

EFTA SURVEILLANCE AUTHORITY DECISION

of 13 July 2016

on alleged state aid arising from the Norwegian import duty exemption for low-value goods imported by final consumers

(Norway)

The EFTA Surveillance Authority (the “Authority”),

HAVING REGARD to the Agreement on the European Economic Area (the “EEA Agreement”), in particular to Article 61(1) and Protocol 26,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the “Surveillance and Court Agreement”), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Articles 13(1) and 4(2) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) By letter dated 15 October 2015,¹ the Enterprise Federation of Norway (hereafter referred to as “Virke” or the “complainant”) lodged a complaint with the Authority concerning alleged unlawful state aid arising from the Norwegian Value Added Tax (“VAT”) exemption for certain low-value goods imported by final consumers. The Authority acknowledged receipt of the complaint by letter dated 27 October 2015.²
- (2) By letter dated 5 November 2015,³ the Authority forwarded the complaint to the Norwegian authorities and requested information and clarifications. By letter dated 21 January 2016,⁴ the Norwegian authorities replied to the information request.

¹ Document No 776872.

² Document No 777672.

³ Document No 779402.

⁴ Document No 789307.

- (3) By letter dated 17 February 2016,⁵ the Authority received supplementary comments from the complainant relating to the reply from the Norwegian authorities. The Authority forwarded the supplementary comments to the Norwegian authorities by letter dated 22 February 2016.⁶ By letter dated 18 April 2016, the Norwegian authorities confirmed that they did not see a need to submit further comments.⁷

2 Description of the measure

2.1 General overview of the legal framework concerning the import of goods into Norway

- (4) The Act on Customs Duties and the Movement of Goods of 21 December 2007 No 119 (the “Customs Act”)⁸ applies to any goods imported to or exported from the Norwegian customs territory. The rules concerning import and custom duties are further articulated in the Regulation concerning Customs of 17 December 2008 No 1502 (the “Customs Regulation”).⁹
- (5) When goods are imported into Norway, customs duties are payable to the Treasury in accordance with the provisions laid down in the Custom Act, and the rates determined in the Parliament resolution on customs duties. The Customs Act also provides that when goods are imported, taxes are payable to the Treasury in accordance with the provisions set out in the Act on Value Added Tax of 19 June 2009 No 58 (the “VAT Act”)¹⁰ and the Act of 19 May 1933 No 11 on Special Taxes (*lov om særavgifter*),¹¹ and as further articulated in the corresponding regulations.
- (6) According to Section 1-5 of the Customs Act, the Directorate of Norwegian Customs (*Tolldirektoratet*) (the “customs authorities”) calculates and determines customs duty in accordance with the Customs Act and the applicable customs duty rates. The customs duty rates are determined by the Parliament every year, and are published by the Ministry of Finance. The customs authorities also calculate and determine other taxes, *i.e.* VAT and special taxes, to the extent that this follows from a statute or instructions. The customs authorities are therefore responsible for calculating and collecting (i) customs duties, (ii) VAT and (iii) special taxes (hereafter collectively referred to as “import duties”) on goods imported into Norway.
- (7) Most products are not liable for customs duties in Norway; the main exceptions are clothes and food. The customs duty rates may vary according to the type of product and where products are produced.¹² Products such as alcohol, tobacco, ethanol, non-alcoholic beverages (with added sugar or artificial sweetener), sugar, candy, drink packaging, petrol, etc. have different levels of special taxes, as set out in the Parliament Regulation on special taxes of 12 November 2001 No 1451.¹³ VAT is normally levied on all imported products, except those which are specifically exempted or subject to zero VAT rates.

⁵ Document No 794005.

⁶ Document No 794003.

⁷ Document No 801042.

⁸ The Customs Act is available online at: https://lovdata.no/dokument/NL/lov/2007-12-21-119#KAPITTEL_2.

⁹ The Regulation is available online at: <https://lovdata.no/dokument/SF/forskrift/2008-12-17-1502>.

¹⁰ An English version of the Act relating to Value Added Tax (VAT) is available at: <http://www.skatteetaten.no/upload/taxnorway/MVAL.eng.oversettelse.juni2011.pdf>.

¹¹ The Act on Special Taxes is available online at: <https://lovdata.no/dokument/NL/lov/1933-05-19-11>.

¹² .

¹³ Available online at: <https://lovdata.no/dokument/SF/forskrift/2001-12-11-1451>.

- (8) In accordance with Section 4-10 of the Customs Act, goods imported into Norway must be declared to the customs authorities. All importers and forwarding agents of goods to Norway may use the electronic declarations system provided by the customs authorities. Through this system, all declaration documents between the customs authorities and the importer/exporter can be exchanged electronically.
- (9) According to Section 4-10, fifth paragraph, of the Customs Act, the Ministry is authorised to adopt regulations which provide for exemptions from the duty to declare the importation of goods. Such exemptions are adopted in the Customs Regulation Section 4-10-4. The import of goods in small consignments of lesser value than 350 NOK is exempted according to Section 4-10-4 letter f. Thus, according to the Regulation, no customs declaration is required for such small consignments.
- (10) Chapter 5 of the Customs Act provides a list of goods which are exempted from customs duties. These include goods for personal use (e.g. luggage, removal goods, prizes, gifts and inherited goods), goods for use in means of transport in commercial activity, goods for representative missions of foreign powers and international organisations, re-imported goods, samples, goods for technical and scientific use, goods for the aviation industry and goods of lesser value.
- (11) Chapter 5 of the Custom Regulation sets out the conditions for, and the extent of, relief from customs duties pursuant to Chapter 5 of the Customs Act. Chapter 5 of the Regulation *inter alia* sets out: (i) the value and type of goods persons traveling from abroad may import without paying customs duties,¹⁴ (ii) the conditions for receiving prizes and gifts from abroad and their maximum value,¹⁵ (iii) which goods constitute samples and are thus not subject to customs duty, and (iv) the scope of the exemption for goods of lesser value (see Section 2.3 below).

