



Canadian Association of Importers and Exporters
15 Allstate Pkwy, 6th Floor
Markham, Ontario
L3R 5B4
(416) 595-5333
info@iecanada.com

July 25, 2023

Valerie Dinis
Acting Director
Commercial and Trade Policy Division
Traveller, Commercial, and Trade Policy Directorate
Strategic Policy Branch
Canada Border Services Agency
Email: CBSA.OCT/CECO.ASFC@cbsa-asfc.gc.ca

Dear Ms. Dinis:

Re: Canada Gazette, [Part I](#), Volume 157, Number 21: Regulations Amending the Valuation for Duty (VFD) Regulations

The Canadian Association of Importers and Exporters (IE Canada) is pleased to provide comments regarding the Canada Border Services Agency (CBSA) consultation on the proposed regulations amending the valuation for duty regulations. IE Canada serves businesses who depend on the movement of goods across Canada's international borders. We offer an informed perspective with over 85 years of engagement and advocacy in Canada. Our members' expertise surrounds the ever-important global supply chain, including customs and brokerage, freight forwarding, transportation and supply chain infrastructure, manufacturing, wholesale distributors, retailers, legal, financial and tax.

Executive Summary

IE Canada acknowledges CBSA's rationale to "protect Canadian importers' ability to compete on a level playing field with non-resident importers (NRI)". In the CBSA's attempt to "provide greater certainty and predictability for the importing community", we interpret this proposal to create more uncertainty and raise substantial concerns that Canadian resident importers will be irrevocably harmed by the proposed "last sale rule" in several areas.

CBSA's rationale for change is stated to achieve several benefits including protecting Canadian importers' ability to compete with non-resident importers (NRIs). We have extensively reviewed the proposed Regulations (RIAS) with our members and colleagues from across Canada and abroad and find that we are generally aligned in our interpretation that the proposed changes are flawed.

Whether the substantial increase in VFD was intended to apply to resident Canadian businesses or not, the outcome will be that the proposed changes will irrevocably harm Canadian supply chains and further increase inflation for Canadian consumers. We also believe that the approach may force international companies with assets in Canada to leave, discourage future investment in Canada and accelerate the decline of Canada's global trade competitiveness. Therefore, we recommend that the Government of Canada (GOC) not proceed to enact CBSA's proposed changes.

As presently drafted, IE Canada does not support the current regulatory approach nor the substance of the currently proposed regulations. We are concerned that the regulatory approach does not follow the Cabinet Directive on Regulation and the proposed regulations will put the Canadian economy in jeopardy.

We believe that the regulatory text proposed in Definitions for the Purposes of Subsection 45(1) of the Act targets traditional domestic sales transactions and will substantially increase the VFD and taxes for Canadian resident importers.

CBSA appears to be trying to address challenges in determining what they believe to be the correct VFD for a multi-tiered transaction (i.e., there must be three or more parties involved in the sequence of sales leading to the importer). In reviewing all the supporting documents provided in the proposal, and drawing upon our collective experiences globally, we believe this proposal is not aligned with the international trade community. We believe the materials to support the CBSA's justification were cited out of context. CBSA also seems to be addressing perceived issues with transfer pricing and a series of CITT cases that were appealed, and the importer was successful. Instead of honouring the decisions it would appear these proposed changes are an attempt to change the legislation and regulations.

As a member of The Canadian Chamber of Commerce we have participated in the drafting of comments and support their comments filed under separate cover. We have also reviewed and support the comments submitted by the Commodity Tax, Customs and Trade Section of the Canadian Bar Association (CBA) and the Canadian Produce Marketing Association (CPMA).

We offer specific recommendations for the proposal but also more detailed observations and suggestions in a number of key areas.

We are committed to dialogue and working to a mutual understanding of the issues CBSA believes are impacting trade; however, we need to be sure that we are aligned with current global agreements on valuation and compliance with our existing agreements. As a rules-based country, we can not break these obligations and also put our own Canadian NRI companies at risk of retaliation when exporting around the world.

