

EU Customs Practice Group

October 2012

EU CUSTOMS POLICY

MCC/UCC recast proposal

On 10-11 October 2012, the International Trade (INTA) Committee of the European Parliament (EP) adopted a draft opinion on the proposal for the Modernised Customs Code (MCC) Recast Regulation. A vote in the EP's Internal Market and Consumer Protection (IMCO) Committee on the report of its rapporteur is currently scheduled to take place on 29 November 2012. 215 possible amendments to the Commission's proposal will be on the table.

Trilogue discussions between the EP, the Commission and the Council on this dossier will likely start at the end of 2012, or beginning of 2013. The vote in the EP's plenary session is currently scheduled to take place in April 2013.

The Competitiveness Council is also scheduled to hold an orientation debate on 10 December 2012.

In order to avoid a legal void (in the absence of implementing provisions for the MCC), the UCC should be adopted before June 2013 so that it can allow for the existing Customs Code and its implementing provisions remaining in place, pending the implementation of the UCC (i.e. involving future adoption of implementing provisions for the UCC).

TARIFFS

Update on duty suspensions/tariff quotas

(a) January 2013 Round

The formal proposal for the January 2013 round was not yet available when this newsletter was drafted, but should soon be submitted to the Council for adoption by the end of the year.

(b) July 2013 Round

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

(c) Increased transparency

The Commission has created a public dedicated suspensions database with detailed information on existing and pending suspensions which significantly increases transparency on pending applications.

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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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New EU GSP Regime adopted and published

On 4 October 2012, the Council adopted the new EU generalised scheme of preferences (GSP) for developing countries (see **Regulation 978/2012**, published on 31 October 2012). The new GSP regime will only replace the current scheme on 1 January 2014, so existing GSP benefits will continue to apply until that date.

The general aim of the new GSP scheme is to concentrate duty preferences on those developing countries most in need, by reducing the number of beneficiary countries and increasing the number of products that can benefit from preferential treatment. The number of GSP beneficiary countries – which are also eligible for GSP+ (granting further tariff reductions for those GSP beneficiaries that respect certain sustainable development and good governance principles) – is currently estimated to be lowered from 176 to 89 countries. The Everything But Arms (EBA) arrangement which gives duty-free access to the least developed countries will remain unchanged. The list of GSP beneficiary countries will be reviewed on an annual basis.

The criteria for suspending duty preferences for a particular product section from a specific country (the so-called “graduation mechanism”) have been amended to better target certain product groups. The new GSP regime also contains a general safeguard mechanism to re-introduce normal customs duties if imports of a certain product from a certain beneficiary country could cause “serious difficulties”.

The EU is expected to adopt the necessary measures concerning GSP+ procedures and countries, the first annual review of the GSP beneficiary list (to be finalised in the coming months) and the list of graduated product sections in the course of next year.

FTA update

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

(a) Japan

On 25 October 2012, the EP adopted a (non-binding) resolution urging the EU to start FTA negotiations with Japan. The resolution stresses that the talks should be suspended if Japan fails to remove non-tariff barriers in key sectors, especially in the car sector, within foreseen timeframes.

Discussions on the Commission’s draft FTA negotiating mandate (which must be approved by the Council before negotiations can be launched) are currently on-going within the Council. Provided that certain important outstanding issues can be resolved by then, the Council could adopt such a mandate at the next Foreign Affairs

Council meeting focusing on trade which is scheduled to take place on 29 November 2012.

(b) USA

The EP adopted a resolution on 23 October 2012 calling on the Commission to start negotiations with the US in early 2013 on a comprehensive trade agreement that should include market opening in goods, services and investment, but also take into account the needs of the EU farm sector.

Meanwhile, according to the EU’s Trade Commissioner, Karel De Gucht, free trade negotiations between the EU and the US could be launched in early 2013. In the meantime, the EU and the US have reportedly identified a number of trade barriers in each other’s markets that they want to resolve in the short term as part of a “confidence-building” exercise. The final report of the bilateral High-Level Working Group with a final recommendation on the launch of FTA talks is expected to be released in December, or possibly sometime early next year (depending on the outcome of the confidence-building initiative).

(c) Canada

Intensive work is currently on-going with the aim to wrap up the EU-Canada FTA negotiations by the end of the year. The final outstanding issues include market access for agricultural goods, protection of Geographical Indications (GIs), rules of origin, opening of public procurement markets, and the extension of pharmaceutical patents. The EU Trade Commissioner is scheduled to meet his Canadian counterpart in November – as part of a series of bilateral meetings – to work on these outstanding issues and it is foreseen that the Trade Ministers of the EU Member States will discuss finalisation of these negotiations during the Foreign Affairs Council meeting focussing on trade scheduled for 29 November 2012.