2.2 General overview of the Norwegian VAT system

- (12) VAT was introduced in Norway with effect from 1 January 1970. The tax is levied on the final consumption of goods and services and is considered a fiscal tax to secure the State's income.
- (13) The VAT provisions are laid down in the VAT Act and the Regulation concerning Value Added Tax of 15 December 2009 No 1540 (the "VAT Regulation").¹⁶
- (14) The VAT rates in Norway are adopted annually by the Parliament. The general VAT rate is 25% of the net price (taxable base). The VAT rate on foodstuff is 15%. Certain services are subject to a reduced rate of 10%, e.g. passenger transport, admission fees to cinemas and museums and hotel accommodation.
- (15) Norwegian VAT is collected on the supply of goods and services falling within the scope of the VAT Act. The import and self-supply of goods and services are also considered

¹⁴ According to the Regulation, persons traveling from abroad may import goods duty free with a value up to 6 000 NOK if they have been abroad for more than 24 hours, and with a value up to 3 000 NOK if they have been abroad for less than 24 hours. There are certain restrictions, mainly concerning alcohol and tobacco products.

¹⁵ According to the Regulation, it is permitted to receive prizes with a maximum value of 10 000 NOK without paying customs duties, and gifts valued at less than 1 000 NOK. There are certain restrictions, mainly concerning alcohol and tobacco products.

¹⁶ The Regulation is available online at:
<https://lovdata.no/dokument/SF/forskrift/2009-12-15-1540?q=merverdiavgiftsforskriften>.

taxable events. According to Section 11-2 of the VAT Act, the person liable for the payment of customs duties according to the Customs Act is also liable for the payment of VAT.

- (16) Persons engaged in trade or business, whose taxable supplies exceed a threshold of 50 000 NOK over a period of 12 months, must be registered in the VAT register and are liable to pay the tax. According to the Norwegian authorities, there are currently around 355 000 undertakings subject to VAT in Norway.
- (17) Undertakings established abroad can, on the basis of an overall assessment, also be considered as supplying goods within the Norwegian VAT area. Such undertakings are subject to the ordinary regulations on domestic supplies if the undertaking is marketing its goods and services to Norwegian consumers.
- (18) The sale of goods is seen as a business activity in Norway if there is a sufficient link between the specific business and Norway. A central criterion is the place of delivery. If the contractual place of delivery is Norway, the transaction is considered as constituting a business activity in Norway. In case of Internet sales of goods, a foreign non-established business which conducts sales through the Internet, using the Norwegian country code “.no”, is also considered to be engaged in business activity in Norway.
- (19) Since VAT on imported goods is determined and collected by the customs authorities, it follows for practical reasons that the various exemptions from customs duties correspond to exemptions from VAT. Section 7-2 of the VAT Act reads as follows:

“VAT shall not be payable on the import of goods as specified in the Act on Customs Duties and Movement of Goods section 5-1, section 5-2 subsection (1) letters (b) and (c), section 5-3, section 5-4 subsection (1) letters (a), (c), (d), (f) and (g), section 5-5, section 5-6, section 5-7 subsection (1) letter (e) and section 5-9. Nor shall VAT be payable on the re-import of goods as specified in the Act on Customs Duties and Movement of Goods section 5-4 subsection (1) letter (e) if the party exporting and re-importing the goods is the same person. The condition that the party importing and exporting the goods must be the same person shall not apply, however, if VAT has previously been finally payable on the goods.”

- (20) It also follows from the VAT regulation, as well as the previous regulations concerning the calculation and collection of VAT upon importation, that VAT should not be calculated on goods which are not subject to customs duties in accordance with the customs tariff's introductory provisions.¹⁷

2.3 The exemption for goods of lesser value

- (21) As previously noted, Chapter 5 of the Customs Act provides a list of goods which are exempted from customs duties. Section 5-9 reads as follows:

“1) No customs duty shall be payable for goods of lesser value.

2) The Ministry may make regulations concerning value thresholds, conditions for and the extent of relief from customs duty pursuant to this section.”

¹⁷ See for example, *Forskrift om endring i forskrift (Nr. 4) om beregning og oppkreving av merverdiavgift ved innførsel*, 23.2.1984, Section 4, published in *Lovtidend* vol. 2 1984, p. 444.

- (22) The exemption is further articulated in Section 5-9-1 of the Customs Regulation, which provides that:

“The relief from customs duty applies to goods of a value of less than 350 NOK that are sent to a consignee in the customs territory. Transport- and insurance costs shall be included for the purposes of calculating the value of the goods. The exemption does not apply to alcoholic beverages or tobacco products.”

- (23) Prior to the enactment of the current customs legal framework, Norwegian law had already provided for a number of provisions establishing similar exemptions for goods of lesser value. In 1969, in conjunction with the introduction of the previous VAT Act of 19 June 1969 No 66,¹⁸ the Ministry of Finance issued a Regulation on the calculation and collection of VAT upon importation.¹⁹ Section 5 No 2 of the Regulation was worded as follows (unofficial translation):

“Nor shall VAT be charged on post shipments when Customs Duties, storage fees and other fees (hereunder VAT) do not exceed 20 NOK in total.”

- (24) Since the exemption was first introduced, some changes have been made to the threshold. With effect from 1 January 1983, the threshold was raised from 20 to 50 NOK.²⁰ This threshold still referred to hypothetical customs duties and fees. As of 1 March 1999, Section 5 No 2 was amended again.²¹ One of the changes entailed that the scope of the exemption was set with reference to the value of the goods, as opposed to the customs duties and fees that would otherwise have applied. The threshold was set at 200 NOK:

“Other shipments with a value of less than 200 NOK. The exemption does not apply to alcoholic beverages, tobacco products (hereunder cigarette paper) or shipments which form part of a mail-order sale.”

- (25) The 1999 amendments entailed that consignments which formed part of a mail order sale were liable to VAT. For all other forms of importation, the overall rule was still applicable. In 2001, consignments of low value goods which formed part of a mail order sale were again included in the general exemption for importation of low value products.²²
- (26) With effect from 1 January 2015, the threshold for the import of low value goods was raised from 200 NOK to 350 NOK.²³ At the same time, it was decided that costs relating to transport and insurance should be considered as a part of the goods' value. The changes introduced in 2015 did not affect the import of alcoholic beverages and tobacco products, which were never covered by the exemption.

¹⁸ Lov om merverdiavgift, LOV-1969-06-19-66.

¹⁹ Forskrift om oppkreving og beregning av merverdiavgift ved innførsel, 2.12.1969, published in Lovtidend vol. 2 1969, p. 922.

²⁰ Published on 7.12.2982, Lovtidend 1982, p. 676.

²¹ Forskrift om endring i forskrift (Nr. 12) om beregning og oppkreving av merverdiavgift ved innførsel, 16.12.1998, No 1244.

