THE BINDING TARIFF INFORMATION (BTI) RULING: A KEY ELEMENT OF SUCCESSFUL EXPORTING TO EUROPE

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American firms are well-acquainted with the value of obtaining binding classification rulings from United States Customs and Border Protection. Rulings represent the official position of the agency, and are binding on Customs officials at United States ports of entry – more than 300 of them. They provide importers with predictability in determining landed costs and prices. Perhaps most importantly, they provide importers with procedural protections, in case Customs decides to change its position to the importer’s disadvantage. Small wonder, then, that American companies obtain several thousand Customs classification and country of origin rulings each year.

But exporting to the European Union often seems mysterious to the same companies who obtain United States Customs rulings. At first blush, that’s understandable: while the EU has a common Customs Code, it also has twenty-seven (27) different national Customs Administrations interpreting and administering that Code. Each of these Customs authorities is differently organized, and they work in many different languages. How can a United States exporter achieve uniform treatment of its goods in such a large and diverse market?

The answer lies in the Binding Tariff Information (“BTI”) – the EU’s equivalent of the binding Customs ruling. Although issued by national Customs administrations, BTIs have a uniform format. Better yet, they are binding on Customs officials in all 27 EU Member States, and remain in force for six (6) years, subject to renewal. Since the EU’s Combined Nomenclature is, like the United States tariff, based on the international Harmonized System of tariff nomenclature, many multinational companies are able to leverage their knowledge of United States tariff classification into securing favorable BTIs.

How, then, does a United States exporter secure a BTI regarding its merchandise?

Article 12 of the EU’s Customs Code provides for the issuance of BTIs to “economic operators” in EU Member States. If an applicant has a subsidiary, affiliate or exclusive agent in an EU country who will act as importer of record, that firm should be listed as the applicant. A common

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application, available in different languages, must be submitted. Companies can, and usually do, submit supplemental memoranda explaining their legal position concerning the proper classification of the goods. Samples, photographs, or specifications catalogs depicting the goods to be classified are usually submitted.

A BTI can be submitted to any one of the 27 EU Customs Administrations, but typically should be submitted in the country where the goods will be imported. For this reason, the EU countries which are home to major port facilities, such as the Netherlands and Belgium, issue a number of BTIs disproportionate to their size. EU countries with large economies and populations, such as France, Germany and the United Kingdom, also account for a significant number of BTI issuances.

A BTI application should typically be submitted in the language of the country to which the application is addressed, although some non-English speaking countries will also accept applications in English. Customs authorities are generally willing to meet and discuss BTI applications, particularly where the issues presented are complex, or likely to set wide-ranging precedent.

In most cases, the Customs authority will issue a BTI between 6 and 10 weeks after an application is submitted. Years ago, it was believed that the countries which depended on port activity for a major part of their economic activity might be more lenient in granting favorable BTIs than countries which housed industries that competed with imports. While there might be some validity to this notion, BTI applications today are routinely referred to the EU’s Customs Code Committee, a group composed of representatives from the EU Customs authorities that meets regularly in Brussels. There, delegates have the opportunity to review BTI applications, to ensure that they are consistent with precedent and that similar goods are classified uniformly across the EU.

The applicant who receives a BTI ruling is designated as the “holder” of the ruling. “Holder” status imparts legal rights; only the holder is entitled to place definitive reliance on a BTI. The holder must also be able to prove that goods it imports conform to the definition of goods covered by a BTI on which it relies. A BTI which is based on incorrect or inaccurate information submitted to the Customs authority can be revoked.

BTIs concerning the classification of goods remain valid for six (6) years, subject to renewal. Binding rulings concerning the origin of goods (also known as Binding Origin Informations or BOIs) remain in force for three (3) years.

A BTI can be overturned or rendered ineffective for a number of reasons. For example, if the European Commission issues a classification regulation which differs from the classification set down in the BTI, the BTI will no longer be valid. Similarly, if the European Court of Justice issues a contrary ruling, or if EU authorities amend the EU’s explanatory notes to the Combined Nomenclature in a way which is contrary to a BTI, the ruling will no longer be valid.

International developments can also invalidate BTIs – changes to the international
Harmonized System nomenclature adopted by the World Customs Organization, changes to the HS Explanatory Notes, and adverse WCO rulings will also render a BTI invalid.

While such developments are relatively rare, the value of a BTI to an economic operator becomes especially evident when one of these developments occurs. Holders of BTIs are entitled to continue relying upon their invalidated BTIs for a “grace period” of up to six (6) months, if the holder has entered into binding contracts in reliance on the BTI. Thus, BTIs not only provide an importer with assurance concerning its import costs, it can give the importer an advantage over competitors who lack the protection of a BTI in the event Customs authorities decide to change their practices.

BTIs issued by the EU are often influential in other countries, particularly members of the European Free Trade Association, and countries which are candidates for EU membership. Those countries which are associated with, or seek to be associated with the EU, generally try to harmonize their Customs interpretations with those of the EU.

Ruling issued by Customs officials in the EU are published in a database which is made available to all Customs authorities in the Community. A public version of the database is also available for online searching. The EBTI Database, can be accessed at http://ec.europa.eu/taxation_customs/dds/cgi-bin/ebtiquer?Lang=EN.

The BTI process is not an obscure backwater of European Union law, but is one of the essential procedures at the heart of the Customs Union. It allows 27 different Customs authorities to administer the Customs Code in a consistent and harmonious manner. Holders of BTIs have certain rights to appeal rulings that are adverse to them. And the BTI process has been the subject of several decisions by the European Court of Justice (ECJ), the highest court in the EU legal system.

Savvy importers doing business in the EU obtain BTIs for their products, and then maintain them as they would a portfolio of intellectual property, and make sure that renewal applications are filed before the expiration of the rulings’ effective dates.

American firms doing business in the EU should establish a BTI program to guide their entry into the world’s largest economic market.