International Obligations

We believe that this proposal would make Canada a further outlier on how we value goods that cross our borders. Today, Canada has an additional requirement no other country does that adds additional requirements for transaction value to include to a purchaser in Canada with a permanent establishment in Canada.

Although this proposal is suggesting to clarify which sale is to be used to calculate the duty on imported goods it appears to be targeting a specific party, the NRI, which is not the basis in determining the last sale for export into a country. We are not aware of any country in the world that would include this for consideration of the value to be used. We agree that a related party in the transaction could impact the value of the goods but that is a separate issue. CBSA also seems to be dismissing actual sales and wants to expand to include purchase orders as a foundation to establishing a sale. This provides further evidence that they seem to be trying to move to domestic transactions and not the transaction that moved the goods across the border. It also appears there will be an amendment to the purchaser in Canada and remove the permanent establishment requirements. This would help Canada's current standing as an outlier with this requirement but would still be an issue by keeping the purchaser in Canada requirement. It is a point of interest that this is being removed when CBSA states that the NRI is the problem.

We do not agree with the statement that the object to "ensure that Canada meets its obligations under the World Trade Organization's Customs Valuation Agreement and to Canada's trading partners regarding methods for calculating VFD" would be met. In fact, we believe the opposite is true, adopting the proposed changes would cause Canada to violate this agreement and others and put us at odds with our closest trading partners.

We interpret that the proposed regulations are not consistent with Canada's obligations under Article 1 of the Agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Customs Valuation Agreement). The comments filed by The Commodity Tax, Customs and Trade Section of the Canadian Bar Association (CBA) go into more detail and we support their comments filed under separate cover.

In addition, we are concerned that Canada is not compliant with the rule nor the spirit of notifying partners of changes until Gazette 2. This proposal is such a fundamental change unique to the rest of the world and also a direct aside to NRI's of our partners, we believe that they should be both notified now and also given the opportunity to consult with the Government of Canada.

We believe there is concern with how CBSA will enforce these provisions. If the Gazette 1 proposals are adopted as stated we do not feel that importers will be able to comply and therefore do not see how CBSA will be able to enforce the provisions.

Recommendations

1. Do not proceed with the proposed regulatory changes as stated in Gazette 1.
2. Stand up an interagency committee (i.e. Finance, GAC, ISED, etc.) to include private sector members to fully review the proposal and potential impacts to Canada whether or not implemented. IE Canada and the Canadian International Freight Forwarders (CIFFA) proposed such a framework in October of 2019 with our paper entitled *A Path to a Smart and Secure Border*¹ (See Appendix).
3. Conduct an internal review of the proposal including supporting documentation in its entirety to ensure it substantiates the proposal and include the impact to domestic importers that was omitted.

Conclusion

IE Canada looks forward to assisting the GOC and CBSA in getting this proposal that was included in Bill C-30, *Budget Implementation Act, 2021, No. 1* that would add a definition of "sold for export to Canada" back on track. To do so however, we require the GOC to trust our informed perspective and that of our other colleagues that as drafted the proposal should not proceed. We look forward to assisting the GOC in drafting more informed policy in the future that achieves the intended outcome and supports Canadian business.

Sincerely,

IE Canada

Cc

Hon. Marco Mendicino, P.C.,M.P. Minister of Public Safety

marco.mendicino@parl.gc.ca

Hon. Chrystia Freeland, P.C.,M.P. Deputy Prime Minister, Minister of Finance

chrystia.freeland@parl.gc.ca

Hon. Mary NG, P.C.,M.P. Minister of International Trade, Export Promotion, Small Business and Economic Development

mary.ng@parl.gc.ca

Hon. François-Philippe Champagne, P.C.,M.P. Minister of Innovation, Science and Industry

francois-philippe.champagne@parl.gc.ca

¹

https://mcusercontent.com/fea968051b7b6149c63aaa0c5/files/70ac03ec-df82-4535-a095-d9277bf6ead6/A_path_towards_a_smart_and_secure_commercial_border.03.pdf