²² Forskrift om endring i forskrift (Nr. 12) om beregning og oppkreving av merverdiavgift ved innførsel, 28.2.2001, No 197.

²³ Prop. 1. LS (2014-2015 Skatter, avgifter og toll 2015).

3 The complaint

3.1 General

- (27) The complainant, Virke, is a federation organising and representing over 20 000 businesses in Norway with more than 220 000 employees. Virke's objective is to safeguard the interests of its members and ensure that businesses in Norway enjoy fair regulatory conditions.
- (28) The complainant has provided the Authority with data concerning the distribution of e-commerce between respectively businesses operating from abroad, and businesses operating in Norway (domestic e-commerce).²⁴ The figures presented by the complainant demonstrate that the share of domestic e-commerce is lower for products with a value of less than 350 NOK in all product categories. According to the complainant, this shows that the exemption provides a benefit for businesses active in distance sales from abroad, and has led to a higher market share and increased profits for them. Furthermore, according to the complainant, the figures establish that trade in certain goods are more affected by the exemption than trade in other goods. For example, it is evident that for the product categories of electrical goods, data, electronics, cell-phone and telephonic communication, music, movies, and computer games, the relative share of domestic e-commerce is particularly low for products with a value of less than 350 NOK. Thus, according to the complainant, foreign businesses in these specific product markets derive a particular benefit from the exemption.

3.2 The presence of state aid

- (29) According to the complainant, exemptions from normal tax liabilities can be regarded as state aid, as it is irrelevant in what form the aid is provided.²⁵ Thus, a reduction of taxes otherwise due can amount to state aid if there is a loss of state resources.
- (30) The import of goods to the Norwegian VAT area generally produces an income for the Norwegian state. The presumption is that the state enjoys a net income when VAT is paid. According to the complainant, there are no indications that the State would not obtain positive revenue if it levied VAT on all imported goods with a value of less than 350 NOK. The complainant therefore considers that the current VAT exemption entails a loss of state revenue.
- (31) According to the complainant, the direct beneficiaries of the exemption provided for in Section 5-9-1 of the Customs Regulation are the final consumers. This is so because the VAT scheme is designed as a tax on final consumers. Undertakings will typically have the right to deduct the VAT initially levied on them, passing the effective taxation burden on to final consumers. Hence, as the direct advantage will often not accrue to undertakings engaged in economic activities, it will not amount to state aid for the direct beneficiaries.
- (32) However, the complainant further states that it follows from established case law and the Authority's decisional practice that Article 61(1) of the EEA Agreement applies also with respect to measures which provide undertakings with an indirect economic advantage. In particular, the complainant refers to the Authority's Decision No 150/15/COL on state aid measures in favour of electric vehicles, where the Authority noted that the zero rating VAT for electric vehicles and batteries indirectly favoured manufacturers and dealers of electric vehicles or batteries for electric vehicles.²⁶ According to the complainant, that analysis is also applicable in the current case, as the VAT exemption for imported good of lesser value

²⁴ Documents No 776872 and 776874.

²⁵ EFTA Surveillance Authority Decision No 150/15/COL on the State aid measures in favour of electric vehicles, OJ C 232, 16.07.2015, p. 13 and EEA Supplement No 40, 16.07.2015, p. 1, paragraph 71.

²⁶ Ibid, paragraph 83.

will increase demand for the products eligible for exemption, thereby providing an indirect advantage for dealers and manufacturers of such goods.

- (33) According to the complainant, for the purposes of assessing selectivity the relevant reference system is the Norwegian VAT system as such. In this respect, the complainant argues that the starting point of the Norwegian VAT regime is that VAT should be levied neutrally, and irrespective of the subject of the transaction.
- (34) The complainant notes that the recent case law of the European Court of Justice shows that it is not necessary to identify that a narrow sector of business activities is treated favourably, and that it is immaterial whether the group of beneficiaries is large or even unquantifiable.²⁷ For establishing the *prima facie* selectivity of a tax provision, it suffices to identify that it provides undertakings with advantages on the basis of properties which are specific to them.²⁸
- (35) In order to effectively benefit from the favourable VAT treatment established in Section 5-9-1 of the Customs Regulation, the undertaking in question must, directly or indirectly, be involved in selling goods, except for alcoholic beverages or tobacco products, with a value of less than 350 NOK to final consumers from abroad. Thus, the exemption identifies four attributes which results in a *de facto* delimitation of the circle of beneficiaries, *i.e.* (i) the value of the object (below 350 NOK); (ii) the status of the purchaser to whom the object is sold (final consumer); (iii) the location of the sale (from abroad); and (iv) that the good does not consist of alcohol or tobacco. The complainant notes that the identification of these attributes, which effectively draws up a privileged group of undertakings, should in itself be sufficient to establish that the measure is *prima facie* selective. Undertakings in a comparable factual and legal situation that do not possess these attributes are excluded from the privilege of the exemption.
- (36) According to the complainant, the considerations mentioned above must lead to the conclusion that the VAT exemption benefits certain undertakings and is *prima facie* selective. Alternatively, the complainant argues that the measure could also be seen as *prima facie* selective as it excludes certain products from its scope.
- (37) Moreover, the complainant argues that the VAT exemption cannot be justified with reference to the logic of the Norwegian VAT regime. The object of the VAT regime is to provide the State with revenue, and to ensure that VAT is levied as neutrally as possible to avoid skewing economic activities by creating adverse tax incentives.
- (38) Furthermore, the VAT exemption, presumably on grounds relating to public health, excludes tobacco products and alcoholic beverages from being exempted. As the complainant sees it, the Norwegian VAT regime is founded on economic concerns. The health issues connected with certain products are reflected in special fees (“særavgifter”), but fall outside the objectives of the VAT regime. On the basis of the above, the complainant argues that the VAT exemption is an ad-hoc aid measure which is unrelated to the underlying logic of the Norwegian VAT regime.
- (39) The VAT exemption for goods of lesser value will furthermore discriminate between companies depending on the way in which they have organised the dealership of their goods.

²⁷ Judgments in *CETM*, T-55/99, EU:T:2000:223, paragraph 40; *Adria Wien Pipeline*, C-143/99, EU:C:2001:598, paragraph 48.

²⁸ Judgment in *Commission and Spain v Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 104.

Companies which, directly or indirectly, gain market access in Norway through long-distance sales are favoured. A chain which relies on physical stores, on the other hand, will not benefit from the exemption. This entails that competition between these categories of undertakings is liable to be distorted, and the patterns of trade affected.

