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PRODUCT SAFETY DUTY REFUND OPPORTUNITY

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In 2009, the U.S. Court of International Trade issued a decision in Volkswagen v. United States, 540 F.3d 1324 (CIT 2009) that may provide duty recovery opportunities for importers of merchandise found not to meet government mandated safety standards.

Pursuant to 19 C.F.R. § 158.12, an importer may claim an allowance in value (and a refund of duties) for merchandise that is defective at the time of importation. In order to successfully make a claim for a Section 158.12 allowance, the importer must establish that the goods were defective at the time of importation.

In the Volkswagen case, the National Highway Traffic Safety Administration found that certain imported vehicles did not comply with established safety standards and issued a government recall of the vehicles. Volkswagen, citing the recall, filed protests with U.S. Customs and Border Protection (“CBP”) seeking a value allowance due to the defective nature of the vehicles and a duty refund in accordance with Section 158.12. CBP denied the importer’s claims and Volkswagen filed suit in the CIT. Although the trial court initially sided with the government, on appeal, the U.S. Court of Appeals for the Federal Circuit found that the government recall established that the vehicles were defective and further held that “the very nature of a government mandated safety recall establishes the high likelihood that any defects repaired pursuant to the recall existed at the time of importation.” 540 F.3d at 1336. The case was remanded to the CIT where the court subsequently held that Volkswagen was entitled to an allowance in value pursuant to 19 C.F.R. 158.12.

The Volkswagen case may have significant implications to importers of products which are subject to recalls or which were found to violate the Consumer Product Safety Improvement Act of 2008 (“CPSIA”). In this regard, goods which were rendered unsaleable, or refurbished to bring them into compliance with the CPSIA, may be deemed defective under the Volkswagen case and may therefore be eligible for duty refunds.

Please contact us for additional details regarding this case and possible duty recovery opportunities.