

Global Trade Alert

NEVILLE PETERSON LLP

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Federal Circuit Court Strikes Down “Beef Hormone Dispute” Retaliatory Tariffs

Tariffs Terminated by Operation of Law, Court Holds; Importers Eligible for Refunds

An October 13, 2010 decision of the United States Court of Appeals for the Federal Circuit (CAFC) paves the way for importers of certain foods from the European Union to cover 100% ad valorem retaliatory duties which the United States imposed in the course of the ongoing “Beef Hormone Dispute” with the European Union. Duties paid on goods entered on and after July 29, 2007, are eligible for refunds.

The Gilda Industries Decision

In *Gilda Industries Inc. v. United States*, No. 2009-1492 (October 13, 2010) the question was whether 100% ad valorem retaliatory duties imposed by the United States Trade Representative (USTR) in connection with the Beef Hormone Dispute had expired in July, 2007, when no representative of a domestic industry petitioned USTR for their continuation.

The Beef Hormone sanctions had been initially imposed in 1999, and extended in 2003. The relevant provisions of the Trade Act of 1974, codified at 19 U.S.C. § 2417© provided for extension of retaliatory tariffs if a timely request for extension was received. It also indicated that, if

no request was received, “Such action shall terminate at the close of such four year period”.

The Federal Circuit held that the statute was clear and unequivocal. Although the courts give deference to USTR’s interpretation of the statute, the Federal Circuit held that there was no basis for taking any action other than what the statute plainly required. Thus, the court held, “the retaliatory action at issue here terminated by operation of law on June 29, 2007, when it is undisputed that no request for continuation of the retaliatory list was received within the sixty-day window specified by Section 2417(c)(1).”

The court also rejected the USTR’s argument that the termination clause should not have operated because USTR failed to notify the domestic industry of the imminent expiration of the sanctions. The Court said that there is no penalty specified in the statute for USTR’s failure to provide notification.

Next Steps for Affected Importers

Importers of record who paid the retaliatory duties on goods imported on and after July 27, 2007 can secure refunds by filing suit by United States Court of International Trade. The suit should seek refunds of all excess duties collected. We expect that the government will

stipulate settlements of these suits, once the amount of duties to be refunded is determined.

In addition, importers can file protests against the assessment of retaliatory duties on their imports. Protests can be filed within 180 days after “liquidation” of a Customs entry. Since entries generally liquidate about eleven months after the date of importation, this means that, as a practical matter, importers can probably look back about seventeen months.

One benefit to filing administrative protest is that refunds will be paid with interest as required by law. For interests received solely as the result of lawsuits, interest cannot be guaranteed.

While the United States and the European Union entered into a Memorandum of Understanding (MOU) to “table” the Beef Hormone Dispute in 2009, the United States did not dismantle the retaliatory tariffs on a retroactive basis, leaving an opportunity for recovery of duties paid by importers of a wide range of European Union-origin cheeses, jams, mustard products, sparkling waters and other products.

Our firm stands ready to furnish any additional information or assistance which importers may require in pursuing refunds of retaliatory tariffs assessed.

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