- (40) In light of the above, the complainant considers that the VAT exemption amounts to state aid as defined in Article 61(1) of the EEA Agreement. The complainant maintains that the measure must be regarded as new aid and considers that the Norwegian authorities have violated the notification and standstill obligations. Therefore, the complainant urges the Authority to initiate the formal investigation procedure.

4 Comments by the Norwegian authorities

4.1 General

- (41) According to the Norwegian authorities, the primary purpose of the exemption in question is to facilitate trade in low-value goods. Norway, like most members of the Organisation for Economic Co-operation and Development (“OECD”), applies a relief for low-value imported goods (small consignments). Because of the low value of these consignments, it is important to facilitate the customs procedures and the cost of tax collection in order to mitigate the cost for traders and the tax administration.
- (42) The Norwegian authorities are aware of the concerns that have arisen recently about the competitive disadvantage of this relief for domestic retailers due to increasing cross-border e-commerce. Indeed, a tax policy debate is taking place within the OECD and also in the European Union (“EU”). The Norwegian authorities maintain that the Norwegian exemption for the import by final consumers of goods of lesser value than 350 NOK, transport and insurance costs included, balances the need for an appropriate protection of these different considerations. Moreover, according to the Norwegian authorities, the exemption is broadly in line with similar exemptions in other countries, *e.g.* the EU Member States.
- (43) According to the Norwegian authorities, the goal of the exemption is to keep the administrative costs of the tax system low, both for the undertakings and the tax authorities. This is also one of the reasons why established small enterprises in Norway do not have to be registered for VAT unless their domestic supplies of goods and services exceed 50 000 NOK.
- (44) The Norwegian authorities also highlight that the EU Member States have all, in accordance with Council Directive 2009/132/EC,²⁹ introduced a threshold for VAT exemption on imported goods of lesser value. These thresholds have been introduced mainly for practical simplification purposes and they range from 10 to 22 EUR of either the taxable value or the intrinsic value of the goods. According to the Directive, Member States may exclude goods which have been imported by mail order from this exemption. Moreover, the Directive provides that the exemption does not apply for imported consignments of alcoholic products, perfumes and toilet waters, as well as tobacco and tobacco products.
- (45) For further information on the provisions and procedures in the EU regarding the VAT relief for consignments of lesser value, the Norwegian authorities refer to the report of May 2015 “Assessment of the application and impact of the VAT exemption for importation of small

²⁹ Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods, OJ L 129, 10.11.2009, p. 5.

consignments”.³⁰ As it appears from the extract of the report below, the European Commission has evaluated to which extent the VAT exemption for the import of small commercial and private consignments is having an impact on EU businesses. In Part I chapter 3.2.4, the following is stated:

“The analysis indicates that it is general practice and is commonly accepted in the majority of the EU Member States that for consignments with a value below the VAT threshold to use of simplified procedures for customs clearance. This includes verbal clearance, clearance by any other means or the use of the CN22/23 forms under International Postal Agreements. In addition to these simplifications, there is no requirement to calculate and account for the import VAT involved.”

- (46) The Norwegian authorities also refer to a report from the OECD on Addressing the Tax Challenges of the Digital Economy.³¹ Annex C to the report concerns the collection of VAT/GST on imports of low value goods. It demonstrates that most OECD countries apply a VAT relief for low-value imports.

4.2 The presence of state aid

- (47) It is the position of the Norwegian authorities that the exemption for low-value goods imported by final consumers does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.
- (48) The Norwegian authorities note that in order to constitute state aid, a measure must be selective by favouring certain undertakings or the production of certain goods. With regard to fiscal measures, it is necessary first to determine the system of reference. Secondly, the Authority needs to assess whether the measure derogates from the common regime in as much as it differentiates between economic operators that, in light of the object pursued by that regime, are in a comparable factual and legal situation. Finally, if such derogation exists, it is necessary to examine whether it results from the nature or logic of the tax system of which it forms a part.
- (49) The custom and VAT exemptions are adopted to facilitate the customs procedure related to the import of low-value goods and to reduce the cost of tax collection. Against this background, the Norwegian authorities maintain that the relevant system of reference is the system of customs procedures related to the import of goods.
- (50) According to the current regulations, no customs duties or VAT are collected on goods with a value of less than 350 NOK and, indeed, no declaration obligation applies to these small consignments. This constitutes an exemption from the main rule. Thus, the Norwegian authorities acknowledge that the exemption constitutes a derogation from the common regime, which carries a risk of favouring some retailers.

³⁰ Available online at: http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/lvr-study.pdf.

³¹ <http://www.oecd.org/ctp/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report-9789264241046-en.htm>. Firstly, the report contains a description of the challenges in exemptions of low-value goods. Secondly, the report explores different models, which Member States can apply on the collection of low-value goods. The report also contains a list with information about different OECD member states' thresholds. This list is mainly based on information that the OECD received in 2014 from a low-value import questionnaire. As the list shows, countries that have no threshold are in a clear minority. The Norwegian authorities participated in the working group that prepared the report.

- (51) As the measure constitutes a derogation from the relevant system of reference, it must be examined if the derogation results from the nature and logic of the tax system of which it forms part. A tax advantage cannot be considered as selective if it falls within the nature and logic of the system. Differentiation between undertakings that arises from the nature and logic of the system does not constitute state aid.
- (52) In this respect, the Norwegian authorities argue that the establishment of the customs and VAT exemption has its roots in the basic understanding that it may be counter-productive to have a tax in a segment where the administrative burdens for traders exceed or are at a comparable level to the tax due.
- (53) Collection of VAT generates additional cost not only for the customs and tax authorities, but also for the logistics operators, importers and consumers. Furthermore, it causes time delays with a quantifiable value. The Norwegian authorities therefore believe that the VAT exemption for low-value goods, together with the declaration exemption for such goods, is likely to reduce the cost for all parties involved, while securing the swift flow of goods into Norway. According to the Norwegian authorities, this is of vital importance to promote market access and secure efficient supply chains.
- (54) Hence, the Norwegian authorities believe that if the exemption were to be abolished, this would constitute a barrier to trade in this segment. It would prevent the creation of a more competitive market and increase administrative costs. The Norwegian authorities maintain that it must be of relevance to compare the cost of collection to the relatively small level of VAT that would be collected if the exemption were to be abolished.
- (55) Furthermore, as described above, most countries have general exemptions for the import of low-value goods. Hence, not only in Norway, but in most countries the authorities have been faced with the task of balancing the overall costs of assessing and collecting VAT versus the total revenue. Furthermore, they have also needed to consider the costs generated for importers and logistics operators and, going yet further, the effects on cross-border trade. The fact that most countries, in their effort to strike a fair balance between these different interests, apply general thresholds shows that the derogation in question must be deemed as a logical part of the system. The Norwegian authorities acknowledge the challenges raised by the digitalisation and the increased international trade in B2C (*i.e.* Business to Consumer) imports of small consignments. Thus, Norway actively participates in the ongoing debate to find internationally accepted solutions for the near future.
- (56) In conclusion, the Norwegian authorities consider that for the reasons set out above, the derogation in question must be deemed to result from the nature and logic of the tax system.

