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Law Alert
EU, Competition and
Trade Law

EU customs should award interest on anti- dumping duties

Court of Justice of the European Union,
8 September 2016

According to an opinion delivered on 8 September 2016 by an Advocate General at the Court of Justice of the European Union (CJEU), when anti-dumping (AD) duties are reimbursed after annulment of the EU Regulation imposing them, the national customs authorities should also pay interest on the sums refunded.

This opinion has been issued by Advocate General Manuel Campos Sanchez-Bordona in the context of a dispute arising before a German Finance Court, between German shoe retailer Wortmann and the German customs authorities (C-365/15).

Following the annulment by the CJEU of Regulation 1472/2006 imposing definitive AD duties on imports of footwear from China and Vietnam, Wortmann submitted applications to the German customs authorities for reimbursement of the AD duties paid on the basis of the annulled regulation. It also requested the payment of interest on the sums refunded from the time of payment of the AD duties. The German customs reimbursed the AD duties but, on the basis of Article 241 of the Community Customs Code (CCC), refused to pay the requested interest.

According to this provision, which has been replaced by Article 116 (6) of the Union Customs Code (UCC) as of June 2016, repayment of amounts of customs duties should not give rise to the payment of interest by the customs authorities, except in two situations: where a decision to grant a repayment is not implemented within three months of the date of adoption of that decision, and where national provisions stipulate that interest should be paid.

As stressed by the German customs authorities, in the case at issue, the criteria laid down in Article 241 CCC were not fulfilled: there had not been a delay of three months in implementing the reimbursement decision and the German legislation only provided for a right to payment of interest from the date on which the request for reimbursements was filed in CJEU.

Upon an action filed by Wortmann contesting the refusal by the German customs authorities to pay interest, the German Finance Court had doubts about the compatibility of Article 241 CCC with the general principle of EU law according to which, where the authorities are required to reimburse income they have received contrary to EU law, the sums reimbursed must be increased by interest from the date on which the undue payment was made.

The German Finance Court thus referred a question for a preliminary ruling to the CJEU on the interpretation of Article 241 CCC. It asked, in essence, whether in light of the above general principle of EU law, Article 241 CCC should not be interpreted as requiring the national customs authorities to pay interest from the date of payment of the AD duties.

According to the Advocate General, Article 241 CCC should not apply to situations in which the reimbursement of AD duties is required as a result of a CJEU decision declaring the EU regulation imposing the duties invalid. As argued by the Advocate General, following the annulment of an AD regulation by the CJEU, the customs authorities are required to take the necessary measures to reinstate the situation which would have occurred had this regulation never existed. Such measures comprise the reimbursement of the AD duties wrongly levied, but also interests from the date of the payment of the AD duties.

If the Advocate General's opinion is followed by the CJEU, which is often the case, this could create a legal precedent which would entitle importers to be awarded interest on AD duties from the date of payment of those duties.

The adoption of the new UCC could make this opinion even more relevant. This is because the new UCC (Article 116 (6) UCC) no longer mentions the possibility for the customs authorities to pay interest on refunded import duties on the basis of their national legislation.

The CJEU is expected to render its judgment in the first months of 2017.

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