(d) India

It appears the EU-India FTA negotiations may have lost some momentum in light of the uncertain Indian political climate and the urgent need for progress in certain areas relating to, for instance, services, car tariffs and GIs. It is currently expected that following bilateral negotiation meetings scheduled for November/December, it will become clearer whether negotiations could feasibly be concluded in the first half of 2013.

(e) Malaysia

Pending upcoming elections in Malaysia (expected to be held sometime between now and June 2013), the FTA negotiations with the EU are seemingly at somewhat of a standstill. Therefore, it is currently unclear when exactly the next round of bilateral negotiations will be held and by when the negotiations can be concluded.

(f) Singapore

Intensive bilateral work is currently on-going to settle remaining issues (e.g. on GIs) and finalise the EU-Singapore FTA negotiations by the end of 2012. The Foreign Affairs Council meeting focussing on trade scheduled for 29 November 2012 is expected to discuss finalisation of these FTA negotiations as well.

(g) Mercosur

The latest (ninth) round of FTA negotiations between the EU and Mercosur took place in Brasilia on 22-26 October 2012. Negotiations involved the important topics of customs and trade facilitation, rules of origin, services and public procurement but there was reportedly limited progress.

Also, in light of the fact that crucial market access offers have not yet been exchanged, the dates for the next round and possible finalisation of the EU-Mercosur FTA negotiations remain unclear.

(h) Vietnam

The first formal round of negotiations, focussing largely on establishing negotiation positions in various main areas, was held in Hanoi during the week of 8 October 2012. While the target date for finalisation of the negotiations is currently unclear, it is foreseen that the next negotiation round will be held in the beginning of 2013.

CLASSIFICATION

Commission publishes EU Common Customs Tariff for 2013

On 31 October 2012, the EU Commission published the Common Customs Tariff (CCT) applicable from 1 January 2013 in **Regulation 927/2012**. This new version of the CCT contains certain amendments in relation to statistical, commercial policy and other requirements.

Nomenclature Committee

(a) Mechanical/Miscellaneous Sector

The report of the 93rd meeting of the Mechanical/Miscellaneous Sector of the Nomenclature Committee has recently been made available. During that meeting, the Committee delivered favourable opinions on draft classification regulations with respect to party-poker sets, crawler carriers, water-proof plywood, multi-switches, electronic hot-air-blowing guns, load cells, PIR detectors, audio-video players with reception apparatus for radio-broadcasting, steel wire clamps, Universal Dual Port Car Chargers, USB cables and CCD sensors. The Committee also delivered a favourable opinion on the draft Combined Nomenclature Explanatory Notes (CNENs) to subheading 8504 40 30 (static converters of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof).

The Committee further discussed the classification of manual knife sharpeners placed on a supporting surface during grinding.

The existence of divergent Binding Tariff Information (BTI) within the EU with respect to fireside companion sets and fun massagers was also discussed. The Committee further concluded that DG Taxud should present a draft regulation regarding the classification of a body composition analyser of the household type with analysing and weighing functions under heading 8423, while the classification of such analysers for professional use will be studied further. The Committee also supported a draft classification regulation classifying connector parts and discussed the classification of anti-stress balls and anti-stress toys, metal boxes for champagne bottles, and wood-composite decking boards.

The Commission furthermore presented a working document proposing the introduction of a duty free CN code in subheading 8528 59 for flat panel displays able to display signals from ADP machines with an acceptable level of functionality.

(b) HS/WCO Coordination

The report of the 92nd meeting of the HS/WCO Coordination sector of the Nomenclature Committee of 10-12 September 2012 has been made available. During that meeting the Committee discussed the EU's position for the 50th meeting of the HS Committee of the WCO. The Committee also discussed the draft note on a possible amendment of Chapter 84 (machine tools). It further concluded that there is a divergence – and possible misalignment of the English and French version – between Note 1(a) to Section XVI (Chapters 84-85) and an Explanatory Note 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) with respect to the classification of oil seal rings.

The Committee decided that the Notes of Chapter 96 and the Explanatory Notes to heading 96.19 (hygienic products) did not require a further amendment given that the current legal provisions were considered satisfactory, and decided to keep the status quo. The Committee, in line with the opinions of the CN and Agricultural/Chemical sectors, also decided to accept the proposal to amend the heading 25.01 (Salt (including table salt and denatured salt) and pure sodium chloride, whether or not in aqueous solution or containing added anti-caking or free-flowing agents; sea water).

