Reducing and Recovering Customs Duties in the European Union

By Dr. Robert M. MacLean

More than €14 billion\(^1\) are paid each year in EU customs duties by EU importers – both large and small – as the price for bringing goods into the EU market. Much like a tax, EU importers do not get any of this revenue back unless they ask or claim the right exemptions. Unlike a tax, a surprisingly large number of EU importers do not ask for reductions in their customs liabilities and pay little attention to the amount in customs duties they pay. Even fewer companies engage in extensive post-clearance examinations of how their customs bills can be reduced going forward.

Our EU Duty Recovery Programme is intended to fill this gap. It is designed to return real value to EU importers in the form of recovery of past payments and the reduction of liabilities for future importing activities. To determine whether or not this programme might apply to your company, ask yourself the following questions:

- Does our company import products from outside the EU to sell, manufacture or use in EU production and processing activities (i.e. industrial processing, assembly operations, etc.)?
- Is our company’s annual expenditure on importing goods into the EU a significant part of the company’s overall costs?
- Are our company’s competitors taking advantage of EU duty reduction programmes to obtain a competitive advantage over us in the EU market?

If the answer to any of these questions is yes (✓), then it is likely that the company will be able to recover or reduce its payments through some form of a recovery programme. Recovery actions can be a component of an overall global strategy to reduce EU customs liabilities on a strategic basis or a response to specific customs liability exposures that have arisen – for example, as a result of the imposition of EU antidumping duties. Although these procedures are highly technical, we have developed special skills and expertise in achieving recovery of these types of payments. When a recovery opportunity arises, it can lead to substantial repayments that otherwise would not be obtained.\(^2\)

\(^2\) Disclaimer: In this White Paper, we provide some illustrations and descriptions of how these procedures work and the kinds of recovery that can be achieved. The situations of individual companies may vary. Nothing in this White Paper should be interpreted as specific legal advice for any company or enterprise that has not expressly sought our opinion and/or advice on this subject.
Some Recent Cases

EU Customs Duty Recovery Through Classification Techniques

Customs tariff reclassification involves developing ways of declaring imported merchandise under the EU customs classification codes that attract the lowest possible customs duty rate. If a product can be classified into an EU customs classification code that reduces the level of duty payable, a customs cost saving can be made for the future and in most instances for the recent past.

- A multinational company was importing chemical precursors made in its plants in the United States and Asia for their production sites in the UK and Germany. After an audit, it was clear that the customs classification code traditionally used (with an 8-percent duty rate) might be incorrect and another possible code (with a 2.2-percent duty rate) could be used. Classification requests were made which confirmed proper classification at the 2.2 percent duty rate. The company adjusted its import declarations for the previous three years to recover the difference in its favour and, of course, obtained the cost savings of the lower duty rate going forward.

- A Russia-based fertiliser manufacturer was paying an EU antidumping duty of €180/tonne on its exports of ammonium nitrates-based solid fertilisers to its EU customers. We successfully classified a large range of their products outside the CN categories which attracted EU anti-dumping liability and into other categories where only normal EU customs duties were payable.

EU Duty Suspension Procedures

The EU’s tariff suspension system allows EU importers to import chemicals, raw materials, semi-finished goods, etc. without paying the usual customs duties if the necessary procedures are followed. Duty reduction can be achieved either by using existing tariff suspensions or creating new ones for the specific needs of the EU importing company.

- Requests for an EU tariff-free quota were made on behalf of EU industrial users of an imported chemical substance despite the fact that there were still manufacturers of this product in the EU. After several rounds of negotiations, a duty-free quota was agreed upon by the EU Committee for a specific annual volume of the product to enter the EU market without duties being assessed.

