



Customs Flash Belgium

Classification of All Terrain Vehicles for agricultural use: previous EC Regulation overruled

Introduction

Published on 22 of September 2016, the European Court of Justice issued its Judgment in Case C-91/15, which invalidates Paragraph 2 of the annex to Commission Regulation (EC) No 1051/2009 of 3 November 2009 on the classification of All Terrain Vehicles (ATVs) used for agricultural purposes. The technical restrictions previously imposed by that regulation are lifted and all tractors intended for agricultural use can benefit from a 0% import duty rate under CN 8701 90 11 to 8701 90 50.

Facts

Deloitte was asked by Kawasaki Motor Europe to support them in defending their classification of ATVs intended for agricultural use in a dispute against the Dutch Authorities.

The Dutch authorities relied on Commission Regulation (EC) No 1051/2009 of 3 November 2009 whereby tractors similar to the ones at hand, which did not possess specific components (power take-off shaft, hydraulic lift, or winch), must be classified as "other tractors of CN 8701 90 90". This heading activated a 7% import duty rate.

It was argued that despite the lack of the above components, the ATVs should be classified under CN 8701 90 11 to 8791 90 50 as agricultural tractors, as that would be their intended

use. The final 8-digit classification will depend on the engine's capacity. The agricultural tractor headings have a 0% import duty rate.

The ECJ ruled that the tractor's agricultural nature could derive from its characteristics and design, with no obligation for a take-off shaft, hydraulic lift or winch to be present on said vehicle. Consequently, the ECJ stated that Paragraph 2 of the aforementioned EC Regulation was invalid.

The fact that the ATV may be used for recreational purposes should be noted as being irrelevant, as long as the ATV is clearly identifiable as an agricultural ATV.

What does it mean for you?

Companies that import ATVs intended for agricultural use should verify whether the vehicles are properly classified.

Additionally, companies that have imported agricultural tractors misclassified as other tractor types should look into filing for a refund claim for overpaid customs duties.

What to do?

Deloitte's Customs and Global Trade (CGT) team can support in determining whether ATVs benefit from the ruling and can help prepare refund claims.

Where disagreements on CN classification arise with the Authorities, the CGT team can also help determine the best possible approach and strategies.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Fernand Rutten, frutten@deloitte.com, + 32 2 600 66 06
- Nick Moris, nmoris@deloitte.com, + 32 2 600 66 03
- Julien Pauwels, jpauwels@deloitte.com, +32 2 600 66 25
- Tom Verbrugge, tverbrugge@deloitte.com, + 32 2 600 66 20
- Klaas Winters, klwinters@deloitte.nl, +31 (0)88 288 2125
- Johan Hollebeek, jhollebeek@deloitte.nl, +31 (0)88 288 1992

For general inquiries, please contact:
bedeloittetax@deloitte.com, + 32 2 600 60 00

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