

## EU Customs Practice Group

December 2013

### EU CUSTOMS POLICY

#### UCC Developments

In the course of 2014, consultations will take place between the European Commission and the EU Member States and trade experts to prepare the delegated and implementing acts to implement the recently adopted Union Customs Code (UCC). The Commission's aim is to have these delegated and implementing acts ready for entry into force by mid-2015.

The UCC replaces the previous 1992 Community Customs Code as the new EU framework legislation in the area of customs. Even though the UCC entered into force on 30 October 2013, most provisions of the UCC will only apply as of 1 May 2016 (i.e. after the adoption of the detailed implementing provisions). The transition to electronic exchange and storage of data should be completed by 2020. The Commission plans to adopt the UCC IT work programme by 1 May 2014.

#### Customs 2020

On 20 December 2013, the EU published **Regulation 1294/2013** establishing an action program for customs in the EU for the period 2014-2020 ('Customs 2020'). Customs 2020 replaces the previous Customs 2013 program and aims to support customs authorities in increasing the efficient functioning and modernisation of the EU customs union.

#### Proposed EU Legal Framework for Customs Infringements and Sanctions

On 13 December 2013, the Commission proposed a framework to harmonise customs infringements and align related sanctions of the 28 EU Member States (among which the relevant definitions and sanctions currently differ). The proposed Directive sets out the acts that must be considered infringements of the EU's customs rules (e.g. non-payment of customs duties, failure to declare goods to customs, falsifying documents to obtain preferential treatment). The proposal also sets out a scale of sanctions to be applied, depending on the infringement. In its current form, the proposal foresees that Member States will have to enact implementing legislation by 1 May 2017.

The proposal will now be considered by the Council and the European Parliament.

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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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## TARIFFS

### Duty Suspensions and Tariff Quotas

#### (a) *January 2014 Round*

On 28 December 2013, the EU published **Regulations 1387/2013 and 1388/2103** containing the updated lists of duty suspensions and tariff quotas that apply as of 1 January 2014.

#### (b) *Tariff Suspension for Jet Fuel*

On 13 December 2013, the EU published **Regulation 1325/2013** providing for a duty suspension on jet fuel (CN code 2710 19 21) as of 1 January 2014, regardless of the country of origin of imports, to compensate for the loss of tariff benefits by important supply countries. The duty suspension must be reviewed within 5 years.

### GSP – New Regime and Practical Guide

The EU's revised Generalised Scheme of Preferences (GSP) regime started to apply on 1 January 2014. In December 2013, the Commission issued a practical GSP guide explaining, *inter alia*, the various trade regimes that will apply now to a particular product shipped to the EU. It also provides information about GSP treatment for goods that left their point of origin in 2013 but arrived at the EU customs border after 1 January 2014.

### GSP – China, Thailand, Ecuador and the Maldives Losing Benefits

On 31 December 2013, the Commission published **Regulation 1421/2013** removing GSP benefits for China, Thailand, Ecuador and the Maldives as a result of the annual review of the GSP beneficiary list. These countries are being removed from the list of beneficiary countries as a result of their World Bank classification as high or upper middle income countries during the three last consecutive years. **Regulation 1421/2013**, which also featured certain technical amendments to the GSP regime, entered into force on 1 January 2014. However, as a result of a one-year transition period, the countries will only be removed from the list of GSP beneficiaries on 1 January 2015.

### GSP Plus

#### (a) *El Salvador, Guatemala and Panama to Get GSP Plus Status*

On 17 December 2013, the European Commission issued a proposal to grant GSP Plus status to El Salvador, Guatemala and Panama. GSP Plus is the EU's special incentive arrangement for GSP beneficiary countries that meet certain criteria related to sustainable development and good governance, including ratification and effective implementation of 27 international conventions on human and labour rights, environment and governance principles.

The Council and the European Parliament now have a few months to approve or reject the proposal. If accepted, these three countries will be added to the current list (published in early January 2014) of ten GSP Plus countries.