5 Supplementary comments from the complainant

- (57) By letter dated 17 February 2016,³² the Authority received supplementary comments from the complainant concerning the comments from the Norwegian authorities.
- (58) According to the complainant, the fact that the collection of customs duties and VAT falls within the responsibilities of the Customs Authorities when goods are imported into Norway, does not mean that these liabilities stem from a common reference system. The complainant notes that it is the VAT Act which establishes that some exemptions from customs duties simultaneously amount to exemptions from VAT liabilities that would normally have been applicable.

³² Document No 794005.

- (59) According to the complainant, VAT is designed to be a neutral tax in order to limit adverse incentives and to ensure equal access for all market players. Customs duties, on the other hand, are not subject to the principles of neutrality and equal market access. To the contrary, customs duties are often levied on the basis that Norwegian businesses should be protected from cheaper and more efficient competition. The fact that the customs clearance procedures are set forth in legislation which supports diametrically opposite aims to those of the VAT Act, indicates that no common and overarching reference regime exists with respect to the customs clearance of goods.
- (60) The complainant therefore considers that the VAT regime and the regime on customs duties, including the rules applicable to customs procedures, are systematically distinguishable. As a matter of law, the regimes have separate foundations. The fact that the Norwegian authorities have taken a practical choice of collecting VAT in connection with the customs clearance procedures does not alter this. Therefore, the complainant maintains that the correct approach must be the one adopted by the Authority in its two recent decisions on Norwegian VAT exemptions, namely that the reference system must be considered to be the VAT regime as such.³³
- (61) As the complainant sees it, the Norwegian authorities' arguments that the VAT exemption is logical because it would be counterproductive to levy VAT, amount to an attempt to artificially construe the rationale behind the VAT exemption to fit the case at hand. The complainant considers that the Authority should disregard the Norwegian authorities' arguments relating to the "counter-productivity" of levying VAT on goods of lesser value. Instead, the exemption should be assessed against the aim that has historically been expressed by the Norwegian authorities in support of the VAT exemption, namely that of providing consumers with easy access to cheap imported goods.
- (62) According to the complainant, it is common ground that a Contracting Party cannot defend an illegal aid measure by arguing that other Contracting Parties employ similar measures. For the purpose of the state aid analysis, therefore, the Norwegian authorities cannot justify the exemption simply on the ground that the Norwegian VAT exemption is "normal" when compared with the regulations in other VAT jurisdictions.
- (63) The complainant considers that the situation outside the EEA has little, if any, relevance. The competition rules, including the state aid prohibition, are established precisely with a view to govern the proper functioning of the EEA internal market. These rules are specific to the EEA, and it is consequently of little interest what may be permitted in countries that are not subject to these rules.
- (64) The complainant further considers that any comparison with the EU Member States is irrelevant. The exemption for goods with a value up to 10 EUR, and a discretionary exemption for goods with a value between 10 and 22 EUR, are established in the VAT Directive. Accordingly, these exemptions will not amount to a state aid measure in the EU. The VAT Directive, however, does not apply to Norway. Thus, to the extent that the Authority considers that the Norwegian 350 NOK rule amounts to unlawful aid, this will not have the consequence that the exemptions between 10 and 22 Euros applied by EU Member States should also be regarded as aid measures.

³³ EFTA Surveillance Authority Decision No 023/16/COL raising no objections to a zero VAT rate for electronic news services, not yet published, paragraph 51, and EFTA Surveillance Authority Decision No 150/15/COL on the State aid measures in favour of electric vehicles, OJ C 232, 16.07.2015, p. 13 and EEA Supplement No 40, 16.07.2015, p. 1, paragraphs 89 - 109.

- (65) Finally, the complainant also highlights that while not amounting to an aid measure under EU law, the exemption for low-value consignments has in fact been subject to criticism. In the medium term, therefore, the European Commission has recommended to revise the relevant directives:³⁴

“A number of provisions in the VAT Directive are outdated and do not take the single market aspect into account. [...] A level playing field for non-EU and EU suppliers also has to be ensured. The treatment of small consignments and other internet sales is to be tackled in this context”.

- (66) According to the complainant, it is clear that similar, yet more pronounced market distorting effects result from the Norwegian VAT exemption. Firstly, Norway falls outside the common VAT area, which has the consequence that sales from EU Member States are treated as VAT exempted imports. Secondly, the 350 NOK limit establishes a significantly higher threshold than the range compatible with the obligations of EU Member States under the applicable directives.

³⁴ COM (2011) 851 final, *Towards a simpler, more robust and efficient VAT system tailored to the single market*, on page 16 (heading no. 6).

II. ASSESSMENT

1. The presence of state aid

- (67) In the following, the Authority will assess whether the exemption laid down in Section 5-9 of the Norwegian Customs Act and Section 5-9-1 of the Norwegian Customs Regulation for goods of lesser value than 350 NOK imported by final consumers involves state aid within the meaning of Article 61(1) of the EEA Agreement.
- (68) A measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure (i) is granted by the state or through state resources; (ii) confers an economic advantage on an undertaking; (iii) is selective; and (iv) is liable to distort competition and affect trade between Contracting Parties.

1.1. Presence of state resources

- (69) The State, for the purpose of Article 61(1) of the EEA Agreement, covers all bodies of the public administration, from the central government to the city level or the lowest administrative level as well as public undertakings and bodies.³⁵
- (70) The measure in question, *i.e.* the exemption for goods of lesser value than 350 NOK imported by final consumers, may entail loss of state revenue, since the imposition of VAT would normally produce an income for the Norwegian State. There are no indications that the State would not obtain positive revenue if it also levied VAT on all goods with a value of less than 350 NOK (including transport and insurance costs) imported by final consumers. The measure is also attributable to the State as it is adopted through legislative and regulatory acts. Thus, the first condition of Article 61(1) of the EEA Agreement is fulfilled.