Erin O’Gorman, President, Canada Border Services Agency
erin.ogorman@cbsa-asfc.gc.ca

Attached:

- Guidance Customs Valuation Implementing Act – EU 17 September 2020 – Appendix 1
- CVA Article 1-8, Advisory Opinion 1.1 The Concept of Sale, Commentary 22.1 Meaning of the Expression “Sold for Exportation to the Country of Importation” in a Series of Sales – Appendix 2
- U.S. CBP Internal Advice Transaction Value; Multi-Tiered Transaction HQ H327067 – Appendix 3
- IE Canada 2021 VFD Submission – Appendix 4
- *A Path to a Smart and Secure Border* – Appendix 5

ANNEX

IE Canada Consultation Approach

IE Canada was relieved to receive information on June 20, 2023, that our request for an extension of the comment period was extended to July 26, 2023. In future, for projects of this significance on trade, we urge that CBSA follow the provisions in the Canada-United States-Mexico Agreement (CUSMA) Section 4 of Article 28.9 for transparent development of regulations and guidelines issued by Canada's Treasury Board on Canada's Cabinet Directive on Regulation that detail comment periods of 60 days or more. We do not believe that we should have to ask the government and be subjected to undue duress because not following current trade obligations and regulations nor guidelines issued by Canada's Treasury Board on Canada's Cabinet Directive.

In discussions with CBSA June 6, 2023, CBSA officials stated that it was not their intent to harm Canadian resident importers. Subsequently, IE Canada made the following recommendations to CBSA:

- CBSA should consider rescinding or retracting the consultation document as drafted.
- CBSA should consider issuing an extension of the comment period to be consistent with the provisions within CUSMA and provide industry an adequate period to consult and respond.
- CBSA should consider reissuing the consultation document to reflect the desired intent more accurately to remove the ambiguity and concerns raised by resident Canadian importers with respect to the last sale proposed regulatory text and scenario diagrams.

IE Canada made these recommendations in order that Canadian businesses were not left in a position of uncertainty and risk between the closing of the consultation period and publication of the final regulation in Gazette 2.

In the absence of clarity during this period of uncertainty, we foresee many businesses may reconsider whether to maintain operations in Canada. As our members are becoming aware of these proposed changes, they have shared they are currently conducting risk assessments to inform decisions on maintaining Canadian operations.

Recommended Actions:

1. The CBSA President conducts a review of current processes and procedures for consultation and implement changes to ensure that future consultations are compliant with the Cabinet Directive on Regulation and international obligations related to notice periods for regulatory changes.

CBSA Gazette 1 Proposal – Areas of Concern

The proposal in its entirety does not appear to support CBSA's proposed changes as stated.

1. The economic and financial analysis in the RIAS only pertained to the "filling the loophole" problem which was estimated at 11% of the total VFD declared. CBSA did not conduct an economic analysis of the unintentional impact of increased VFD for the balance of industry. We believe the economic impact on resident importers will be substantially greater than the project \$181.8 million in duties in 2023, rising to 273.2 million by 2031, an average of \$224.7 million per year in nominal terms included in the RIAS as the increases in VFD will apply to 89% of the total VFD.
2. The 8 transactional examples do not represent the entire universe of transactions that cause goods to be imported into Canada and raise more uncertainty and confusion for industry. In certain cases, it leads to a valuation based on Manufacturers' Suggested Retail Price not the actual price paid for the good. For example:

- a. Many retailers rely on fulfillment software that automatically sends orders to replenish inventory when it is running low in brick-and-mortar stores. In this scenario, is the customer purchase, which causes inventory to run low, the trigger that causes the goods to be imported into Canada? Will the CBSA use MSRP to determine the value for duty for goods imported pursuant to retail fulfillment software?
 - b. Many retailers rely on seasonal forecasting that they provide to third party distributors to assist those distributors in their purchasing/importing. Does the forecast of proposed retail sales cause the goods to be imported into Canada? Is MSRP then the relevant value for duty?
 - c. When customized goods that are imported into Canada in response to a purchase by a Canadian consumer at a brick-and-mortar store? Is MSRP then the relevant value for duty? (e.g., a garment in a different colour, monogrammed merchandise, custom fabricated structures?)
 - d. Is CBSA resourced to address the predicted increase in rulings to challenge the interpretations of the new rules?
3. Several of the scenarios expose Canadian entities and well-established subsidiaries, wholesalers, distributors, and retailers to significant and unprecedented higher duties and taxes based on the "last sales" value further contributing to Canada's battle against inflation.
 4. Figures 6 & 8 are extremely problematic for resident importers. As articulated, the proposed regulatory amendments would require duties and taxes to be assessed on domestic transactions that would negatively impact resident firms operating Franchise, Wholesale, Distribution or Subsidiary Operations in Canada.
 5. The proposal increases the lack of uniformity in valuation methods between Canada, the European Union, the United Kingdom and especially within North America and may lead to significant compliance issues for businesses vested in United States - Canada trade. Based on this "last sales" rule proposal and the amorphous interpretation of an arrangement between the importer and the "last sale" customer, there is a risk that the customs value in Canada will be higher than in the United States. CBSA's proposal "to establish a level playing field" by increasing the tax and administrative burden to both Canadian and non-resident companies is concerning.
 6. The proposal lacks consideration for risk of loss on shipments from foreign entities to local entities. The local end-customer may not bear any risk of a purchase order (PO) until goods arrive at their site and are installed. All installation occurs domestically. Timing of billing from local Canadian entities to an end customer occurs after installation of goods, not at time of shipment from the plant, not at the time of PO. These new valuation rules may well be contradictory to common revenue recognition rules.
 7. We agree that there is limited application of the "First Sale" rule in the U.S. and only when there is evidence to support the "First Sale" being the sale related to the importation of goods. CBSA appears to be of the opinion by providing this supporting document that industry did not accept a change to "Last Sale" and therefore the U.S. still uses "First Sale". Find a recommendation below.
 8. Because the CBSA has not submitted an updated future regulatory roadmap, nor have they published a coherent E-Commerce strategy, the business community is unable to assess the combined impact of the CBSA Assessment and Revenue Management (CARM) project, proposed changes to Importer of Record and these proposed changes. At present, it is our understanding that the cumulative impact could be detrimental, but without a full understanding of CBSA regulatory direction, it is not possible to accurately assess.
 9. Links to definitive statements are not government sources nor provide the actual implementation guidance of last rule changes. For example, reference of the EU changes are to a non-governmental publication that provides an overview of changes that would appear CBSA believes support their position without referencing the actual document of government directive².
 10. We previously submitted comments on July 5, 2021, to CBSA stating that "We are concerned that the current regulatory proposal could create unintended consequences, resulting in more expensive consumer goods and less availability of products."

² <https://www.globalcompliance.com/2016/05/28/eu-customs-implementation-of-union-customs-code-from-1-may-2016/>

We also pointed out these issues with respect to the approach and made the following recommendations at that time:

- a. CBSA undertakes comprehensive consultation with industry over a reasonable period including a meaningful opportunity for importers and other stakeholders to comment that includes the specific proposed regulatory text.
- b. Follow the lead of fellow “five-eyes’ partners and create trade facilitation where government, its agencies and the private sector work collaboratively to improve economic and regulatory infrastructure (i.e. Australia’s IFAM and U.S. CBP 21st Century Customs Framework).
- c. Work to a one government approach to cross-border valuation that ensures that Canada strategically repositions itself to increase World Ranking on the Ease of Use at the Border Ranking currently at 51.
- d. Any changes take 12 months to be implemented for industry to adapt for the coming fiscal year.
- e. We also have reviewed the comments previously submitted by the Commodity Tax, Customs and Trade Section of the Canadian Bar Association (CBA) on July 5, 2021, and noted their comments stressed that “The combined effect of proposed changes to the definitions of “sale for export” and “purchaser in Canada” represent a fundamental shift in trade policy and have implications that go far beyond clarifying existing law.” The CBA further points out “The determination of what arrangement causes goods to be exported to Canada for sale to a “purchaser in Canada” would result in the transaction value being determined in a manner that is inconsistent with Canada’s largest trading partners. It is also fraught with uncertainty.”

We do not agree with the comment in the proposal that feedback from 2021 consultation was taken into account and addressed in the proposal.

11. CBSA references and provides the link to the Cabinet Directive on Regulation but we respectfully submit that it was not followed as stated and/or intended. Prior to reviewing the substantive details of this regulatory amendment, IE Canada feels the Cabinet Directive on Regulation holds pertinent guidelines that the CBSA should uphold in all forthcoming regulatory proposals. In particular, the directive calls on regulators to base their recommendations on the following principles:

It is the duty of the Government of Canada to respect Parliament and the authorities granted by Parliament, as expressed in legislation; and to ensure that regulations result in the greatest overall benefits to current and future generations of Canadians. In fulfilling this duty, departments and agencies are to be guided by four principles:

Regulations protect and advance the public interest and support good government: Regulations are justified by a clear rationale in terms of protecting the health, safety, security, social and economic well-being of Canadians, and the environment.

The regulatory process is modern, open, and transparent: Regulations, and their related activities, are accessible and understandable, and are created, maintained, and reviewed in an open, transparent, and inclusive way that meaningfully engages the public and stakeholders, including Indigenous peoples, early on.

Regulatory decision-making is evidence-based: Proposals and decisions are based on evidence, robust analysis of costs and benefits, and the assessment of risk, while being open to public scrutiny.

Regulations support a fair and competitive economy: Regulations should aim to support and promote inclusive economic growth, entrepreneurship, and innovation for the benefit of

Canadians and businesses. Opportunities for regulatory cooperation and the development of aligned regulations should be considered and implemented wherever possible.

Coordination: Departments and agencies are responsible for working with each other to coordinate regulatory efforts within the Government of Canada when engaging with stakeholders, including Indigenous peoples.

12. As drafted, IE Canada does not feel that the CBSA has provided the substantive evidence in the RIAS that the proposed regulations will have a positive cost-benefit. Further, we are concerned that these regulations create great risk in harming the Canadian economy through the reduction of viable businesses.
- i. Although the CBSA is claiming to close a loophole, we believe that CBSA has not provided the evidence to support the existence of the loophole. Further, the proposal as drafted may cause greater issues than those which the CBSA is aiming to solve.
 - ii. The RIAS does not include any analysis regarding potential inflationary pressure of how the input tax credit on import GST would always exceed the federal portion of HST making it more expensive for consumers and drive-up operating costs for industry.
 - iii. The RIAS does not include any economic or technical analysis for industry to update/enhance/customize their Enterprise Resource Planning (ERP) and financial accounting systems to support a change with no precedent.
 - iv. The RIAS does not illustrate or consider inflationary cost projections on present resident importer transactions. Below is a hypothetical illustration of the PER UNIT potential cost increase based on the “last sale” used for VFD.

Durables example 8% duty rate for illustrative purposes only.

Resident importer present total duties and taxes	= \$140
Resident importer cost based on net sales value “last sale” VFD	= \$165
Resident importer cost based on gross sales value “last sale” VFD	= \$316
Resident importer cost based on MSRP value “last sale” VFD	= \$429

Small electrics example 11.25% duty rate for illustrative purposes only.