#### (b) *Philippines files GSP Plus Application*

The Philippines has reportedly filed an application for the EU's GSP Plus programme. The EU's evaluation process to determine whether the Philippines can benefit from GSP Plus preferences could take up to ten months.

### FTA update

#### (a) *US*

A third round of negotiations for a Transatlantic Trade and Investment Partnership (TTIP) agreement between the EU and the US took place in Washington, D.C. on 16-20 December 2013. Progress was made on market access, regulatory aspects and rules. Discussions will continue during the fourth round, which is expected to take place in March 2014. The two sides are now preparing to start text based discussions on certain regulatory provisions during the next formal negotiation round. EU Trade Commissioner and USTR Michael Froman are further expected to meet in February 2014 to carry out a "political review" of the progress made so far in negotiations.

#### (b) *Thailand*

The third round of FTA negotiations between the EU and Thailand was held in Brussels on 9-13 December 2013. 13 working groups met, covering, among others, trade in goods, rules of origin, IPRs, TBT, SPS, services and sustainable development.

Due to the current political crisis in Thailand, discussions on specific tariff modalities as well as other sensitive areas were postponed. Market access offers for goods are expected to be exchanged during the fourth round of negotiations (which may take place in March 2014), but the political situation in Thailand could further delay the negotiations.

#### (c) *Ukraine, Georgia and Moldova*

On 19-20 December 2013, the European Council issued a statement that the EU remains ready to sign the Association Agreement negotiated with Ukraine. Parties had originally planned to sign this Association Agreement at the Eastern Partnership Summit, but the Ukrainian government unexpectedly announced on 21 November 2013 that it had stopped preparations for the signature of the agreement.

In the same statement, the Council also confirmed the EU's readiness to sign the Association Agreements concluded with Georgia and Moldova, which include Deep and Comprehensive Free Trade Areas, "*as soon as possible and no later than the end of August 2014*"

(emphasis added). These two Association Agreements were initialled at the Eastern Partnership Summit on 28-29 November 2013.

#### *(d) EU overseas countries and territories*

On 19 December 2013, the EU published its new Overseas Association **Decision 2013/755** replacing **Decision 2001/822** (which expired on 31 December 2013). The EU's Overseas Countries and Territories (OCTs) include, among others, Greenland, the Netherlands Antilles, the Falkland Islands, and Bermuda.

This new Decision establishes the principles and areas of cooperation between the parties. It identifies three key pillars on which the Partnership between the EU and these OCTs is based: (i) enhancing competitiveness; (ii) strengthening resilience and reducing vulnerability; and (iii) promoting cooperation and integration between the OCTs and other partners and neighbouring regions.

## CLASSIFICATION

### Classification Regulations

In December 2013, the Commission published Classification **Regulation 1405/2013**, classifying a concentrate for the production of anti-freezing fluid, under Combined Nomenclature (CN) code 2207 20 00 as denatured ethyl alcohol.

### Simplified tariff system/classifications for sanitary articles

On 13 December 2013, the EU published **Regulation 1326/2013**, which simplifies the CN and the tariff structure for sanitary towels (pads) and tampons, as well as napkins and napkin liners for babies and similar articles under tariff line 961900 of the CN. Under the simplified tariff system, four (instead of eight) categories of products are implemented, each of them with a single autonomous rate of duty.

### CNEN for and methods for sensory testing of uncooked poultry meat

On 19 December 2013, the Commission published a new CN Explanatory Note (CNEN) to heading 1602 ('other prepared or preserved meat, meat offal or blood') on how to determine whether or not uncooked poultry meat is seasoned.

In parallel, the Commission published **Regulation 1362/2013** laying down methods for sensory testing of uncooked seasoned poultry meat for classification purposes.

### CNENs for gases from biomass

On 3 December 2013, the EU introduced two CNENs with respect to heading 2711 ('Petroleum gases and other gaseous hydrocarbons'). These CNENs clarify that subheading 2711 19 00 includes liquefied gas obtained

from biomass, while subheading 2711 29 00 covers the gaseous form.

