





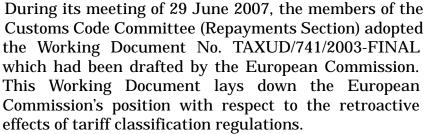


Concern about possible price increase by 3 years retroactive effects of classification regulation in the European market



Cologne, 23 September, 2008

1. Background



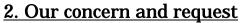




More specifically, Section 2.2.2.2. of the Working Document provides that in case where the classification specified in a "new" classification regulation (as opposed to a classification regulation which amends or repeals an earlier classification regulation) results in a higher customs debt, customs authorities undertake to recover the customs debt unless the lower duties were paid due to an error made by themselves (as provided for in Article 220(2)(b) of the Community Customs Code). In other words, "new" classification regulations will have retroactive effects unless the lower duties were paid as a result of an error on the part of the customs authorities. Since this is usually not the case, in practice, it implies classification "new" regulations will have retroactive effects in most cases.







We understand that this Working Document is not strictly speaking legally binding. However, it is in any case an internal administrative guidance that Member States should apply. It thus has a direct impact on traders and therefore requires appropriate disclosure. As far as we know, the Working Document has suddenly been uploaded on the DG-TAXUD Website without being officially published. We therefore doubt that the EC has complied with its disclosure obligations under GATT 1994 Articles :1 and :2.





photo imaging council

Furthermore, we would like to express our serious









concern as to the content of this Working Document. By conferring retroactive effects to tariff classification regulations, this Document obviously breaches the consistent case law of the European Court of Justice (ECJ) according to which classification regulations, being of legislative nature, cannot have retroactive effects¹. Actually, the ECJ position is consistent with the fundamental principle of legal certainty which requires, *inter alia*, that rules imposing charges on the taxpayer must be clear and precise so that he may know without ambiguity what are his rights and obligations and may take steps accordingly as well as to the principle of legitimate expectations.





In the light of the foregoing, we would like to sincerely request the customs authorities of the Member States to continue applying tariff classification regulations non-retroactively in accordance with the consistent case-law of the ECJ.



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1. Asociacia Dovozcov Audiovizualnej Techniky (ADAT, Slovakia), 2. Associazione Italiana Foto & Digital Imaging (AIF, Italy), 3. Associacao Empresarial das Sectores Electrico, Electrodomestico, Fotografico e Electronico (AGEFE, Portugal), 4. Asociatia Producatorilor si Distribuitorilor de Echipamente de Technologia Informatiei si comunicatiilor (APDETIC, Romania), 5. Bulgarian Association of Information Technologies (bait, Bulgaria), **6.** Camera & Imaging Products Association (CIPA, Japan), **7.** The Association of Electronics Wholesalers (Finland), **8.** European Photo and Imaging Association (EPIA, Pan-Europe), 9. Association of the Hungarian Representatives of the Manufacturers machineries (FOTOMKE, Hungary), 10. Leverandorforening (Denmark), 11. International Imaging Industry Association (i3a, USA), 12. Photo Imaging Council (pic, UK), 13. Photoindustie-Verband e.V. (PIV, Germany), 14. Sindycat des Enterprises de L'image de la Photo et de la Communication (SIPEC, France), 15. Svaz Obchodu a Cestovniho Ruchu Cr - Czech Confederation of Commerce and Tourism (Czech), 16. Photo Marketing Association International (PMA, USA), 17. Greek Manufacturers, Distributors & Dealers of Photo Products and Image Systems Association (SEKAF, Greece), 18. Photographic Arts Federation of Turkey (TFSF, Turkey), 19. ZIPSEE (Poland), 20. Elektronik Branschen (Sweden)

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¹ See, e.g., case 158/78, *P. Biegi v. Hauptzollamt Bochum*; Case C-401/93, GoldStar Europe BmbH and Hauptzollamt Ludwigshafen; Case C-288/99, VauDe Sport GmbH & Co. KG v Oberfinanzdirektion Koblenz, Case C-479/99, CBA Computer Handels- und Beteiliguns GmbH.