Importing Construction Materials Into Canada

A summary of the principles governing the importation of construction materials into Canada

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Construction industry firms with an effective understanding of Canadian rules governing the importation of goods into Canada can often realize considerable savings on customs duties and other charges. The following article sets out in summary form some of the main principles governing the importation into Canada of construction materials.

Federal sales tax . . .

More federal government revenue is raised annually through the imposition of Federal sales tax (“FST”) than through corporate income tax. With proper planning, many Canadian construction companies can reduce their FST obligations. Most important in this regard are two FST relief provisions in the Excise Tax Act granted to the Canadian construction industry.

The standard FST rate of 12 percent of the value of most goods imported into Canada is reduced to 8 percent in relation to the importation of 24 categories of construction materials, including most types of materials used in the construction of conventional buildings of all kinds. The lower FST rate also applies to the importation of various kinds of equipment used in buildings, including furnaces, electric heating systems, elevators, escalators and parts used with these types of equipment.

No FST is payable in relation to the importation of a number of kinds of machinery used in the construction industry, provided the dutiable value of each imported article exceeds $2,000. This exemption applies to such imports as excavation and earth moving equipment, cranes, hoists, derricks, pile-driving equipment, equipment for laying, wrapping and welding pipe, compressors and pumps, various kinds of equipment designed for use in the preparation, paving or finishing of concrete, mortar or asphalt, repair and replacement parts for these types of equipment, and parts and equipment installed on such machinery items before they are first used.

Construction firms which modify and re-sell any imported materials generally should try to pay FST at the time of importation, since goods become more expensive as value is added, and FST charges in relation to such goods become proportionately greater. FST payment at an early stage of production is possible, where modifications to an article are not considered to amount to further manufacturing—that is, they do not change the function or purpose of the article.

Construction firms should also ensure that they do not pay FST on a price of imported goods that includes FST-exempt elements. For example, FST is not chargeable on any part of the purchase price of goods that represents transportation, delivery or installation cost.

Valuation for Duty . . .

Establishing the value of an article imported into Canada is important for two reasons:

First, low dutiable value means that less customs duty is paid on the importation of the article. Since FST is payable on both the dutiable value of an imported article and on the duty charged in relation to the importation of such an article, a low dutiable value will produce a double FST savings.

An important change in Canadian customs valuation procedures occurred as a result of a 1985 Customs Act amendment, which provided that Canadian customs duty is to be charged on the transaction value (generally the invoiced selling price) of imported goods. Previously, valuation for duty was based on the greater of fair market value and actual sale price. This method often imposed excessive duty on goods imported into Canada, as it was based on a comparison by customs authorities of the export price of goods with the sale price of similar goods in the exporter’s home market, not on the actual export price of the goods being assessed.

The transaction value method minimizes intervention by Canadian customs authorities in the valuation process. It also offers importers and suppliers an opportunity to minimize the invoiced price of goods, and the duty payable in relation of such goods, by excluding any cost elements not specifically related to the goods. Related parties can use this method of valuing imports as long as the relationship does not influence the transaction value.

To avoid losing the benefit of the transaction value method, Canadian importers should ensure that the invoiced price of imported goods is clearly established and supported by evidence that no conditions apply to a sales contract which would affect the invoiced price.

For example, where in relation to imported goods, an importer pays an
An importer can request the Department of Finance to create a new tariff item.

additional amount or commission, the value of which cannot be determined, the transaction value method cannot be used to determine the dutiable value of an import. Similarly, where a non-arms-length relationship between a supplier and an importer affects the price of an imported article, an alternative method of evaluation must be used to determine the value of the article in question.

Where transaction value is used to determine the amount of duty payable, the Customs Act provides that the price paid or payable for the goods must be adjusted by adding, to the extent that they are not already included, a number of specified costs incurred by the importer, including commission, brokerage fees, the value of certain goods and services supplied free or at reduced costs by the importer in relation to goods, and the cost of transportation and handling of the goods within the country of export to the place of direct shipment to Canada.

Transaction value can be adjusted downward by deducting from the contract price, to the extent they have not already been deducted, a number of the importer's costs, including transportation, handling and insurance in the country of origin and cost of transport from the place of direct shipment in the country of origin to Canada. Any duty or tax payable to Canadian authorities in relation to the goods is also deducted from the sale price in determining transaction value.

To avoid double charging of duty on any cost components, Canadian importers should maintain accurate records showing that various costs have already been added to or not yet subtracted from the invoiced price, as the case may be.

Where the dutiable value of an imported article cannot be determined on the basis of the invoiced price, the Customs Act provides that five other methods of determination must be used in the order specified. Generally, these alternative methods do not offer the same flexibility to an importer as the transaction value method.

**Customs duty rates . . .**

Construction firms in a position to import goods from different countries should recognize that the Customs Tariff imposes a lower rate of duty on imports from developing countries, to which the General Preferential Tariff ("GPT") rate applies, than on imports from developed countries.

The effect of the duty rate differentials is that construction materials imported into Canada from the United States or Europe attract duty at the Most Favored Nation rate, generally 33-50 percent higher than the GPT rate payable on imports from, for example, Mexico.

**Tariff classification . . .**

The Customs Tariff also imposes
different customs duty rates on varying tariff items. It is also advantageous for an importer to maintain that goods imported into Canada and assigned a particular tariff item by Canada Customs should properly be classified under another item which attracts a lower rate of duty.

An importer can argue, for example, that articles which constitute a larger entity should be classified as such and not as separate items. Evidence of the way goods are used, as opposed to the way they are designed, can also produce a favorable tariff classification.

An importer disagreeing with a tariff classification by Canada Customs of particular imported goods has the right to request reclassification of such imported goods, and to appeal a refusal of such reclassification to the Deputy Minister of National Revenue for Customs and Excise. A decision of the latter can be appealed to the Tariff Board.

An importer who believes particular goods are not properly dealt with under the Customs Tariff (for example, where comparable goods used in a competing industry attract a lower duty rate) can request the Department of Finance to create either a new or temporary tariff item-presumably attracting a favorable rate of duty-to cover such goods. This policy-oriented approach is generally time consuming and complex. However, it may be worth considering, where an importer dissatisfied with existing tariff rules expects to receive large volumes of imports at a future date.

Conclusion . . .

Canadian construction companies engaged in substantial import operations are well advised to plan strategically in relation to federal sales tax, valuation and tariff classification issues, just as they would in relation to income tax. The comments made in this article are intended only as an introduction to the kinds of constructive approaches that can be taken in these areas.

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