### Commission endorses Amendments to HS Explanatory Notes and Classification Opinions

On 5 December 2013, the European Commission published a list of references to amendments to the Harmonised System (HS) Explanatory Notes and Classification Opinions approved by the HS Committee in March 2013 in a wide range of product areas. The EU Member States are now obliged to revoke conflicting Binding Tariff Information and apply the HS guidance.

### Commission Deletes CNEN for Motor Vehicle Collectors' Pieces

On 31 December 2013, the Commission deleted a CNEN relating to subheading 9705 00 00 ('Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest'). This CNEN allowed the classification of certain motor vehicles and motorcycles as collector's pieces in the subject subheading, as opposed to classification in Chapter 87.

### CJEU Ruling on the Tariff Classification of Stove Pipe Sets

On 12 December 2013, the Court of Justice of the EU (CJEU) rendered its judgment in Case C-450/12, *Hark GMBH & Co. KG Kamin- und Kachelofenbau v. Hauptzollamt Duisburg*, relating to the classification of stove-pipe sets. The applicant had imported steel stove-pipe sets into Germany from China under CN code 7321 90 00 (parts of 'stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate-warmers and similar non-electronic domestic appliances, and parts thereof, of iron or steel'). The German customs authorities later argued that the stove sets should have been classified under CN code 7307 99 90 (other 'tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel'), which carried much higher duties.

The CJEU concluded that the tubular elbow component of the stove pipe was essential for the operation of the stove and that the product could not be classified under CN heading 7307 as it was not a 'part of general use'. The Court therefore found that the stove pipe set instead must be classified under CN heading 7321 as a steel 'part' of a stove.

### Nomenclature Committee Developments

#### *a) HS/WCO Coordination Sector*

The report of the 121<sup>st</sup> meeting of the HS/WCO Coordination Sector of the Nomenclature Committee held on 5-6 November 2013 is now available. The Committee as usual handled the post-coordination and preparation for several HS Committee meetings. The

Committee further voted in favour of endorsing amendments to HS Explanatory Notes and HS Classification Opinions (published in December – see above). The Committee also discussed a possible amendment of an HS Chapter Note relating to textiles (Chapter 59), and a proposal to amend HS heading 85.41 to cover certain laser diodes modules (as opposed to classification under HS heading 90.13).

Another meeting of the HS/WCO Coordination Sector took place on 18 December 2013. The agenda included the post-coordination of a recent HS Review Sub-Committee meeting, a discussion on the classification of a drum housing for a combined harvester-thresher, a possible amendment of the HS heading on fasteners (heading 73.18), an amendment to the HS Explanatory Notes to Chapter 41 (leather) and the classification of “self-adhesive thermo-sensitive paper” and of a preparation for use in animal feeding. The Committee was also scheduled to reflect on the possible acceleration of the publication of EU communications endorsing HSEs and opinions (which currently takes over 6 months).

## ORIGIN

### Origin Committee Developments

The report of the 207<sup>th</sup> meeting of the Origin Committee (held on 26-27 September 2013) has recently been made available. The Committee discussed certain Pan-Euro-Med (PEM) matters and the Commission debriefed the Member State experts on FTA negotiations with, among others, Thailand, the Eastern Partnership countries (Ukraine, Moldova, Georgia, and Armenia), and EPA countries. The discussion on a Turkish request to extend bilateral cumulation in FTAs of the EU and Turkey to materials originating in Turkey and the EU, respectively, continued. A request concerning the preferential origin rule for buttons of heading 9606 was also addressed. The Origin Committee further considered the legislative amendments required to implement the registered exporter (REX) system, and draft guidelines on Approved Exporters. Problems relating to acceptance of origin declarations by third countries, in particular South Korea, were raised as well. A working document on the direct transport/non-alternation rule and discussions with South Korea on the possible replacement of the current direct transport rule in the EU-Korea FTA with a non-alternation rule were also debated. The Committee finally also discussed draft non-preferential origin rules for solar panels (adopted since then – see below), and considered a specific case relating to Chinese aluminium road wheels processed in a third country.

