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An Overview of Customs Laws in Canada

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Introduction

The World Customs Organization ("WCO") represents Customs administrations in 177 countries, which collectively process approximately 98% of world trade. It also administers the technical aspects of the World Trade Organization ("WTO") agreements on Customs Valuation and Rules of Origin. As a member of both the WCO and WTO, Canadian customs laws are, at least to an extent, based on agreements and conventions established by these organizations. A brief overview of Canadian customs laws appears below.

The Canadian Harmonized System of Tariff Classification

All goods that are imported into Canada must be classified into one of the 10-digit tariff classification numbers found in the *Customs Tariff*[1]. The rate of duty that is applied to the imported goods will depend on the tariff classification and the tariff treatment for those goods.

The *Customs Tariff* is based on the Harmonized Commodity Description and Coding System ("HS"), which was initially developed by the WCO in 1983. The first six digits are the same in all countries that have adopted the HS; the remaining four digits are specific to each country. Within the *Customs Tariff*, goods are classified numerically and divided by chapter (first two digits), heading (first four digits), subheading (first six digits), tariff item (first eight digits), and a final 10-digit classification number (all ten digits).

There are also general rules that clarify how the HS is to be interpreted; these rules are known as the General Interpretive Rules ("GIRs"). The Canadian GIRs consist of six international rules of classification under the HS and three additional rules specific to Canada[2].

The General Tariff and Specific Tariff Treatments

According to Section 29 of the *Customs Tariff*, a General Tariff rate of customs duty of 35% applies to:

a) Goods that originate in countries that are not included in the *List of Countries and Applicable Tariff Treatments*[3]; and

b) Goods that originate in a country set out in the *List of Countries and Applicable Tariff Treatments* but do not meet the requirements for a preferential tariff treatment.

Tariff Treatments Not Arising From Free Trade Agreements ("FTAs")

Certain preferential tariff treatments are applied to designated groups of countries for reasons other than an applicable FTA. The *List of Countries and Applicable Tariff Treatments*, which is contained in the *Customs Tariff*, identifies countries that are entitled to one or more of these tariff treatments. These preferential tariff treatments include:

a) Most-Favoured-Nation (“MFN”) tariff treatment - Countries that are entitled to MFN tariff treatment are members of the WTO.

b) General Preferential Tariff (“GPT”) treatment - Canada unilaterally provides preferential access in the form of reduced tariffs on goods imported from developing countries. The GPT, introduced in 1974, benefits more than 180 developing countries and customs territories. Under the GPT, three-quarters of GPT-eligible products enter Canada duty free; the remainder face tariffs lower than the MFN rates applicable to exports from most developed countries. The GPT applies to most products, with the exception of dairy products, poultry, eggs, refined sugar and most textiles, apparel and footwear.

c) Least Developed Country Tariff (“LDCT”) treatment - Canada unilaterally provides greater preferential access to imports from a subset of GPT eligible countries in the form of the LDCT. The LDCT was introduced in 1983 and applies to 49 of the world's least developed countries, as defined by the United Nations. In January 2003, the benefits of the LDCT were substantially expanded, and this tariff treatment now provides duty-free and quota-free access for all products from LDCs, with the exception of over-quota access for supply-managed products in the dairy, poultry and eggs sectors. The most important change was the inclusion of textile and apparel products which now enter Canada duty- and quota-free under the LDCT.

d) Commonwealth Caribbean Countries Tariff (“CCCT”) treatment - Canada unilaterally provides preferential access to imports from 18 Commonwealth Caribbean countries. Under the CCCT, which was introduced in 1986, eligible imports from these countries are provided duty-free access. Currently, exceptions to the duty-free access provided by the CCCT are most textiles, apparel, footwear, headgear, supply-managed agricultural products and other agricultural products subject to over access commitment.

Certain countries are also specifically entitled to preferential tariff treatment, for reasons other than the existence of an applicable FTA. These country-specific tariff treatments are described below:

a) The Australia Tariff (“AUT”) treatment; and

b) The New Zealand Tariff (“NZT”) treatment.