The Committee further expressed its interest in a possible amendment to headings 69.07 and 69.08 (ceramic tiles).

(c) Agriculture/Chemical Sector

The report of the 94th meeting of the Agriculture/Chemical sector of the Nomenclature Committee has also been made available. The Committee adopted a favourable opinion on, *inter alia*, draft Regulations classifying cleansing wipes under subheadings 3307 90 00 and 3401 11 00. The Committee also examined the tariff classification of, among other products, soy protein concentrates used in animal feeding, food supplements, mixtures of ethyl alcohol and ETBE, and a heavy mineral oil named VGO. The Committee rejected a possible amendment to heading 39.01 (linear low-density polyethylene, LLDPE).

The Committee further discussed certain classification regulations relating to Chapters 27 (Mineral Fuels, Mineral Oils and Products of their Distillation; Bituminous Substances; Mineral Waxes) and 38 (Miscellaneous Chemical Products), the tariff classification of granules consisting of calcium carbonate and starch, human recombinant laminin, and concentrates used for the production of anti-freezing preparations.

ORIGIN

Origin Committee

The 201st meeting of the Origin section of the Customs Code Committee took place on 29 October 2012. The agenda included a discussion on the entry into application and the implementation of the Pan-Euro-Med Convention. The Commission was also scheduled to debrief the Committee on rules of origin in FTA negotiations with, *inter alia*, Armenia, Malaysia, Vietnam, Canada, and Mercosur. In addition, the Committee was set to prepare the second meeting of the Customs Committee under the EU-Korea FTA. A discussion was also planned on a working document concerning the exchange of letters between the EU, Norway and Switzerland providing that certain products with a content of Norwegian, Swiss or Turkish origin shall be treated as products originating in GSP beneficiary countries, and on the mutual acceptance of replacement certifications of origin Form A or replacement statements on origin.

The Committee further discussed clarifications with regard to the application of emergency autonomous preferences for Pakistan and shared information on the organisation for the issuance of Binding Origin Information (BOI) within the Member States' administration (i.e. whether this is done at the regional or central level).

New Commission Communication on preferential origin warnings

On 30 October 2012, the Commission published a Communication setting out the conditions for informing economic operators and Member States of cases involving reasonable doubt as to the preferential origin of the goods. Such information (or warning) notices make it

impossible for importers to rely on the "good faith" clause that can sometimes lead to remission of duties if a preference is denied. This Communication replaces an earlier Communication from 2000 in light of recent developments concerning risk analysis goals and related experience. The Communication includes a list of circumstances which may give rise to reasonable doubt on the preferential origin of the goods and lists the warning notices published by the Commission which are currently still in place.

Origin marking proposal withdrawn

On 23 October 2012, the Commission issued its Work Programme for 2013. This programme indicates that the Commission's 2005 proposal on the indication of the country of origin of certain products imported from third countries has been withdrawn. This withdrawal is reportedly due to a lack of agreement in the Council, and the recent interpretation of WTO labelling rules by the WTO Appellate Body in the US – COOL cases initiated by Canada and Mexico. At the moment, the Commission does not appear to be planning to issue a new proposal on origin labelling.

MISCELLANEOUS

Council authorises the EU-Canada Agreement on Customs Supply Chain Security Cooperation

On 18 October 2012, the EU Council published its decision authorising the signing of the Agreement between the EU and Canada on customs cooperation with respect to supply chain security. The purpose of this agreement is to increase end-to-end supply chain security and facilitating legitimate trade.

Commission launches consultation to identify top-10 burdensome EU legislative acts for SMEs

On 1 October 2012, the EU Commission launched a consultation for Small and Medium Sized Enterprises (SMEs) and their respective organisations to identify the top ten EU legislative acts considered most burdensome, and specifically referred to customs controls and formalities, classification of goods and customs tariffs as one of 10 typical areas where excessive burdens could exist. The Commission intends to use the results from this consultation to make focussed and tailor-made revisions to legislative acts. The consultation will be closed on 21 December 2012.

EU adopts new sanctions against Syria and Iran

On 15 October 2012, the EU Council decided to expand economic sanctions against both Syria and Iran, which could affect export operations as the customs authorities play an important part in enforcing sanctions and could for example raise questions before releasing shipments for export.

Among other sanctions, the ban on the supply of key equipment for the Iranian oil, gas and petrochemical industries has been broadened, and a ban has been introduced on the sale of certain materials (including graphite and raw or semi-finished metals such as steel and aluminium) and certain industrial processing software to Iran.

The EU's sanctions against Syria include a new ban on the purchase of arms and related materials from Syria and a ban on EU airport access for Syrian Arab Airlines.

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