1.2. Economic advantage to undertakings

- (71) A State intervention favours an undertaking if it provides the undertaking with an economic advantage that it would not have obtained under normal market conditions.³⁶
- (72) The definition of aid is more general than that of a subsidy, because it includes not only positive benefits, such as subsidies, but also state measures which, in various forms, mitigate charges that are normally included in the budget of an undertaking and which thus, without being subsidies in the strict sense of the word, are similar in character and have the same effect.³⁷ A tax exemption can confer an advantage, as well as a loss of State resources, even if it does not involve a transfer of State resources.³⁸ The measure must be assessed in relation to its effects, not to its form, aim or causes.³⁹ As a consequence, neither the fiscal nature of the measure, nor its aim is sufficient to place it outside the scope of the state aid rules.

³⁵ Judgment in *Germany v Commission*, Case-248/84, EU:C:1987:437, paragraph 17.

³⁶ Judgments in *France v Commission*, C-301/87, EU:C:1990:67, paragraph 41; *De Gezamenlijke Steenkolenmijnen v High Authority of the European Coal and Steel Community*, 30/59, EU:C:1961:2, paragraph 19; *France v Commission (Kimberly Clark)*, C-241/94, EU:C:1996:353, paragraph 34; and *Fleuren Compost*, T-109/01, EU:T:2004:4, paragraph 53.

³⁷ Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 50; judgments in *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke*, C-143/99, EU:C:2001:598, paragraph 38; *Spain v Commission*, C-501/00, EU:C:2004:438, paragraph 90; and *Italy v Commission*, C-66/02, EU:C:2005:768, paragraph 77.

³⁸ Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 51.

³⁹ Judgment in *Italy v Commission*, C-173/73, EU:C:1974:71, paragraph 27.

- (73) It follows that a measure, by which the public authorities grant to certain undertakings a tax exemption that places the entity/entities to whom the exemption applies in a more favourable financial situation than other entities, constitutes an advantage within the meaning of Article 61(1) of the EEA Agreement.⁴⁰
- (74) The measure at issue will confer on consumers who purchase goods of lesser value from abroad economic advantages that they would not have obtained under normal market conditions. The final consumers importing such low-value goods into Norway are thus the direct beneficiaries of the measure.
- (75) Private consumers, who are natural persons, are not subject to the state aid rules as these are only applicable to undertakings. However, undertakings purchasing goods of lesser value, for their own purposes and not to sell on to final consumers, can also benefit from the exemption and in those cases, the state aid rules would apply.
- (76) Moreover, undertakings selling and/or manufacturing goods of lesser value that are exported to consumers in Norway, might obtain an economic advantage, since the exemptions in question reduces the acquisition costs of the goods and thus has the potential of increasing demand, which in turn is likely to result in higher sales figures and increased profit for these undertakings.
- (77) Therefore, irrespectively of whether the direct beneficiaries of the alleged aid qualify as undertakings,⁴¹ the measure can stimulate the consumer demand for directly importing goods of lesser value into Norway compared to a reference situation in which no exemption exists. It follows that the measure may indirectly⁴² favour manufacturers and dealers (e.g. e-commerce operators) of low-value value goods.⁴³
- (78) In conclusion, the Authority identifies potential advantages in favour of direct and indirect beneficiaries of the measure (as defined above). The next step in the legal reasoning is to assess the selective nature of those potential advantages.

1.3. Selectivity

- (79) The aid measure must be selective in that it favours “*certain undertakings or the production of certain goods*”.
- (80) The selectivity criterion allows one to distinguish between state aid measures and general measures of tax or economic policy.⁴⁴ Advantages resulting from a general measure

⁴⁰ Judgments in *Banco Exterior de España*, C-387/92, EU:C:1994:100, paragraph 14; and *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, paragraph 132.

⁴¹ According to settled case law, undertakings are entities engaged in an economic activity. See judgments in *Höfner and Elser v Macroton*, C-41/90, EU:C:1991:161, paragraphs 21-23; and *Pavlov and Others*, C-180/98 to C-184/98, EU:C:2000:428, paragraph 74; and Case E-5/07 *Private Barnehagers Landsforbund v ESA* [2008] EFTA Ct. Rep. 61, paragraph 78.

⁴² The case law has already clarified that the state aid rules prohibit aid granted in any form whatsoever, without drawing a distinction as to whether the aid-related advantages are granted directly or indirectly. The courts have thus acknowledged that an advantage granted directly to certain natural or legal persons who are not necessarily undertakings may constitute an *indirect advantage* for other natural or legal persons who are undertakings. See judgments in *Mediaset*, T-177/07, EU:T:2010:233, paragraph 75; and *Italy v Commission*, T-424/05, EU:T:2009:49, paragraph 108.

⁴³ The same line of reasoning can be found in Commission decision of 8.3.2011 - State aid No 386/2010. Denmark. Pilot scheme for purchase of electric vehicles. Points 29-30.

⁴⁴ Judgment in *Air Liquide Industries and others*, C-393/04 and C-41/05, EU:C:2006:403, paragraph 32. See also the Authority’s Guidelines “*Application of State aid rules to measures relating to direct business taxation*”. The Guidelines are available at: <http://www.eftasurv.int/?1=1&showLinkId=15141&1=1>

applicable without distinction to all economic operators do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.⁴⁵

- (81) According to the case law, “[a]s regards the assessment of the condition of selectivity, which is a constituent factor in the concept of State aid, it is clear from settled case-law that Article 87(1) EC [equivalent to Article 61(1) of the EEA Agreement] requires assessment of whether, under a particular statutory scheme, a State measure is such as to ‘favour certain undertakings or the production of certain goods’ in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the system in question.”⁴⁶
- (82) The concept of state aid does not encompass tax measures that differentiate between undertakings and are *prima facie* selective, where that differentiation arises from the nature and general scheme of the system of which they form part.⁴⁷ Therefore, a measure that creates an exception to the application of the general national tax system can be justified if the EEA State concerned can demonstrate that it follows directly from the basic or guiding principles of the tax system. In that connection, a distinction must be made between, on the one hand, the objectives attributed to a particular tax scheme which are extrinsic to it and, on the other, the mechanisms inherent in the tax system itself, which are necessary for the achievement of such objectives.⁴⁸
- (83) In the following paragraphs, the Authority will assess whether the measure covered by this decision constitutes a *prima facie* selective measure and, the case being, whether it is justified by the logic and general nature of the reference system.