The former British Preferential Tariff (“BPT”) treatment should also be mentioned. It was rescinded in 1998 because the 1998 tariff revisions included MFN duty rates that were equal to those provided for under the BPT. However, in limited cases where the former BPT rate is less than the rate under the MFN, the BPT rate may still be used.

Tariff Treatments Available under FTAs

The following preferential tariff treatments are available as a result of FTAs in force between Canada and each designated country:

a) The United States Tariff (“UST”), Mexico Tariff (“MT”) and the Mexico-U.S. Tariff (“MUST”) are all preferential tariff treatments under the *North American Free Trade Agreement* (“NAFTA”). The UST was initially established under the former *Canada-U.S. Free Trade Agreement* (“CFTA”) and has now been incorporated into the NAFTA; the MT and MUST were created when the NAFTA superceded the CFTA. The following rules are relevant to determining which of these tariff treatments will apply:

1) Goods are entitled to the UST when they satisfy the NAFTA rules of origin considering only U.S. and Canadian materials as originating. In other words, if Mexico is treated as a non-NAFTA country and the goods still originate, the goods are eligible for UST.

2) Goods are entitled to the MT when the goods satisfy the NAFTA rules of origin in considering only Mexican and Canadian materials as originating. That is, if the United States is treated as a non-NAFTA country and the goods still originate, the goods are eligible for MT treatment.

3) If goods that satisfy the NAFTA rules of origin are not eligible for either UST or MT, then MUST is to be applied.

b) The Chile Tariff (“CT”) is the preferential tariff treatment under the *Canada-Chile Free Trade Agreement* (“CCFTA”).

c) The Canada-Israel Tariff (“CIAT”) is the preferential tariff treatment under the *Canada-Israel Free Trade Agreement* (“CIFTA”).

d) The Costa Rica Tariff (“CRT”) is the preferential tariff treatment under the *Canada-Costa Rica Free Trade Agreement* (“CCRFTA”).

e) The Iceland Tariff (“IT”), Norway Tariff (“NT”), and Switzerland-Liechtenstein Tariff (“SLT”) are preferential tariff treatments under the *Canada-European Free Trade Association Free Trade Agreement* (“CEFTA”).

f) The Peru Tariff (“PT”) is the preferential tariff treatment under the *Canada-Peru Free Trade Agreement* (“CPFTA”).

g) The Colombia Tariff (“COLT”) is the preferential tariff treatment under the *Canada-Colombia Free Trade Agreement* (“CCOFTA”).

Requirements for the Application of Preferential Tariff Treatments

Before any of the above tariff treatments may be applied, certain requirements specific to a particular tariff treatment must be satisfied. These requirements appear in various regulations enacted pursuant to the *Customs Tariff*. If the specific requirements of more than one tariff treatment are satisfied, the tariff treatment with the lowest duty rate will be applied.

Rules of Origin

In order for a particular tariff treatment to apply, the imported goods must originate from the country or countries entitled to that particular tariff treatment. According to Subsection 16(1) of the *Customs Tariff*, the term “originate” is defined as follows:

Subject to any regulations made under Subsection (2), for the purposes of [the *Customs Tariff*], goods originate in a country if the whole of the value of the goods is produced in that country.

However, Subsection 16(2) states that the Governor in Council may, on the recommendation of the Minister of Finance, make regulations:

a) Respecting the origin of goods, including regulations:

1) Deeming goods, the whole or a portion of which is produced outside a country, to originate in that country for the purposes of the *Customs Tariff* or any other Act of Parliament, subject to such conditions as are specified in the regulations;

2) Deeming goods, the whole or a portion of which is produced within a geographic area of a country, not to originate in that country for the purposes of the *Customs Tariff* or any other Act of Parliament and not to be entitled to the preferential tariff treatment otherwise applicable under the *Customs Tariff*, subject to such conditions as are specified in the regulations; and

3) For determining when goods originate in a country for the purposes of the *Customs Tariff* or any other Act of Parliament; and

b) For determining when goods are entitled to a tariff treatment under the Customs Tariff.

In other words, where specific rules of origin for a particular tariff treatment appear in regulations enacted under the *Customs Tariff*, these specific rules of origin modify the general rule described in Subsection 16(1), with regard to a particular tariff treatment. Specific rules of origin regulations exist for most of the tariff treatments arising from FTAs.