Resident importer present total duties and taxes	= \$56
Resident importer cost based on net sales value “last sale” VFD	= \$58
Resident importer cost based on gross sales value “last sale” VFD	= \$60
Resident importer cost based on MSRP value “last sale” VFD	= \$63

Consumables example (detergent) 2.5% duty rate for illustrative purposes only.

Resident importer present total duties and taxes	= \$.57
Resident importer cost based on net sales value “last sale” VFD	= \$1.14
Resident importer cost based on gross sales value “last sale” VFD	= \$1.52
Resident importer cost based on MSRP value “last sale” VFD	= \$1.60

Note the escalation of cost to the resident importer raises dramatically depending on the “last sale” price selected. The landed cost increase to the resident importer in the durables example is between \$25/unit up to \$289/unit. This represents a projected increase in costs³ to consumers of between \$38 - \$432 depending on the “last sale” price is selected for the purposes of valuation for duties as proposed by CBSA in Gazette 1. CBSA should not discount the impact of increasing

³ Prices are for comparison purposes only. Retailers alone have the sole discretion to set the retail price.

GST as this represents a drag on the importer's cash flow and will be a factor as importers seek to acquire bonds for security of payment for the CARM project.

Recommended Actions:

1. Review the actual government documents referenced. Specifically, EU Customs: Implementation of Union Customs Code from 1 May 2016 (see Appendix) does not support CBSA's positions. In fact, the definition used is:

"The transaction value of the goods sold for export to the customs territory of the Union shall be determined at the time of acceptance of the customs declaration on the basis of the sale occurring immediately before the goods were brought into that customs territory".

The relevant moment for determining the transaction value of the goods being valued is therefore when goods are brought into the customs territory of the Union. The relevant sale for goods brought into the Union is the sale when crossing the border, i.e. the ultimate sale taking place, in performance of the contract of the sale, at that time."

They also further clarify cases when a sale is not made at the time of importer (i.e. consignment) the sale to be considered the sale occurring closest to the moment of the introduction of the goods into the customs territory.

There is extensive direction on what is a sale and the limitation of purchase orders and other items that CBSA is suggested to include in this proposal as a basis on which they can expand their scope of items to consider in establishing the customs value (see paragraph 10 of the EU Guidance document).

It further states:

"Any other subsequent sales, including the last sale before the goods are released for free circulation into the customs territory of the Union, cannot be used for this purpose.

The EU guidance document, like CBSA, provides similar scenarios but additional scenarios too. The EU does not come to the same conclusions CBSA has stated in the Gazette 1 documents. This is an excellent guidance document framework that we would further recommend CBSA consider adopting.

2. Review the Customs Valuation Agreement, Advisory Opinion 1.1. The Concept of "Sale" and Commentary 22.1 in their entirety. Members do not draw the same conclusions as CBSA as stated in Gazette 1 (see appendix).
3. Review U.S. CBP Internal Advice Guidance on "Multi-Tiered Transaction" (HQ H32767) to fully understand the rules of engagement not only on First Sale but also what documentation is used to prove the sale. This approach would also be helpful in Canada to provide predictability and transparency on how CBSA will behave on verifications (see Appendix).
4. Review and follow Cabinet Directive on Regulations.

Regulatory Changes – Impact to Systems – Cost to Comply

1. The complexity of IT solutions (hardware, software, installation, and post-sale services) makes it difficult to break out a sale or PO value just for hardware on the PO placed by a customer. For example, the customer does not place a PO for hardware, they place a PO for a 'solution' that includes hardware, software, installation, and post-sale services). So, the customer would rarely,

if ever, submit a hardware only PO or value. Therefore, there is a significant risk that the valuations for duty will be excessive and dramatically overstated.