Prima facie selectivity

- (84) A measure is *prima facie* selective if it constitutes an exemption from its system of reference, *i.e.* the system applicable to other undertakings in the same legal or factual situation.⁴⁹ Therefore, the first step in the selectivity analysis requires the identification of the system of reference.
- (85) The reference system is composed of a consistent set of rules that generally apply – on the basis of objective criteria – to all undertakings falling within its scope as defined by its objective. Typically, those rules define not only the scope of the system, but also the conditions under which the system applies, the rights and obligations of undertakings subject to it and the technicalities of the functioning of the system.⁵⁰
- (86) As explained in Section 2.3 of Part I above, the exemption for goods of lesser value derives from Section 5-9 of the Norwegian Customs Act and is further articulated and clarified in Section 5-9-1 of the Norwegian Customs Regulation. The exemption is found in the

⁴⁵ Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 53 and the case law cited.

⁴⁶ See judgment in *Portugal v. Commission*, C-88/03, EU:C:2006:511, paragraph 54. See also judgments in *GIL Insurance*, C-308/01, EU:C:2004:252, paragraph 68; and *Heiser*, C-172/03, EU:C:2005:130, paragraph 40.

⁴⁷ Judgment in *Commission and Spain v Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 75.

⁴⁸ Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 74.

⁴⁹ Judgment in *Adria-Wien Pipeline*, C-143/99, EU:C:2001:598, paragraph 41.

⁵⁰ Communication from the Commission, Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU, not yet published, paragraph 133. Available online at: http://ec.europa.eu/competition/state_aid/modernisation/notice_of_aid_en.pdf.

Customs Act and the corresponding Regulation due to the fact that it relates to duties payable upon the import of goods, *i.e.* customs duties, VAT and special taxes, which are collected by the customs authorities. The exemption effectively entails that the goods covered by it are not subject to any import duties, and that there is no obligation to declare their importation. The purpose of the exemption is to provide for the efficient functioning of the customs clearance procedure. Although the exemption covers both custom duties and VAT, it must, in light of its objective, be viewed as one single measure and cannot be artificially separated and assessed under two different systems of reference. The Authority therefore considers that the correct system of reference is the Norwegian customs system (system of import duties).

- (87) The Authority agrees with the Norwegian authorities and the complainant that the exemption for goods of lesser value constitutes an exception from the main rule of the Norwegian customs system that a custom declaration must be submitted and taxes are payable to the Treasury when goods are imported into Norway.
- (88) However, the fact that a tax measure constitutes an exception from the reference system is not sufficient to consider the measure selective, when such measure is potentially accessible to all undertakings.⁵¹ Similarly, even if benefitting from a tax measure requires the fulfilment of certain conditions, this is not sufficient to make the tax measure selective *a priori*. In order for a tax measure to constitute aid, it is necessary to identify a particular category of undertakings which can be differentiated from other undertakings based on their specific characteristics.⁵² Tax measures which are open to all economic agents do not constitute state aid.⁵³
- (89) As already stated, the Authority considers that, in the present case, there are two groups of potential beneficiaries obtaining an advantage: (i) undertakings purchasing goods of lesser value from abroad (*direct beneficiaries*) and (ii) undertakings selling and/or manufacturing goods of lesser value, which are exported to consumers in Norway (*indirect beneficiaries*).
- (90) Starting with the first group, the Authority considers that the measure will not be selective for the *direct beneficiaries* as even if the measure could represent an exemption from the system of reference it applies to all undertakings established in Norway, *i.e.* everyone purchasing lower value goods can benefit from the measure. The advantage is open to all sectors of the economy and all kinds of companies. The advantage concerned applies to all economic operators, and thus the measure is not selective regarding the direct beneficiaries.⁵⁴ Moreover, the measure benefits all economic operators equally regardless of the product they purchase, as all products are in principle covered, excluding only alcohol and tobacco. As detailed in paragraph (99) below, the exclusion of alcohol and tobacco is in line with the nature and logic of the particular reference system relating to the import and sale of these specific products.

⁵¹ Judgments in *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 22; *Banco Santander, SA and Santusa Holding, SL v Commission*, T-399/11, EU:T:2014:938, paragraph 70; and *Autogrill v Commission*, T-219/10, EU:T:2014:939, paragraph 70, and the case law cited.

⁵² Judgment in *Banco Santander, SA and Santusa Holding, SL v Commission*, T-399/11, EU:T:2014:938, paragraph 71, and the case law cited. See also judgment in *Autogrill v Commission*, T-219/10, EU:T:2014:939, paragraph 67.

⁵³ Judgment in *Commission and Spain v Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 130.

⁵⁴ See EFTA Surveillance Authority Decision No 150/15/COL on the State aid measures in favour of electric vehicles, OJ C 232, 16.07.2015, p. 13 and EEA Supplement No 40, 16.07.2015, p. 1, paragraph 92.

- (91) Regarding the second group of beneficiaries (*indirect beneficiaries*), the measure is selective as only a certain group of companies will benefit from the economic advantage. The complainant has provided data which suggests that consumers are sensitive to the benefit provided by the import duties exemption when purchasing goods. Such a consumer preference materialises in an indirect advantage for dealers and producers of these product categories abroad that companies established in and operating out of Norway do not enjoy.
- (92) It follows from the above that *prima facie* the VAT exemption indirectly and selectively favours undertakings abroad that produce or trade in goods with a value of less than 350 NOK (including transport and insurance costs), and which can be sold long-distance and are meant for final consumers.
- (93) The fact that the number of undertakings able to claim entitlement under a measure is large, or that the measure covers an entire sector, is not sufficient to call into question the selective nature of that measure and, therefore, to rule out its classification as state aid.⁵⁵ Moreover, the fact that the measure in question is governed by objective criteria of horizontal application does not call into question its selective character, since it can serve only to show that the aid at issue falls within an aid scheme and is not individual aid.⁵⁶
- (94) Based on the above, the Authority concludes that the measure is *prima facie* selective for the indirect beneficiaries.

