



Customs Flash

Belgium

Customs duty reclaims on defective goods

Introduction

The Court of Justice of the European Union (CJEU) issued a judgment on 12 October 2017 (*X BV v Staatssecretaris van Financiën* (C-661/15)) relating to customs duty adjustments on defective goods (cars in this case). Given the Court's position, the resulting case law creates a major opportunity for affected companies to reclaim overpaid customs duties.

The case and judgment

X BV purchased cars from a manufacturer in Japan and imported them into the EU, paying the required customs duties. X BV then sold these vehicles to dealerships, which in turn placed them for sale to consumers.

After their import, the cars were found to have various latent (potential) defects. Consequently, the local dealers repaired the defects in the country of import. X BV then reimbursed the dealers, and the manufacturer reimbursed X BV. X BV then sought to adjust the customs duties on the basis that the manufacturer's payment was an adjustment on the purchase price used for calculating the customs value at import.

Upon its assessment of the case, the CJEU ruled that although the goods were only 'potentially' defective upon import, conditions for a refund under the UCC provisions in this respect are deemed to have been met. The Court also ruled that the UCC's twelve-month time limit for adjusting the price

(i.e. after the original importation) is invalid, and the general three-year limitation period for refund requests should apply.

What does this mean for you?

Two important conclusions can be drawn from the case to assess future duty reclaims:

1. The CJEU ruled that it is not necessary for the claimant to demonstrate that the goods were actually defective upon import. The existence of a manufacture-related risk that the goods may become defective during use is sufficient.
2. Article 145(3) CCIP (the current IA-UCC in Article 132) is invalid, to the extent that it sets out a time limit of twelve months for a price adjustment to take place. Instead, the time limit for adjustments should be three years.

It should be noted that the one-year period for adjustments under Article 238(4) of the CCC, currently Article 121(b) of the UCC, does not apply here, as this last period is only applicable to situations where the importer refuses the goods because they are defective, or differ from what was contractually agreed upon.

What to do?

This judgment is relevant to businesses (such as those active in the automotive and electronic sectors) that import goods that are under warranty and are subsequently identified as having a (potential) defect or manufacture-related risk.

If a company had any product recalls under warranty over the past three years, it is advisable to check if this could serve as basis for a duty refund claim.

The Customs and Global Trade team is readily available to provide any assistance or more information regarding the above.

Contacts

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