



Canadian Tax & Legal Alert

Proposed amendments to the *Valuation for Duty Regulations*

Increased duty costs and significant administrative burden for many businesses that import goods into Canada

June 5, 2023

On May 27, 2023, proposed amendments to the *Valuation for Duty Regulations*¹ (the “Regulations”) sponsored by the Canada Border Services Agency (CBSA) were published as notice of a regulatory proposal in Part I of the *Canada Gazette*, along with a regulatory impact assessment.² The long-awaited regulatory proposal was first announced in Budget 2021, with a preliminary round of consultations that took place in July 2021.³

Impact

These changes will affect the way customs value is to be declared by importers of goods into Canada. In 2021-2022, CBSA collected more than \$34 billion of duty and tax revenues, including just over \$5 billion of customs duty. While CBSA foresees an increase in annual revenues to an estimated \$273.2 million by 2031 that will result from the new measures, this may be quite understated given how broad the amendments have been drafted and the understanding that many more importers

¹ SOR/86-792.

² [Regulations Amending the Valuation for Duty Regulations](#), *Canada Gazette* Part I, Vol. 157, No. 21, 1686 (Part I contains public notices, official appointments and proposed regulations from the Government of Canada).

³ CBSA, Consultation notice, “[Potential regulatory amendments to the Valuation for Duty Regulations](#),” July 5, 2021.

than anticipated could see their customs value increase significantly, accompanied by a corresponding increase in their duty costs and the resulting landed cost of imported goods.

In turn, this could erode profit margins, result in increased consumer pricing, and/or cause importers to re-evaluate their business models in Canada. While the stated objective of the amendments is to level the playing field amongst domestic and non-resident importers (NRIs) by removing “unfair advantages”⁴ that, according to CBSA, NRIs have enjoyed as a result of a misalignment between Canadian law and Canada’s international obligations, the potential impact of the proposed changes is much wider as it will seemingly affect all businesses that import goods for resale to other customers in Canada.

Further, the potential administrative burden associated with identifying the relevant sale for export for goods within a shipment, particularly in complex supply chains involving both goods stored within Canada and abroad, and/or sold in multiple channels, may become cumbersome.

A 30-day public consultation commenced on May 27, 2023. **The deadline for affected importers and the public at large to submit comments is June 26, 2023.**⁵ While timing for implementation is uncertain, CBSA has confirmed that the changes will not be retroactive.

Value for duty determination

Currently, goods imported into Canada are predominantly valued using a “last sale” approach to customs valuation, subject to the stipulations of section 48 of the *Customs Act*⁶ (the Transaction Value Method, or TVM) and the provisions made by the Regulations. Under the TVM, where goods sold for export to Canada are subject to multiple sale transactions between the time the goods are ordered from a foreign vendor and the time they are imported into Canada, the last sale price will, in many cases, prevail as the basis for customs valuation under the provisions of the TVM.

Alternatively, the value determination may fall under another methodology. However, the price in a domestic sale would not be used as the basis for appraisal of the goods. While the proposals indicate “sales that occur in Canada and do not cause the goods to be exported to Canada will not be used in the determination of the value for duty of imported goods,”⁷ the broadly framed provisions present a significant risk that sale transactions viewed as domestic under the current administrative practice will be considered the relevant sale for export to be used as a basis for customs value going forward.

Sale for export to Canada

Under the current customs valuation practice, the distinction between a sale for export and a domestic sale serves to limit the ability of the CBSA to appraise goods based on their domestic commercial value in Canada (e.g., the retail price at which a distributor sells goods from its Canadian stock to Canadian customers). Technically, this distinction is evidenced by a combination of factors that include, notably, whether or not an agreement to further sell the goods existed prior to their importation and whether or not the title of the goods in that further sale passes prior to the goods arriving in Canada.