2. Upon final publication of any final regulations in Gazette 2, there needs to be a significant amount of time before the coming into force of any proposed amendments because importers need adequate time to assess their supply chains and how they will be affected. From a business perspective, this goes beyond adjusting customs processes to declare a new value for duty but ensuring that there is cash flow available to pay additional duties or taxes owing due to increases in the value for duty.
3. In the form that the CBSA has proposed, these regulations will make Canada completely unique in the world. This fact is particularly interesting given that Brazil is now conforming to OECD guidelines for transfer pricing. Canada is taking a direction on transfer pricing that Brazil is moving away from because Brazil felt they need to better comply with international standards. This proposal will cost individual companies hundreds of thousands if not millions of dollars in technology customizations for enterprise systems to comply.

Recommended Actions:

In the event that CBSA proceeds with regulatory changes post consultation and requires changes to be compliant with international agreements related to “last sale” we make the following recommendations.

1. Any regulatory changes to Canada’s legal framework regarding VFD should establish at least a 12-18 month period for implementation in order that industry has adequate time to adapt.
2. Adopt EU transitional measure to include valuation amounts from previous contracts executed prior to the change (almost 24 months), (See Valuation Implementing Act (2.4) cited by CBSA).

CBSA Pattern of Behaviour - Legislative, Regulatory and Policy Changes

Industry has observed a recent trend in CBSA’s approach to legislation and regulatory changes.

Canada cannot be a country that changes legislation and regulations when a government agency does not accept the decisions made by an independent review authority (i.e., Canada International Trade Tribunal - CITT) on their enforcement decisions and actions. We have now seen this happen twice in the last two years with changes to legislation in Budget Implementation Acts (BIA) for both the importer of record (C19) and last sale. For the last sale change we agree this change was in line with international changes but we do not believe that CBSA is understanding these changes and why the Gazette 1 proposed regulations on VFD are not in line with what was intended and how the rest of the world has implemented “last sale”.

In the proposed regulatory amendments, the CBSA’s failed to clearly articulate or properly site which CITT case it is referencing with respect to “purchaser in Canada” and we can only assume, that they are referring to AP-2020-002⁴ where the CITT ruled in favour of the Appellant. In AP-2020-002 the Tribunal was very clear when they said, “the transfer of title between Delta (the appellant) and the Canadian retailers occurred after the goods were already in Canada.” Changing the rules to calculate Transaction Value on a later “relevant sale” after the goods have been imported does change the fact that they were already imported and should have duties and taxes assessed at that time.

We do appreciate that the proposed regulations were issued in a Gazette 1 because the Importer of Record (C19) changes were not, therefore industry has no avenue to make formal comments.

⁴ <https://decisions.citt-tcce.gc.ca/citt-tcce/c/en/item/493933/index.do>

We also would like to express concerns on the statement Finance Canada accepted the changes for BIA 2021. Due to the fact that BIA information is held as “Cabinet Confidence” and also can not be obtained via Access to Information and Privacy (ATIP) requests we have no way of knowing if the correct information was provided to properly inform decisions. Industry is of the opinion that this consultation document is not accurate nor complete therefore we are making the assumption that the “briefing binder” might also have lacked correct and complete information.

Recommended Actions:

1. We would encourage CBSA to review the OECD Transfer Pricing Guidelines⁵ of which Canada is a Signatory Member, as well as familiarize itself with the CRA’s approach to collection and remittance of Division III GST⁶.
2. Review all CITT decisions (i.e. Delta Galil USA Inc. – 2021 and G-III Apparel Canada - August 22 2022) to include the Mattel decision related to proposed VFD changes where CBSA was not successful to fully understand the rationale for those decisions and ensure that this proposal is not an attempt to dismiss all jurisprudence because they do not agree with them as is suggested in the proposal and as we have seen with the recent Importer of Record change because did not agree with the Landmark decision.
3. Review the links between C19 Importer of Record Changes and Gazette 1 Valuation Regulations. There will be additional unintended consequences related to service provider liability (i.e. Customs Brokers, Freight Forwarders, 3PL operators, etc.) that will impact services for importers and costs to consumers.

5

<https://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>

⁶ (<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/g300-8/imported-goods-gst-300-8.html>)