Justification by the logic and nature of the Norwegian system of import duties

- (95) As indicated, specific or *prima facie* selective tax measures can be justified by the logic of the system.⁵⁷ Under the settled case law,⁵⁸ measures introducing a differentiation between undertakings when that differentiation arises from the nature and logic of the system of charges of which they form part do not constitute state aid. This justification, based on the nature and logic of the system, reflects the consistency of a specific measure with the internal logic of the system in general. In that context, it should be noted that, according to the case law, it is the basic and guiding principles of the reference system which are relevant, not those of the particular measure in question.⁵⁹ With regard to tax system the basis for a possible justifications could, for instance, be the need to fight fraud or tax evasion, the need to take into account specific accounting requirements and administrative manageability.⁶⁰

⁵⁵ Judgments in *Belgium v Commission*, C-75/97, EU:C:1999:311, paragraph 32; and *Adria-Wien Pipeline*, C-143/99, EU:C:2001:598, paragraph 48; and *Spain v Commission*, C-409/00, EU:C:2003:92, paragraph 48.

⁵⁶ Judgment in *Spain v Commission*, C-409/00, EU:C:2003:92, paragraph 49.

⁵⁷ Case E-6/98 *Norway v ESA* [1999] EFTA Ct. Rep. 76, paragraph 38; Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnffjord, PIL and others and Norway v EFTA Surveillance Authority* [2005] EFTA Ct. Rep. 117, paragraphs 84-85; judgments in *Territorio Histórico de Alava and others v Commission*, T-127/99, T-129/99 and T-148/99, EU:T:2002:59, paragraph 163; *Adria-Wien Pipeline*, C-143/99, EU:C:2001:598, paragraph 42; and *Salzgitter v Commission*, T-308/00, EU:T:2013:30, paragraph 42. See also Decision of the Authority No 193/14/COL of 8 May 2014, concerning certain amendments to Act 50/1988 on Value Added Tax applicable to customers of Icelandic data centers, paragraph 58.

⁵⁸ Judgments in *Portugal v Commission*, C-88/03, EU:C:2006:51, paragraph 81; and *Territorio foral de Alava and others*, T-227/01, EU:T:2002:59, paragraph 179.

⁵⁹ Judgments in *Paint Graphos and others*, C-78/08 to C-80/08, EU:C:2011:550, paragraph 69; and *RENV British Aggregates Association v Commission*, T-210/02, EU:T:2014:65, paragraph 107.

⁶⁰ Communication from the Commission, Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU, not yet published, paragraph 139. Available online at: http://ec.europa.eu/competition/state_aid/modernisation/notice_of_aid_en.pdf.

- (96) It is for the EEA State which has introduced the differentiation to show that it is actually justified by the nature and logic of the system in question.⁶¹
- (97) In this regard, the Norwegian authorities have underlined that the collection of import duties generates additional costs not only for the customs and tax authorities, but also for the logistics operators, importers and consumers. Furthermore, it causes time delays with a quantifiable value. The Norwegian authorities therefore believe that the VAT exemption for low-value goods, together with the declaration exemption for such goods, reduces the costs for all parties involved, while securing the swift flow of goods into Norway. Thus, according to the Norwegian authorities, the exemption is vital in ensuring the efficiency and effectiveness of the Norwegian customs system.
- (98) The Authority acknowledges that for practical purposes and in order to reduce unnecessary administrative burden, the Norwegian authorities, in line with the practices of most other countries, have decided to include certain exemptions in the Customs Act and the Customs Regulation. In addition to the 350 NOK custom free threshold for goods of lesser value, there are, as previously noted in Section 2.1 of Part I above, also *inter alia* exemptions for travellers coming from abroad, as well as exemptions relating to the import of gifts and samples. Those exemptions collectively have the effect of expediting and simplifying the customs clearance process. They also enable the Directorate of Customs and Excise to focus its resources and to achieve a simple and user-friendly system. As such, these exemptions are inherent in the Norwegian customs system. In other words, the exemption in Chapter 5 of the Norwegian Customs Act and Section 5-9-1 of the Norwegian Customs Regulation for low-value goods imported by final consumers derives from the inherent mechanisms necessary for the functioning and effectiveness of the system. Indeed, lightening the customs and tax checks to be conducted by the competent authorities has been expressly recognised by the ECJ as being an objective itself inherent in EU customs and VAT law.⁶² In the light of these considerations, the Authority considers the exemption in issue justified by the nature and logic of the Norwegian custom system.
- (99) Finally, with regard to the exclusion of alcohol and tobacco from the scope of the exemption, the Authority considers that these goods belong to a separate reference system within the Norwegian legal order relating to the import and sale of alcohol and tobacco. The sale of these goods within Norway is subject to special rules and licences and they are, as noted by the complainant, subject to special levies, which are justified based on considerations relating to public health. Moreover, these goods are also either excluded from other exemptions in the Customs Regulation, such as the exemption for gifts,⁶³ or subject to special quotas, such as is in the exemption for travellers coming from abroad.⁶⁴ Therefore, the exclusion of alcohol and tobacco from the scope of the exemption for goods of lesser value is in line with the nature and logic of the particular reference system relating to the import and sale of these specific products.
- (100) In light of the above considerations, the Authority concludes that the exemption for low-value goods imported by final consumers is not selective within the meaning of Article 61(1) of the EEA Agreement since it is justified by the nature and logic of the Norwegian system of import duties.

⁶¹ Joined Cases E-17/10 and E-6/11 *Liechtenstein v ESA* [2012] EFTA Ct. Rep. 114, paragraph 75.

⁶² Judgment in *Lietuvos geležinkeliai*, C-250/11, EU:C:2012:496, paragraphs 36-39.

⁶³ <http://www.toll.no/en/goods/gifts/>.

⁶⁴ <http://www.toll.no/en/goods/alcohol-and-tobacco/quotas/>.

2. Conclusion

- (101) On the basis of the foregoing assessment, the Authority finds that the exemption laid down in Section 5-9 of the Norwegian Customs Act and Section 5-9-1 of the Norwegian Customs Regulation for goods of lesser value than 350 NOK (transport and insurance costs included) imported by final consumers, does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The exemption laid down in Section 5-9 of the Norwegian Customs Act and Section 5-9-1 of the Norwegian Customs Regulation for goods of lesser value than 350 NOK (transport and insurance costs included) imported by final consumers, does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Done in Brussels, on 13 July 2016.

For the EFTA Surveillance Authority

For Sven Erik Svedman
President

Frank J. Büchel
College Member

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