Valuation

Tariffs are normally expressed as a percentage. Therefore, an accurate valuation of the goods themselves is critical when calculating those tariffs.

According to Section 44 of the *Customs Act*[4], where duties, other than duties or taxes levied under the *Excise Act, 2001*[5] or the *Excise Tax Act*[6], are imposed on goods at a percentage rate, such duties shall be calculated by applying the rate to a value determined in accordance with Sections 45 to 55.

There are essentially six methods of valuation described in the Customs Act. According to Subsection 47(1), the primary method of valuation is the transaction value of the goods, calculated in accordance with Section 48. According to Subsection 48(1), the value for duty of goods is the transaction value of the specific goods imported, if they are sold for export to Canada to a purchaser in Canada.

According to Subsection 47(2), where the value for duty of goods cannot be appraised in accordance with Subsection 47(1), it shall be appraised using one of the following secondary methods, in the following order of consideration:

a) *Transaction Value of Identical Goods* (Section 49) - According to Subsection 49(1), where the value for duty of goods cannot be appraised under Section 48, the value for duty of the goods is, the transaction value of *identical goods* sold for export to Canada, if the *identical goods* were exported at the same or substantially the same time as the goods being appraised and were sold under the following conditions: (1) at the same or substantially the same trade level as the goods being appraised, and (2) in the same or substantially the same quantities as the goods being appraised.

b) *Transaction Value of Similar Goods* (Section 50) - According to Subsection 50(1), where value for duty of goods cannot be appraised under Section 48 or 49, the value for duty of the goods is the transaction value of *similar goods* sold for export to Canada, if the *similar goods* were exported at the same or substantially the same time as the goods being appraised and were sold under the following conditions: (1) at the same or substantially the same trade level as the goods being appraised, and (2) in the same or substantially the same quantities as the goods being appraised.

c) *Deductive Value* (Section 51) - According to Subsection 51(1), where the value for duty of goods cannot be appraised under Sections 48 to 50, the value for duty of the goods is calculated using the deductive value. This is calculated by determining the Canadian importer's most common selling price of the goods to Canadian customers and then deducting certain expenses from this selling price.

d) *Computed Value* (Section 52) - According to Subsection 52(1), where the value for duty of goods cannot be appraised under Sections 48 to 51, the value for duty of the goods is the computed value. According to Subsection 52(2), the computed value of goods being appraised is the aggregate of:

1) The costs, charges and expenses incurred in respect of, or the value of: (i) materials employed in producing the goods being appraised, and (i) the production or other processing of the goods being appraised, determined in the manner prescribed; and

2) The amount, determined in the manner prescribed, for profit and general expenses considered together as a whole, that is generally reflected in sales for export to Canada of goods of the same class or kind as the goods being appraised made by producers in the country of export.

e) *Residual Value* (Section 53) - According to Subsection 47(4), where the value for duty of goods cannot be appraised on the basis of any of the values referred to above, the value for duty of those goods shall be appraised using the residual method described in Section 53. The residual value method does not actually provide any specific rules for determining value for duty. Instead, Section 53 states that, where the value for duty of goods is not appraised under Sections 48 to 52, it shall be appraised on the basis of: (1) a value derived from the method, from among the methods of valuation set out in Sections 48 to 52, that, when applied in a flexible manner to the extent necessary to arrive at a value for duty of the goods, conforms closer to the requirements with respect to that method than any other method so applied; and (2) information available in Canada.

Conclusion

Despite the fact that Customs laws in Canada may occasionally bear a passing resemblance to the structure utilized by other WCO/WTO countries, subtle differences that are unique to Canada will always exist. For this reason, foreign businesses should always seek advice from local counsel before importing goods into Canada.

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1 S.C. 1997, c. 36.
2 http://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2012/01-99/rules-regles-eng.pdf.
3 http://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2012/01-99/countries-pays-eng.pdf.
4 R.S.C., 1985, c. 1 (2nd Supp.).
5 S.C. 2002, c. 22.
6 R.S.C., 1985, c. E-15.