

An Update on Important Customs Developments:

Import Processing, Enforcement, Valuation
Policy, and Jurisprudence

CPA CANADA – INDIRECT TAX WEBINAR SERIES

GREG KANARGELIDIS
greg@gregklaw.com

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KANARGELIDIS
GLOBAL TRADE & CUSTOMS LAW

AGENDA

- CARM – CBSA Assessment and Revenue Management
- CBSA's New Approach to Enforcing Compliance
- Customs Valuation: Legislative and Regulatory Amendments
- Customs Valuation Jurisprudence

CBSA ASSESSMENT AND REVENUE MANAGEMENT

- What is CARM
- Objectives of CARM
- How will it change the importation process
- Key elements of CARM
- How will CARM affect customs and trade professionals
- When will CARM be fully implemented

CBSA's COMPLIANCE TOOLS

- **Verifications**

- Random Verifications
- Targeted Verifications

- **Administrative Monetary Penalties**

- Master Penalty Document
- Notice of Penalty Assessment

- **New Compliance Tools – TAN, CVL and DCL**

- New Tools Introduced on January 1, 2022
- Trade Advisory Notice (TAN)
- Compliance Validation Letter (CVL)
- Directed Compliance Letter (DCL)

CUSTOMS VALUATION – FUTURE AMENDMENTS

- **Legislative Framework**
- Ss. 47(1) – primary basis of appraisal is the transaction value method (TVM)
- Ss. 47(2) – if TVM doesn't apply, must apply other valuation methods in hierarchical order (TVIG, TVSG, DV, CV, Residual)
- Ss. 48(1) – TVM applies where, among other things, the goods are sold for export to Canada to a purchaser in Canada and the price paid or payable can be determined
- Ss. 45(1) – “price paid or payable” means “the aggregate of all payments made or to be made, directly or indirectly, in respect of the goods by the purchaser to or for the benefit of the vendor”
- Ss. 48(5) - The price paid or payable shall be adjusted by adding thereto the following (i) commissions and brokerage in respect of the goods incurred by the purchaser thereof, other than fees paid or payable by the purchaser to his agent for the service of representing the purchaser abroad in respect of the sale
- **Regulatory Framework**
- *Valuation for Duty Regulations* define “purchaser in Canada” in section 2.1 as follows:
 - (a) a resident;
 - (b) a person who is not a resident but who has a permanent establishment in Canada; or
 - (c) a person who neither is a resident nor has a permanent establishment in Canada, and who imports the goods, for which the value for duty is being determined,
 - (i) for consumption, use or enjoyment by the person in Canada, but not for sale, or
 - (ii) for sale by the person in Canada, if, before the purchase of the goods, the person has not entered into an agreement to sell the goods to a resident.
- Section 2 defines “permanent establishment” as follows: a fixed place of business of the person and includes a place of management, a branch, an office, a factory or a workshop through which the person carries on business.

Customs Valuation – Future Amendments

- CBSA Trade Policy Division has been pushing for changes to TV Method
- Stated objective - help address inconsistencies in the determination of the value for duty of imported goods
- Essentially CBSA wants a “last sale” methodology by regulatory amendments to the phrase “sold for export to Canada to a purchaser in Canada” in ss. 48(1) CA
- ***Budget Implementation Act, 2021, No. 1*** introduced a new defined term, “sold for export to Canada” but left details to be in future regulations
- Consultation document issued in June 2021 sought input on possible policy alternatives
- CBA Commodity Tax, Customs and Trade Section made a submission
- Likely result will be amendments to the ***Valuation for Duty Regulations*** making changes to the “purchaser in Canada” definition [2.1(c)(ii)] and to broadly define “sold for export to Canada”

Customs Valuation – Jurisprudence

- **Delta Galil USA Inc.**

- AP-2020-002 (March 5, 2021)

- A non-resident importer qualifies as a “purchaser in Canada” if it carries on business through a dependent agent’s permanent establishment

- **Pier 1 Imports (U.S.), Inc.**

- AP-2019-047 (September 2 and December 16, 2021)

- TVM didn’t apply, issue was whether to use Deductive Value (per CBSA) or Computed Value (per Pier 1)

- **Casa Cubana (Spike Marks Inc.)**

- AP-2018-065 (February 19, 2020)

- Whether payments to “intermediaries” must be added to the transaction value either as “commissions or brokerage” or being part of the “price paid or payable”

- **Coalision Inc.**

- AP-2019-027 (November 18, 2021)

- Whether payments to garment manufacturers for acquisition of “excess fabric” should be included in the value for duty of imported goods as part of the “price paid or payable” (i.e., is the payment “in respect of the goods”)

Thank you!

Greg Kanargelidis

KANARGELIDIS Global Trade & Customs Law

416.624.5182