Efficient trade chains that are structured around this multi-factor regulatory interplay will be affected by the proposed amendments, which expand the scope of review of resale agreements (and, now, other types of arrangements), and which may serve to recharacterize transactions formerly viewed as domestic sales transactions as export sales by broadening the

Contacts:

Rob Jeffery

National Tax Policy Leader
Tel.: 902-721-5593

Lisa Zajko

National Global Trade Advisory Leader
Tel.: 416-867-8534

Pasquale Madonna

Senior Manager, Global Trade Advisory
Tel.: 416-775-8895

Mike Cristea

Senior Manager, Global Trade Advisory
Tel.: 416-874-4407

Kristie Luk

Senior Manager, Global Trade Advisory
Tel.: 416-874-3747

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⁴ Supra note 2, at 1688.

⁵ Comments can be submitted electronically directly after each section of the notice posted at [Canada Gazette, Part 1, Volume 157, Number 21: Regulations Amending the Valuation for Duty Regulations](#).

⁶ RSC 1985, c. 1 (2nd Supp.).

⁷ Supra note 2, at 1694.

definition of what constitutes a sale for export, specifying the irrelevance of the timing of title transfer, and codifying that the last transfer is the relevant transaction to use.

The proposed regulatory amendments read as follows:

2.01(1) For the purposes of subsection 45(1) of the [Customs] Act, ***sold for export to Canada*** means, in respect of goods, to be subject to an agreement, understanding or any other type of arrangement — regardless of its form — to be transferred, in exchange for payment, for the purpose of being exported to Canada, regardless of whether the transfer of ownership of the goods is completed before or after the goods are imported.

(2) If the goods are subject to two or more agreements, understandings or other types of arrangement described in subsection (1), the applicable agreement, understanding or arrangement for the purposes of that subsection is the one respecting the last transfer of the goods in the supply chain among the transfers under those agreements, understandings or arrangements, regardless of the order in which the agreements, understandings or arrangements were entered into. [Underlines added for emphasis.]

Purchaser in Canada

The proposed regulatory amendments also eliminate from consideration any distinction for purposes of customs valuation between resident and non-resident purchasers of imported goods. The completely overhauled definition of “purchaser in Canada,” a technical term which further serves in qualifying the appropriate sale to use for purposes of the TVM of customs valuation, now reads as follows:

2.1 For the purposes of subsection 45(1) of the Act, ***purchaser in Canada*** means, in respect of goods that are the subject of an agreement, understanding or any other type of arrangement referred to in section 2.01, the person who, under that agreement, understanding or arrangement, purchases or will purchase the goods, regardless of whether the person is the importer of the goods or when the person makes payments in respect of the goods.

Based on the above language, resident and non-resident purchasers that have any type of agreement, understanding or arrangement with customers that can be said to be, in respect of imported goods, “for the purpose of being exported to Canada” are expected to face increased administrative burden and/or changes with respect to how the value for duty of their imported goods will be determined under the proposed amendments. Finally, the determination as to whether a particular agreement, understanding or arrangement is for the purpose of being exported to Canada risks ambiguous interpretation and inconsistent application to contractual and supply chain realities.⁸

How can Deloitte help you?

Deloitte’s Global Trade Advisory specialists are part of a global network of professionals who can provide specialized assistance to companies in global trade matters. Our professionals can help companies seeking to manage the impacts and potential impacts of the developments described above by:

- Modelling potential quantitative impacts on annual customs value and annual duty spend using recent historical data, or available forecasted data;

⁸ This risk may be further complicated by the reference to arrangements that “cause” the goods to be exported in the commentary of the notice (see supra note 2, at 1694); such differences in terminology could significantly impact how the requirements are interpreted and administered by CBSA verification officers.

- Evaluating end-to-end supply chain structures, and identifying restructuring or other opportunities that could help mitigate the impact of the proposed changes;
- Reviewing current business models and associated contractual provisions that serve to support and inform compliance with customs valuation methodologies for potential changes that may be required;
- Supporting clients in undertaking a comprehensive risk assessment with respect to customs valuation in their supply chain.



Deloitte LLP
Bay Adelaide Centre, East Tower
8 Adelaide Street West, Suite 200
Toronto ON M5H 0A9
Canada

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