- A minerals and mining corporation was paying a large amount in EU customs duties each year to import one of its key products sold through its EU network of related companies. Although the EU customs duty rate was relatively small, the large volume of material imported each year gave rise to a significant customs liability, which it sought to alleviate through a fresh EU duty suspension because its EU competitors had ceased production.
A Switzerland-based multinational company asked for assistance in reducing its customs liabilities for a number of its EU-imported products. After an audit, it was confirmed that about one third of the products on their list were either already on the list of EU full duty suspensions or fell under tariff-free quota allowances. Applications were made for the return of these duties and, since the tariff-free quotas had not been exhausted, a substantial claim was permitted.

**Refunds and Suspensions of EU Anti-Dumping Duties**

For EU importers paying antidumping duties, it is possible to request refunds of these duties if it can be shown that the dumping levels for the purchased goods are lower than established during the original investigation or have been completely eliminated. Because the percentages of duties required to be paid to import these goods are often quite high (i.e. greater than 40 percent), it is financially beneficial to use the EU refund processes to recover these payments.

- Six companies manufacturing and importing air compressors from China have separately sought our counsel in filing refund applications for EU antidumping duty payments totalling more than €3 million. To achieve this objective, a comprehensive and regular refund filing procedure was implemented and the European Commission has now carried out its on-the-spot verifications.

- We have made several applications to the European Commission for the suspension of EU antidumping duties when the antidumping duties were responsible for a shortage of material in the EU market. Where changed circumstances come into play and the impacts of EU antidumping duties are excessively onerous, temporary relief in this form is permitted.

**Dealing With Legal Costs**

In most cases, EU duty recovery projects are handled on a partial contingency fee basis. An initial fixed fee is agreed upon to finance the initial screening and exploratory work needed to identify specific duty recovery opportunities. Once these opportunities are identified, actual remuneration for the remaining legal work can take the form of a contingency fee arrangement for an agreed percentage of the actual duty savings, past and future, made by our clients as a result of our efforts. Structured this way, we share the risk with the client and the bulk of the legal charges are paid out of returned revenues or future cost savings – with the largest portion of the recovery being returned to the client in the form of past or future cost savings.

**What Does an EU Duty Recovery Programme Involve?**

The first step of the process is an initial assessment of the potential cost savings that can be achieved. The three main drivers for this exercise are the following:
• Identification of imported merchandise under EU classification codes which attract high EU duty rates (i.e. 3 to 6 percent for chemicals, minerals, electrical and mechanical equipment and steel products)

• While relatively high EU duty rates are a fundamental starting point, high volumes of imports are what drive EU customs liabilities upwards. The combination of high import duty rates plus modest import volumes also warrants further investigation.

• Using the two principles above, it is possible to identify the best imported merchandise candidates for duty recovery actions. Multiple target selection is also highly recommended.

The process requires an audit and analysis of a company’s import records and the identification of specific opportunities for cost savings. High levels of EU customs duty payments are tackled on an imported product-by-product basis. Based on the initial audit, tailor-made processes are applied to each specific opportunity to ensure legal certainty for duty recovery actions. This requires the systematic application of several EU-approved procedures performed against an EU company’s import records.

**Calculating Potential EU Customs Duty Cost Savings**

Each duty recovery procedure involves different factors and permutations of duty savings opportunities.Outlined below are the general cost savings that can be achieved through the various procedures.

**EU Customs Reclassification**

Products can be lawfully classified into lower customs duty classifications which attract a lower duty liability. This process involves the European Binding Tariff Information (EBTI) system, which allows definitive customs classifications to be issued by the competent authorities in the EU Member States. If successful, the company could reclassify these imports retroactively for three years. In addition, the company obtains the benefit and cost savings of the lower duty rate going forward.

