlebars, under CN code 8712 00 70.
- **Commission Implementing Regulation 1144/2012** – classifying modified dehydrated cane molasses presented in powder form, solely used in animal feeding, under CN code 2309 90 96, as a preparation of a kind used in animal feeding.
- **Commission Implementing Regulation 1145/2012** – classifying retail plastic bags containing impregnated sterilized wipes made of non-wovens designed for cleaning hands and face, under CN code 3401 11 00, as non-wovens, impregnated, coated or covered with soap or detergent.
- **Commission Implementing Regulation 1170/2012** – classifying artificial flower garlands (imitations of Hawaiian “lei” chains), consisting of artificial textile flowers, under CN code 6702 90 00, as articles made of artificial flowers, of other materials than plastics.
- **Commission Implementing Regulation 1171/2012** – classifying a made-up textile article for the storage of small items (i.e. not designed to contain any specific item), with a drawstring and cord stopper at the top end and two rounded edges at the bottom, under CN code 6307 90 10, as an “other made-up knitted textile article”.
- **Commission Implementing Regulation 1172/2012** – classifying “refreshing wipes” made of non-woven material impregnated with water, aloe vera extract, perfume and various other substances and individually packaged in retail plastic bags, under CN code 3307 90 00, as other perfumery, cosmetic or toilet preparations, not elsewhere specified or included.

#### CNEN amendments for skin care products and vegetable extracts

On 4 December 2012, the Commission published an amendment to the Combined Nomenclature Explanatory Notes (CNENs) for subheading 3304 99 00 (“Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations – Other”), clarifying the scope of this residual subheading to include products put up for the

care of the skin (other than medicaments) presented in waddings, felt and nonwovens, such as moisturisers, toners and cleansers; however, in line with **Regulations 1172/2012** and **1145/2012** (reported above), it excludes such products, including wipes, from this heading if they are impregnated with perfumes, cosmetics, soaps, etc.

On 7 December 2012, the Commission published a CNEN amendment concerning vegetable extracts of heading 1302, clarifying the scope of “vegetable extracts” and explicitly allowing inert additives and certain processing.

#### HS Developments – BTI communication

On 14 December 2012, the EU published a communication listing the references to a series of amendments to the HS Explanatory Notes and Classification Opinions approved by the WCO’s HS Committee during its 49<sup>th</sup> session in March 2012. The purpose of this Communication is to ensure that Member States and economic operators are aware that Binding Tariff Information (BTIs) conflicting with the referred HS texts have ceased to become valid.

The World Customs Organization (WCO) recently also published the classification rulings, amendments to the HSEs and amendments to the Compendium of Classification Opinions agreed during the 50<sup>th</sup> session of the HS Committee in September 2012 (on which no reservations were filed by any HS Party). The European Commission will in due course prepare a BTI communication reflecting references to HS Committee guidance it wishes to endorse in EU practice.

#### Nomenclature Committee

##### (a) CN Sector

The 102<sup>nd</sup> meeting of the CN Sector of the Nomenclature Committee took place on 19 December 2012. The agenda for that meeting included the possible simplification of the structure of heading 9619 (Sanitary towels (pads) and tampons, napkins and napkin liners for babies, and similar articles, of any material), the transposition and update of the CN Explanatory Notes into the 2012 and 2013 Combined Nomenclature, and a draft Regulation amending classification regulations to reflect the 2013 CN.

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

The minutes of the 96<sup>th</sup> meeting of the HS/WCO Coordination Sector of the Nomenclature Committee which took place on 16 November 2012 have been made available. During that meeting, the Chairman presented the results of the 50<sup>th</sup> meeting of the HS Committee and the Committee also determined the EU position on the items on the agenda of the 44<sup>th</sup> meeting of the HS Review Sub-Committee. It also unanimously approved a draft Communication with respect to BTI to reflect HS developments (reported above). The Committee further approved a draft note to the WCO

Secretariat regarding a possible misalignment between Note 1(a) to Section XVI (Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles) and the Explanatory Notes to heading 84.87 (Machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, not specified or included elsewhere in this chapter).

The 101<sup>st</sup> meeting of the HS/WCO Coordination Sector took place on 18 December 2012. The report of that meeting has not yet been made available, but topics on the agenda included the post-coordination of the 44<sup>th</sup> meeting of the HS Review Sub-Committee; a possible amendment of heading 73.18 (fasteners), a possible amendment of the HS Nomenclature for LED products; and a possible amendment of headings 73.04 to 73.06 (steel tubes) and the corresponding Explanatory Notes.

#### (c) Mechanical/Miscellaneous Sector

The report of the 97<sup>th</sup> meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee that took place on 22-23 November 2012 has recently been made available and shows that the Committee adopted a favourable opinion on draft Regulations with respect to Chapter 95 (Toys, games and sports requisites; parts and accessories thereof), electric breast pumps, and digital media receivers/digital audio streamers.