The 209<sup>th</sup> meeting of the Origin Committee took place on 19-20 December 2013. The agenda included, among other things, certain PEM matters and a debriefing on FTA negotiations with Vietnam, Thailand and the Eastern Partnership Countries; a modification of certain

Customs Code Implementing Provisions to distinguish proofs of origin issued or made out under a DCFTA or Autonomous Trade Measures (ATM) in a single partner/beneficiary country; and repetitive verification requests by partner countries. The Committee was also scheduled to discuss the impact of the application of new GSP regime as of 1 January 2014 on goods in transit; a request by Cambodia for a transitional period in implementing new EBA (Everything But Arms) rules on ASEAN cumulation in the framework of the GSP scheme for the period 2014-2023; Sri Lanka's and Indonesia's request to being allowed to use cross-regional cumulation of origin for certain tobacco products; the Agreement between the EU, Switzerland and Norway on the treatment of GSP products; and REX related legislative amendments.

### 'Made in' Labelling

On 2-3 December 2013, the Council of the EU discussed the Commission's proposals on product safety and market surveillance, which includes a proposal to establish mandatory country of origin marking for non-food products ('Made in' labelling). However, the proposed provision on 'Made in' labelling remains controversial. A number of Member States find this would improve traceability of products and consumer information, but others claim that origin labelling would not only be unjustified but also burdensome for economic operators.

### Non-preferential Origin Rule for Solar Panels/Modules

On 19 December 2013, the Commission published **Regulation 1357/2013** introducing a specific non-preferential origin rule for solar panels and modules. These rules should ensure uniform application of the EU's anti-dumping and anti-subsidy measures against China for these products.

### Origin quota derogations for textiles from Guatemala

On 19 December 2013, the Commission published **Regulation 1366/2013** outlining derogations from the normal rules of origin of the EU-Central America Association Agreement. These derogations apply within specified quotas for certain textile products originating in Guatemala.

### GSP – Indonesia/Sri Lanka cumulation for tobacco products

On 13 December 2013, the Commission published **Regulation 1328/2013** allowing Sri Lanka to use unmanufactured tobacco and tobacco refuse of HS heading 2401 originating in Indonesia under the EU's GSP origin cumulation rules. As a consequence, the tobacco growing sector of Indonesia is allowed to supply the Sri Lankan cigar manufacturing sector with materials

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of Indonesian origin without jeopardising the 'GSP origin' status for the final product.

## VALUATION

### EU Court Issues Judgment on Customs Valuation

On 12 December 2013, the CJEU issued its judgment in Case C-116/12, *Ioannis Christodoulou et al vs. Elliniko Dimosio*, concerning the determination of transaction value for customs valuation purposes and the unlawful use of export refunds. The applicant in that case imported orange juice with added sugar from Bulgaria between 2002 and 2006 (i.e. before it became an EU Member State in 2007).

The applicant exported both the sugar and concentrated orange juice from Greece to Bulgaria under permanent export declarations. The Bulgarian producer received both products through a temporary import declaration and placed them under the inward processing customs procedure for their re-export after mixing the two products and diluting them with water. The concentrated orange juice and the sugar were made available to the Bulgarian producer free of charge, as "assists".

The final orange juice mix was re-valued by the Greek customs authorities, who not only found that the declared customs value should have been higher, but also that the product should have been classified under a different tariff subheading. The domestic court referred this to the CJEU because it doubted the manner in which the customs value of the final preparation was calculated by the customs authorities, mainly because the value did not correspond with the price paid or to be paid for the product covered by the processing contract concluded between the parties.

The CJEU agreed with the re-valuation performed by the customs authorities. The Court also ruled that an export refund obtained unlawfully (since export refunds can only be granted if the product is permanently exported and not when subject to outward processing) must be taken into account to determine the actual transaction value.

## PROCEDURES

### Standard Forms for Customs Enforcement of IPRs

The majority of the new provisions of **EU Regulation 608/2013** on customs enforcement of Intellectual Property Rights (IPRs) will apply as of 1 January 2014. They broaden the scope of IPRs that are covered by the provisions on customs enforcement and introduce simplified procedures for the destruction of goods and with respect to small consignments.

