

East African Court of Justice rules goods brought into Uganda from EAC Partner States are not imports

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Executive summary

On 26 March 2019, the First Instance Division of the East African Court of Justice (EACJ) delivered a judgment holding that the implementation of section 2 (a) and (b) of the *Excise Duty Amendment Act, 2017* of Uganda that reclassified cigarettes brought into Uganda from Kenya as "imported goods" contravenes Articles 1 and 75 (6) of the Treaty Establishing the East African Community (EAC); Articles 1 (1) and 15 (1) (a) and (2) of the EAC Customs Union Protocol and Article 6 (1) of the EAC Common Market protocol.

In its judgment in *British American Tobacco (U) Limited v The Attorney General of Uganda Reference no. 7 of 2017*, the EACJ stated that the misconstruction of the term "import," that has been attributed to the Uganda Revenue Authority (URA), is misconceived and constitutes an infringement of the Customs Protocol and negates the objectives of the EAC treaty.

Detailed discussion

In 2017, Uganda passed into law the *Excise Duty (Amendment) Act No. 11 of 2017* which, among others, created differential tax rates between cigarettes locally manufactured in Uganda and "imported" ones, whereby a higher excise duty was chargeable in respect of the latter category of cigarettes.

Following the enactment of this Act in Uganda, the URA issued tax assessment notices to the British American Tobacco (Uganda) Limited (BATU) that reclassified as imported goods the cigarettes that it had brought from Kenya and had earlier been categorized, assessed and taxed as locally manufactured products.

BATU argued that the definition of the word "import" in the *Excise Duty Act*, when read together with the definition under the *Value Added Tax Act*, that broadly defines imports as goods from any foreign country is different from the definition for "import" under the Community law which recognizes imports to mean "goods that are brought into a Partner State or the customs territory from beyond the Partner States." This would have the effect of categorizing goods from Kenya as imported goods thus attracting higher excise duty rates than the excise duty rate applicable to goods locally manufactured in Uganda, notwithstanding the prevailing Community law that requires goods from the EAC Partner States to attract uniform customs treatment within the region.

The Attorney General of Uganda argued that the Uganda's Parliamentary Committee on Finance Planning and Economic Development considered the Excise Duty (Amendment) Bill and recommended the differential treatment for locally manufactured viz imported goods to bring it in tandem with the practice that purportedly prevailed in other countries in the region, as well as to counteract the practice of smuggling and its adverse effects on locally manufactured cigarettes, cigarette prices in those countries being lower than those in Uganda. The Attorney General further argued that the amendment was sought to promote the growth of local industries, encourage more companies to invest in Uganda and promote the consumption of locally manufactured cigarettes.

In making its decision on the issues raised, the EACJ observed that:

- By purporting to construe the cited domestic tax laws to the exclusion of the applicable EAC Treaty and Customs Union Protocol, the URA acted in a manner that is likely to jeopardize the Treaty's objectives, thus rolling back the gains of the Customs and Common Market that have been realized thus far.

- The misconstruction of the term "import" that has been attributed to the URA is misconceived and constitutes an infringement of Article 1 (1) of the Customs Protocol. To that extent, it is unlawful and negates the objectives of the Treaty Establishing the EAC encapsulated in Articles 2 (2), 5 (2) and 8 (1)(c) which generally define an "import" to mean to bring or cause to be brought into the customs territory (members of the EAC) from a foreign country.
- In complete disregard of applicable Community law, the URA seemingly misconstrued the *Excise Duty Act* and VAT Act to suggest that goods from the EAC Partner States would correspond to the definition of imports. To that extent, the URA misapplied the tax laws, stepped out of legal purview and the ambit of its legal mandate.
- The implementation of section 2 by Uganda resulted in de jure tax discrimination against BATU's cigarettes, violated Article 15 (2) of the Customs Union Protocol.

Implications

The Decision is relevant to taxpayers whose goods that qualify as originating from within the EAC are subjected to customs duties (including import duties, VAT at importation, excise duties at importation, among others), whose duty rates are different from the ones imposed on *locally* produced goods on the basis that they are "imports" into Uganda. The Ruling clarifies that such goods are not imports into the EAC for purposes of customs duties and as such Partner States should not treat them differently from those *locally* manufactured.

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