The Committee also discussed among others, the classification of upper and lower covers for a safety seat-belt buckle, all-terrain vehicles, swivel and fixed castors, wheels as parts of wheelchairs and rollators, Unit Assy (an electronic system for a motor vehicle), components for LCD modules, a body composition analyzer, parts of safety belts, a fun massager, ornamental screws, devices for recording video and still images, small LCD modules and LED lighting products. A state-of-play was given on the work of various Project Groups (chemicals, audio-visual products) and on pending files for certain DVD players and E-tablets. The group also discussed the meaning of the term “electronic assemblies”.

#### (d) Agriculture/Chemical Sector

The 98<sup>th</sup> meeting of the Agriculture/Chemical Sector of the Nomenclature Committee took place on 6-7 December 2012. The Committee delivered a favourable opinion on the draft Regulation regarding the classification of mixtures of ethyl alcohol and ETBE. The Committee also examined, *inter alia*, draft CNENs related to food supplements and “cigars, cheroots and cigarillos”; and the classification of a heavy mineral oil named VGO, granules consisting of calcium carbonate and starch, human recombinant laminin, cat litter, a concentrate for the production of anti-freezing fluid, gas

obtained from biomass, and a food supplement called bromelain.

#### (e) BTI Sector

The 100<sup>th</sup> meeting of the BTI Sector of the Nomenclature Committee took place on 10-11 December 2012. The Committee discussed, among other technical issues, BTI invalidation codes; as well as BTIs affected by new classification regulations or amendments to the explanatory notes. The Committee further discussed the general state of play of the UCC proposal and the preparation of detailed implementation as regards BTI. There was also a discussion on the efficiency of the BTI system; the Commission announced its intention to carry out an external study on the costs and benefits of possible options for a future vision for the BTI system.

## ORIGIN

### Origin Committee

The 202<sup>nd</sup> meeting of the Origin Section of the Customs Code Committee took place on 19-20 December 2012. Items on the agenda included the implementation of the regional Convention on pan-Euro-Mediterranean preferential rules of origin (PEM Convention), a debriefing on the FTA rules of origin negotiations with, Eastern Partnership countries (Ukraine, Moldova, Georgia, Armenia), European Partnership Agreement (EPA) countries, Malaysia, Korea, Vietnam, India, Canada and Singapore. The Committee also discussed amendments to be made to the EU's GSP rules of origin to reflect the recent publication of the Regulation on the next GSP regime. In addition, the Committee was set to review a working document concerning the exchange of letters between the EU, Norway and Switzerland providing that products with content of Norwegian, Swiss or Turkish origin shall be treated on their arrival in the customs territory of the EU as products originating in GSP beneficiary countries, and on the mutual acceptance of replacement certificates of origin Form A or replacement statements on origin. Finally, evidence of direct transport, the conclusions of the latest WTO Committee on Rules of Origin, and the implementation of modalities with regard to the emergency autonomous trade preferences for Pakistan were also on the agenda.

## PROCEDURES

### CCIP Amendments for Community status and transit

On 7 December 2012, the Commission adopted a Regulation amending the Community Customs Code Implementing Provisions to allow the establishment of “Community status” for goods moved from one point in a Member State through the territory of a non-EU country to another point in the same Member State. The new Regulation also amends the packaging codes format and guarantee documents for Community transit with respect to Croatia.

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On 10 December 2012, the Commission adopted another amendment to the Customs Code Implementing Provisions to amend the guarantee documents for common transit as regards Turkey.

## **MISCELLANEOUS**

### **EU Council endorses EU Customs Action Plan to combat IPR infringements**

On 10 December 2012, the Council adopted a Resolution endorsing the EU Customs Action Plan to combat intellectual property rights infringements for the period 2013-2017. The Action Plan aims to increase customs cooperation at the EU's external borders to combat infringements, and lays down as strategic objectives the effective implementation and monitoring of EU legislation on customs enforcement of IPR; tackling trade of IPR infringing goods throughout the entire supply chain; tackling major IPR infringement trends; and strengthening cooperation with the European Observatory on infringements of IPR and law enforcement authorities.

A roadmap will be prepared to facilitate this implementation; the Action Plan will be assessed every year and it will be subject to a final report in 2017.

### **Commission proposes new framework for “retaliatory” trade rules**

On 18 December 2012, the Commission issued a proposal outlining a new framework for “retaliatory” trade rules to achieve more effective enforcement of EU trade rights under its international trade policy. This proposal establishes a single framework to respond to foreign trade measures considered illegal by the EU under international trade rules with duty increases, import or export quotas or licensing, or public procurement restrictions. This proposal still has to be considered and co-decided by the Council and EP.

### **Commission publishes new rules for the management of textile quotas for 2013**

On 8 December 2012, the Commission published a set of three regulations concerning the textile quotas applicable in 2013. These regulations are similar to the quota management measures adopted in previous years and are based on the ‘first come, first served’ principle, but with a ceiling on the quantities that can be allocated to each operator by that method.

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