GLOBAL COMMERCE

Court ruling sweet for Heartland

CUSTOMS UPDATE

STEVEN WEISER
&
ARI KAPLAN

IN THIS SPACE THREE WEEKS AGO, the case of Heartland By-Products Inc. vs. United States was examined. By way of review, Customs revoked a New York ruling it issued to Heartland on May 15, 1995, classifying certain sugar syrups that it proposed to import in a provision not subject to a tariff rate quota.

In its ruling request, Heartland merely described its merchandise as "produced from sugar cane or sugar beet and will contain sugar solids, water and more than 6% soluble non-sugar solids."

As this description fully comports with the definition of items classifiable within Heartland's claimed provision, Customs agreed with the company and issued a ruling providing confirmation of its position.

In fact, Heartland specifically mixed sugar and molasses with water prior to exportation in a sufficient amount to ensure that the resulting syrup exceeded the 6% limitation.

Recently, however, Customs argued that Heartland "tariff engineered" its way out of a provision subject to the tariff rate quota and as such, its ruling was invalid and had to be revoked.

The agency's decision was prompted by a petition filed jointly by powerful interest groups representing the domestic sugar industry contesting this classification.

In response to a request for comments, Customs received an unusually high number of submissions, including remarks from two congressmen and a letter signed by 26 U.S. senators.

Heartland challenges Customs' ruling

Heartland sued the Customs Service and, in a comprehensive decision issued on Oct. 19, Judge Judith M. Barzilay of the U.S. Court of International Trade issued a stunning judgment against the Customs Service.

After reviewing the factual and legal issues, Judge Barzilay ruled on each element of Customs' action in extraordinary detail. She cited not only the administrative record, but extensive case law, including Supreme Court decisions, and even Customs' own laboratory report, in concluding that Customs was clearly wrong in its revocation. Nevertheless, she highlighted that the issue was really a standard classification matter.

'Unreasonable' and 'abuse of discretion'

In addition, it must be noted that the court decided this case on purely legal grounds, without any evident consideration of political pressures which may have been placed on the Customs Service.

On numerous occasions, Judge Barzilay's decision uses such language as, "there is no factual or legal support for Customs' conclusions" and that "there is ample record evidence that Customs' interpretation is unreasonable and an abuse of discretion."

She further noted that Customs failed in its application of the abundant judicial precedent on the tariff classification of imported merchandise.

Trade community is vindicated

In the Court's complete and total reversal of the Customs Service on this issue, there is a certain element of vindication for a trade community that is often arguing that Customs' positions are unfounded. Yet, the true victory in this decision is not simply that Customs was wrong, it is that importers that have been following longstanding principles of tariff classification that an article must be classified in its condition as imported are correct.

Moreover, the Court of International Trade held that following a position contrary to such established law is, and apparently will continue to be, "arbitrary, capricious, an abuse of discretion, and not otherwise in accordance with law."

Another significant issue clarified in Judge Barzilay's decision is that not only is tariff engineering to its maximum potential permissible, but that an importer has the right to fashion its goods to avoid the onus of excessive duties.

In addition, consideration of the importer's motive in fashioning its goods is not a relevant inquiry for Customs to make. In that regard, the court concluded that an importer who intends to fashion merchandise wholly for the purpose of obtaining a low duty rate is absolutely within its right.

Government may appeal ruling

So what does this mean for importers seeking to begin import operations and planning to apply for a binding ruling?

The Heartland case certainly adds another level of comfort, certainty and security for such importers; however, it by no means ensures success.

In addition, it also does not guarantee that Customs will be unable to legitimately revoke another ruling it issues, assuming that such revocation has a strong legal foundation (unlike in the Heartland case).

This looming possibility is something that must be considered when applying for that initial ruling. Accordingly, importers should be sure to consult experts, and in doing so, submit a presentation to Customs that is clearly based on established legal principles and strong factual assertions.

While in this case, the facts, the law and the exercise of judicial review were simply too much of a burden for the Customs Service to overcome, each matter is different. Therefore, as these issues are reviewed on a case-by-case basis, the next decision may not be so "sweet."

Furthermore, the government still has until mid-December to appeal the Court of International Trade's decision to the Court of Appeals for the Federal Circuit. Although it has not yet done so, by the time this article goes to press, this case may very well be on the appellate court's docket.

As such, the trade community will continue to keep a watchful eye on yet another attempt by the government to restrict its pursuit of international commerce.

Customs Update is a weekly column examining critical aspects of the relationship between customs agencies and importers. This column was prepared by Steven S. Weiser and Ari I. Kaplan, partner and associate, respectively, in the international law firm of Graham & James LLP, N.Y., and reflects the opinion of the writers. Please address any questions to Customs Update, Trade Desk, The Journal of Commerce, Two World Trade Center, Suite 2750, New York, N.Y. 10048.