<table>
<thead>
<tr>
<th>Calculation of Retroactive Recovery</th>
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<tbody>
<tr>
<td>Difference in EU Duty Rate * Annual Declared Customs Value * Three years</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Calculation of Future Cost Savings</th>
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</thead>
<tbody>
<tr>
<td>Difference in EU Duty Rate * Annual Declared Customs Value * Indefinitely</td>
</tr>
</tbody>
</table>

**EU Duty Suspension – Existing Exemptions and Quotas**

The EU’s autonomous tariff suspension system allows EU importers to import chemicals, raw materials, parts, components, semi-finished goods, etc. without paying EU customs duties. This exemption is full remission not simply a deferment of payment. Retroactive claims for the repayment of these duty
payments are possible if the entitlement existed in the period when the imports occurred. Going forward, the company can claim exemption for imports until the duty exemption or tariff-free quota expires.

**Calculation of Retroactive Recovery**

Applied EU Duty Rate × Annual Declared Customs Value × Three years

**Calculation of Future Cost Savings**

Applied EU Duty Rate × Annual Declared Customs Value × Number of years remaining for the quota/exemption

**EU Duty Suspension – Applications for Fresh Exemptions and Suspensions**

The suspension process for fresh applications takes two forms depending on whether the imported merchandise is:

i. No longer manufactured or produced in the EU, in which case the procedure is for full duty suspension regardless of volumes; or

ii. Not available in sufficient quantities in the EU, in which case the procedure is one involving the creation of a fresh tariff-free quota for a certain volume of imported merchandise. In this scenario, the imported merchandise can enter the EU market free of duty until the quota is exhausted.

In such cases, the cost saving is a future one only and no retroactive recovery is possible because fresh applications do not create exemptions with retroactive effect.

**Calculation of Retroactive Recovery**

EU Duty Rate × Annual Declared Customs Value of the Merchandise × Normally five years

**Refunds and Suspensions of EU Antidumping and Anti-Subsidy Duties**

EU antidumping and anti-subsidy duties are special duties paid when EU companies import products outside the EU that are covered by EU antidumping or anti-subsidy orders. EU antidumping duties are paid on specific products from particular countries (i.e., steel fasteners from China). Because the duty rates that have to be paid to import these types of merchandise are often quite high, it is financially interesting to use the EU refund processes to recover these payments.

**Calculation of Retroactive Recovery**

(Old Dumping Rate – Revised Dumping Rate) × Customs Value For the Period Covered
Comparative Relief/Recovery Procedure Table

It should be stressed that each of these procedures are quite different as far as the relevant administrative procedures are concerned. The same is true of the nature of the recoveries that can be made, especially in regard to future and past recoveries. The table below summarises these differences.

<table>
<thead>
<tr>
<th>Nature of the procedure</th>
<th>EU Duty Suspension (Full exemptions)</th>
<th>EU Duty Suspension (Tariff-Free Quote)</th>
<th>Reclassification of Merchandise</th>
<th>EU Anti-dumping Duty Refund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinds of duties to be recovered</td>
<td>Normal EU customs duties</td>
<td>Normal EU customs duties</td>
<td>Normal EU customs duties</td>
<td>EU Anti-dumping and anti-subsidy duties</td>
</tr>
<tr>
<td>Eligible products</td>
<td>Raw materials, semi-processed merchandise</td>
<td>Raw materials, semi-processed merchandise</td>
<td>All products</td>
<td>Those products covered by the scope of the applicable EU AD regulation</td>
</tr>
<tr>
<td>Excluded products</td>
<td>Consumer goods</td>
<td>Consumer goods</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Time frame for recovery</td>
<td>Nine months unless exemption already in place</td>
<td>Nine months unless exemption already in place</td>
<td>Around three months</td>
<td>12-15 months from initiation of refund investigation</td>
</tr>
<tr>
<td>Relevant administrative body</td>
<td>EU Tariff Committee</td>
<td>EU Tariff Committee</td>
<td>EU Member States customs authorities</td>
<td>European Commission</td>
</tr>
<tr>
<td>Company specific relief</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Country specific relief</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Future cost savings</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Retroactive recovery</td>
<td>Only for exemptions already in force</td>
<td>Only for exemptions already in force</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

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