

Client Advisory

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Ford Motor Company Penalty Case to Affect Hundreds of Importers

Last Friday turned out to be a “lucky 13th” of January for Ford Motor Company. On that day, the U.S. Court of International Trade (“CIT”) dismissed a penalty case which the Bureau of Customs and Border Protection (“Customs”) had brought against Ford. In a case arising in the mid-1980s, from a Ford employee incorrectly marking a Customs form in connection with an application for duty benefits under the foreign trade zone laws, Customs demanded that Ford repay duties in the amount of \$5,275,000, plus penalties.

In the case of the United States of America vs. Ford Motor Company (Court No. 05-00284), the CIT ruled that the government was barred from collecting the duties and penalties that it claimed Ford owed because the statute of limitations had expired. Although Ford had signed a Waiver of the Statute of Limitations letter and presented it to Customs’ Fines and Penalties Office, Customs refused to return the letter to Ford with its acknowledgement and acceptance of Ford’s Waiver.

Prior to that time, Customs’ Policy was to sign such waiver letters tendered to Customs by importers and other respondents in penalty cases, evidencing Customs’ acceptance of them. In a July 1999 internal Customs memorandum, however, the Chief of the Penalties Branch at Customs Headquarters advised Fines, Penalties and Forfeitures officers at the Customs ports that “submission of a waiver request represents a unilateral act of the submitting party, not requiring acceptance by Customs.” In September 2001, Customs issued a Treasury decision that it claimed reiterated the language from the internal memorandum. Customs had, however, for two years after the July 1999 internal memorandum, continued to acknowledge and accept prior waiver letters filed by Ford in the same penalty action.

In strictly construing the policy behind waivers of the statute of limitations, the Court held that Customs, by not following its own revised policy and not publishing a revocation of its previous policy, never accepted Ford’s last waiver offer. Therefore, the statute of limitations had expired when Customs brought suit to enforce the collection of duties and penalties against Ford in the case. Accordingly, the CIT dismissed the government’s action against Ford, both on the collection of duties and the penalties that Customs tried to impose in the case.

Customs is almost certain to appeal this case to the Court of Appeals for the Federal Circuit, since it affects virtually hundreds of other penalty cases, at various stages of prosecution, in which importers and other respondents have signed waivers of the statute of limitations that Customs has neither acknowledged nor accepted. Should the ruling in this case be sustained, the government may be precluded from enforcing duty and penalty demands against any importer whose situation is similar to Ford’s.

We Can Help

If you have any questions about the recent Ford case, its impact on penalty cases involving Customs, or other Customs and International Trade issues, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below.

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