On 18 December 2013, the Commission published the standard forms for submitting requests for action and for an extension of the period during which the customs authorities are requested to take such action in

**Regulation 1352/2013**. In addition, the Commission has made available an e-learning tool on these new rules on its website.

### Management of EU 2014 textile quotas

On 11 December 2013, the Commission published **Regulation 1281/2013** containing rules for the management and distribution of textile quotas for the year 2014. These rules are generally similar to the measures adopted in previous years, and place a ceiling on the quantities which can be allocated to each operator. Operators are further allowed to make the quantity in their initial import authorisation application for 2014 equivalent to the quantity which they imported in 2013. They can also request a further amount when they have used up at least 50% of their initially allocated amount.

### EU Court Ruling on Denied Request for Remission

On 3 December 2013, the CJEU ruled in Case T-573/11, *JAS Jet Air Service France v. Commission*, on a request for the remission of import duties after the discovery of a fraudulent import scheme involving undervaluation and avoidance of VAT payments. The applicant, a customs agent, requested the annulment of a Commission Decision refusing the remission of import duties paid for the import of blue jeans and other products. The applicant had asserted that the French customs administration was aware of a fraudulent import scheme and should have informed the applicant. The applicant referred to the Commission's decision in a case against the Dutch customs authorities involving the same international fraud scheme ('Case REM 10/01'), where the Commission allowed refunds because of a serious lack of vigilance by the Dutch customs administration which had been aware of the existence of a fraudulent import scheme, which resulted in a 'special situation'.

However, the Court agreed with the Commission that a 'special situation' did not exist in the present case: the circumstances and products concerned in case REM 10/01 were different, and the Dutch customs administration had been made aware of the existence of the fraudulent import scheme. The Court also stated that the existence of a 'special situation' cannot solely be based on whether or not the customs authorities performed certain checks. Relying on a possible failure of the French authorities to apply the VAT rules correctly was also impossible because no logical link exists between VAT rules and the existence of a customs debt (which is the object of the request for a remission of import duties).

The Court therefore rejected all of the applicant's arguments.

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## MISCELLANEOUS

### WTO – EU Requests Consultations with Brazil on Discriminatory Taxes

On 19 December 2013, the EU filed a request for consultations with Brazil in the WTO concerning alleged discriminatory tax advantages given by Brazil in the automotive and electronic sectors. The EU also challenges horizontal tax benefits for goods produced in certain areas such as Manaus and other Free Trade Zones. The EU further alleges that Brazilian authorities have broadened existing systems of tax exemptions for Brazilian exporters by enlarging the number of potential beneficiaries.

### WTO – Bali Trade Facilitation Agreement and EU implementing aid to developing countries

On 7 December 2013, the WTO Ministerial Conference taking place in Bali reached agreement on trade facilitation, agriculture and development (the so-called 'Bali package'). The Trade Facilitation Agreement aims to simplify customs procedures by reducing costs and improving their efficiency, increasing transparency, reduce bureaucracy and corruption, and using technological advances, including for goods in transit. The text adopted in Bali is currently being checked to ensure the language is legally correct. The package is expected to be adopted at the WTO General Council by 31 July 2014.

On 6 December 2013, EU Trade Commissioner De Gucht and Development Commissioner Piebalgs announced that the EU will contribute EUR 400 million over five years to assist developing countries in implementing the Trade Facilitation Agreement.

### WTO – E-Commerce Moratorium Extension

On 11 December 2013, the EU published its formal Decision on the position to be taken by the EU in the WTO talks on the extension of the moratorium on customs duties on electronic transmissions. This so-called 'e-commerce moratorium' was agreed in 1998 and is to be renewed at WTO level every two years. The EU has taken the position that e-commerce should be considered as a service and therefore not be subject to customs duties.

### EU rules on monitoring trade in drug precursors

On 10 December 2013, the EU published an amendment to the existing rules for the monitoring of trade between the EU and third countries in drug precursors. This amendment, *inter alia*, clarifies the definition of a scheduled substance, introduces rules on suspending or revoking the registration of an operator, and generally introduces provisions enabling EU Member States to react more quickly to new trends in drug precursors diversion.

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