



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



Cologne, 23 September, 2008



### 1. Background

During its meeting of 29 June 2007, the members of the Customs Code Committee (Repayments Section) adopted the Working Document No. TAXUD/741/2003-FINAL which had been drafted by the European Commission. This Working Document lays down the European Commission's position with respect to the retroactive effects of tariff classification regulations.

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 that "new" classification regulations will have retroactive effects in most cases.

### 2. Our concern and request

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.

Furthermore, we would like to express our serious



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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 effects<sup>1</sup>. 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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<sup>1</sup> 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 Beteiligungs GmbH*.