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TradeSmart
Highlights



Tariff
Amendments



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Highlights

This edition of TradeSmart highlights:

- **Tariff classification - Toneleria Nacional RSA (Pty) Ltd vs The Commissioner of SARS**

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Tariff classification, valuation and origin are core customs compliance procedures and the main pillars for establishing liability for duties and value-added tax (VAT) on imported goods. Tariff classification relates to the proper categorisation of goods that have been imported or exported using the Harmonized Commodity Description and Coding System/Customs handbook. The customs duties and VAT payable will be calculated based on the rate of duty dictated by the specific tariff code.

The three stages of tariff classification

Tariff classification should be based upon:

1. The interpretation of the meaning of the words used in the headings which may be relevant to the classification of the goods concerned;
2. A consideration of the nature and characteristics of those goods; and
3. The selection of the heading which is most appropriate to such goods.

The World Customs Organization (WCO) has issued general rules of interpretation that should be used as a guide in the correct classification of goods. For more information on the general rules of interpretation visit www.wcoomd.org.

Judgment was recently handed down in a tariff determination case that was heard in the High Court of South Africa (Western Cape Division, Cape Town). In [Toneleria Nacional RSA \(Pty\) Ltd vs The Commissioner of SARS](#), Toneleria Nacional RSA successfully appealed against the classification for customs duty purposes by the Commissioner of the South African Revenue Service (SARS) of certain wooden products imported by the applicant.

Introductory and facts to the case

Toneleria Nacional is a company that specialises in the production of barrels and alternative wood products for the wine industry. Their products are mainly used by winemakers in the storage and maturation of wines. The company imports these goods, which were categorised by the producer as ‘staves’, from its parent company Toneleria Nacional LTDA, which is incorporated in Chile.

The ‘staves’ were described in the case as flat-planed planks of oak that have been measured in various sizes and carpentered especially so that they can be suspended in containers of wine (usually steel containers) during the maturation process. The use of ‘staves’ in this manner would be as an alternative to the maturation of the wine in oak barrels.

The Commissioner of SARS issued two separate tariff determinations for the ‘staves’ in accordance with section 47(9)(a) of the Customs and Excise Act 91 of 1964 (the Customs Act). The Commissioner initially claimed that the products in question should be classified under tariff sub-heading 4421.90.90 described as “**other articles of wood**”. This tariff heading attracts a general customs duty of 20%. Following an appeal by the appellant, the Commissioner changed his tariff determination to tariff sub-heading 4409.29.90 described as “**Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed: other – other**”. This tariff heading attracts a lower customs duty of 10%. The importer appealed in terms of section 47(9) (e) of the Customs Act. In its appeal, the importer claimed that the applicable tariff heading to use was 44.16 being “**Casks, barrels, vats, tubs and other coopers’ products and parts thereof, of wood, including staves**”. Products imported under this tariff sub-heading are imported duty free.

Important definitions and sources considered in the case

In resolving the tariff dispute, the terms ‘staves’ and ‘other coopers’ products’ had to be considered. **Rule 1** of the General Rules for the Interpretation of the Harmonised System was applied and the **explanatory notes** (EN) for tariff heading 44.16 were also considered. The EN constitute [1] the official interpretation of the Harmonized System at the international level and are an indispensable complement to the System. For more information on the explanatory notes visit www.wcoomd.org.

Moreover, decided **case law**, the English Oxford **dictionary** and other modern sources like the **internet** were also referred to in this case. This just illustrates the evolving modern-day world that we are living in and the need to make proper allowance for this.

Key questions in the case

Key questions that had to be considered in deciding whether the imported 'staves' were 'coopers' products' were the following:

1. "...is a barrel substitute or alternative that is now commonly produced by coopers, using many of their traditional skills and methods, not also a modern day 'coopers' product"?"
and
2. "Do the Explanatory Notes have the effect of precluding such a determination"?

Judgment and conclusion

Ultimately the importer succeeded in this case since they were able to prove that the 'staves' were indeed a 'modern day "coopers' product' which completely differed in terms of exterior appearance to the traditional 'staves' used to make wooden barrels. The imported products still served the same purpose and could only be used in the wine industry. The Commissioner's determinations did not take into consideration the essential character of the 'staves' and their purpose.

It was held that the imported goods were produced by coopers using the skills and methods traditionally associated with a cooper's trade. And, "the fact that the 'staves' made by many cooperages as barrel substitutes differ in critical respects from the goods traditionally made by coopers does not mean that they are not coopers' products in today's world. Indeed, one might justifiable ask 'if they are not coopers' products, whose products are they?'

This case is considered to be an important 'modern-day' judgment, the principles of which should be carefully studied by importers of goods.

For more details on the case please visit the [SARS website](#).

Should you require assistance with the aforementioned information, kindly reach out to any one of the [Deloitte Africa Tax & Legal contacts](#).

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