

Customs Flash

Customs duty reclaims on defective cars

Introduction

The Court of Justice of the European Union (hereafter: CJEU) released a decision on 12 October (*X BV* (C-661/15)) relating to customs duties adjustments on defective cars. This case creates a major opportunity for affected companies to make a claim for overpaid customs duties.

Background

X purchased cars from a manufacturer in Japan and imported them into the EU, paying the customs duty. X then sold the vehicles to dealers for onward sale to consumers. There were various latent defects with different types of car. In each case, dealers repaired the defects in country. X then reimbursed dealers, and manufacturer then reimbursed X. X then sought to adjust customs duty on the basis that the payment from manufacturer was an adjustment to the purchase price.

The CJEU has ruled that even though the goods were only 'potentially' defective at the time of import that this counted as a defect for the purpose of being able to adjust the customs duty. It has also ruled that the 12-month limit for adjusting that is indicated in the Community Customs Code (CCC) and now in the Union Customs Code (UCC) for latent defects (i.e. after the original importation) is invalid and that the limit for claims is three years as for other refund claims.

What does this mean for you?

There are two important areas that provide the potential for duty reclaims:

- 1) The CJEU has ruled that it is not necessary for the claimant to demonstrate that the goods were actually defective at the time of the customs declaration (as required in the mentioned customs legislation) but that it is sufficient for there to be a manufacture-related risk that the goods may become defective in use. In such a case, and where the importer, under contractual warranty, reimburses the buyer the costs of remedying

the risk then the import valuation can be adjusted to reflect this; and

- 2) The mentioned customs legislation, which sets out the 12 month time limit for taking into account any adjustment to the price, is invalid as adjustments to the price paid in relation to customs declarations made over the 12 month limit would not correspond to the transaction values under the respective articles of the CCC and the UCC. Instead, the time limit for adjustments is three years.

In summary, the judgment allows for there to be only a manufacture-related risk, resulting in an adjustment to the price paid under a warranty contract, and that applications for adjustment may follow the statutory three year time period for adjustments in the CCC. This provision of the CCC is also available in the UCC.

What to do?

This is relevant to any businesses/sectors where goods are imported under warranty and the product is subsequently identified as having a defect or manufacture-related risk.

If you have any product recalls over the past three years, it is advisable to check if this could lead to a claim for overpaid duty.

If you need any assistance or would like to receive more information concerning the above, please do not hesitate to contact your local Deloitte contact.

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