

Client Alert

Are You Leaving Duty Refunds on the Table? Pursuing Duty-Free Imports Under the Information Technology Agreement

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The Information Technology Agreement ("ITA") provides for duty-free treatment by signatories for a wide range of information and communications technology ("ICT") products. The ITA's stated goal is the expansion of the global economy and in particular "to achieve maximum freedom of world trade in information technology products." Despite this broad scope and the important underlying policy goals, many of the 72 participating countries have been routinely denying importers ITA treatment for ICT products that should be considered covered.

The tide is turning.

In June 2010, a World Trade Organization ("WTO") panel ruled that the EU improperly denied ITA duty-free treatment to certain flat panel displays, multifunction devices and set top boxes. Now many ICT companies are reviewing their imports to identify duty-saving opportunities under the current ITA, and ITA signatory countries are considering discussions to expand the scope of the current ITA.

ICT companies should pursue two paths to maximize duty savings. The first path is to explore what products should be covered by the current ITA scope, but have not been afforded duty-free treatment. Importers in the EU and other countries have been pursuing and winning a number of cases, so there are precedents for this approach under national law.

The following cases decided by the Court of Justice of the European Union illustrate that more relief is available for ICT trade under the current rules:

1. [C-362/07 and C-363/07 Kip Europe et al.](#),
2. [C-376/07 Kamino International Logistics](#), and
3. [C-288/09 and C-289/09 British Sky Broadcasting Group and Pace](#).

Further, the EU is due to communicate by June 30, 2011 how it intends to implement the WTO Dispute Settlement Body's recommendations and rulings. This may open the way for further means of duty recovery on ICT products.

The second path to maximize duty savings is to pursue additional product coverage going forward. In this regard, participating countries are undertaking discussions with a view to expanding the current ITA. The Office of the United States Trade Representative ("USTR") has requested comments on expanding the scope of ICT products

to be covered. [[76 Federal Register \(26334 May 6, 2011\)](#)]. The deadline for comments is June 13, 2011. Recall that the ITA was adopted in 1996 and reflected the state of technology as it existed then. Of course the world of ICT has changed dramatically. Whole new technologies now exist and should be included in order to achieve the very policy imperatives originally pursued by the ITA.

Especially in today's economy, there is no reason to pay more duties than required. ICT companies, however, must be careful to develop consistent strategies when pursuing the two paths to maximize duty savings, e.g., not to undercut claims for recovery of past duties with certain comments in relation to the potential expansion of the scope of the ITA. For more information and to obtain guidance on assessing your imports into ITA signatory countries and filing comments with USTR, please contact those listed on the left.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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