

## **MMTA TRADE AND LOBBY COMMITTEE'S NEWSLETTER**

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### **NEW EU CUSTOMS RULES – WHAT DOES IT MEAN FOR YOUR BUSINESS?**

#### **1. New customs rules will affect your supply chain, import duty costs and liability**

New EU customs rules are in the making. The main rules, the Modernised Customs Code (“MCC”), have already been adopted. The European Commission is now consulting industry and trade on the content of the implementing provisions (“IP”), meaning the technical and detailed customs rules. These rules will affect the operations and bottom line of everyone dealing with EU imports and exports, and will come into effect by June 2013 at the latest.

#### **2. Changes to the origin rules – where does your product come from?**

##### **2.1. Importers become liable for origin declarations under GSP**

A major change is the move to self-certification. While in the past EU importers could invoke a good faith argument, they will now face liability for their foreign suppliers' incorrect or even false origin declarations. To support importers, the EU is to set up a database listing exporters that are deemed reliable. To avoid a backlash of increased duties, MMTA members should consider (i) how to assure reliable origin declarations from their suppliers, and (ii) special recovery clauses in supplier contracts.

##### **2.2. Guidelines become binding and the principle underlying the origin rules may change**

The European Commission is considering making the so called 'list rules' - which determine origin and thus duties, including anti-dumping duties, for all products - legally binding. Up to now, some EU customs authorities have considered these non-binding. Operators should check what origin their goods will have under those rules going forward. It is possible that customs may in fact revoke existing binding origin decisions (“BOIs”).

#### **3. Changes in rulings (origin, tariff classification and valuation)**

In the future, customs authorities will be able to reject applications for Binding Tariff Information (“BTI”) or Binding Origin Information (“BOI”) if an application has already been filed at the same or another customs office. This is intended to stop economic operators from making multiple applications for the same product. Therefore, preparing a strong BTI/BOI application will become even more important in order to maximise chances for success (simply because it will no longer be possible to correct or amend (or otherwise compensate for ) a poorly drafted application). Furthermore, BOI/BTI decisions must be revoked and re-issued if changes are made (for example, regarding the goods description or the tariff code).

There is a new possibility to also ask for a customs ruling on other aspects, which will be useful for companies that want to have business certainty as to the customs value of imported goods.

#### **4. Revision of valuation principles will increase the duty burden**

There is an ongoing high-profile debate between with trade and industry on the proposed detailed valuation rules. The European Commission’s proposed change could lead to important increases in customs duties as a result of the removal of the ‘first sale’ rule and the adoption of a new clause that could make many more royalties and licence fees subject to duties. The Commission is currently working with the Trade Contact Group, of which MMTA is a member, to find a solution. To be prepared, companies should however already now check how the proposed changes could affect their operations.

**5. New rules for customs procedures**

The new customs rules are based on *e-customs* meaning most customs procedures will have to be done electronically, including customs declarations. This will require operators to change how they interact with customs. Further, the new customs rules focus on operators’ self-assessment when applying for and maintaining authorizations for simplified customs procedures. Again, this puts the burden on the operators and may involve stricter customs audits and or possible higher penalties if issues arise. For instance, the possibility for centralized clearance (dealing with only one customs authority) will be closely linked to whether the operators has or could obtain the status of Authorised Economic Operator (“AEO”), which places a strict burden on operators’ self-assessment of customs compliance.

**6. Recommended action**

- **Understand and work to shape the proposed rules.** Ensure that the EU decision-makers are informed about future customs rules that can negatively affect your operations.
- **Be prepared.** Start introducing compliance controls, train people about customs issues and identify key potential issues or bottlenecks for your operations.
- **Be competitive.** Companies who are up-to-speed with self-assessment of customs compliance, compatible electronic systems and the removal of bottlenecks, will avoid having their trade flows disrupted or delayed at the EU border, and potentially avoid a backlash of retroactive customs duties on their imports.

We recommend that MMTA members perform an **impact assessment** and put together **an action plan** to ensure that (1) the new customs rules do not disrupt their operations, and (2) they take maximum advantage of the opportunity to structure operations and which maximizes customs cost savings, either by reduced customs duties or by decreased operational customs clearance and compliance costs.

Please contact the [MMTA](#) or [Arnoud Willems](#) at Sidley Austin for more information.

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