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September 20, 2005

Gemini Shippers Association
350 Fifth Avenue. Suite 2030
New York, NY 10118

Attention: Sara Mayes, President
Harold Sachs, Executive Director

Re: Importing Into Canada by Non-Residents

Dear Sara and Harold:

You have indicated that certain members have expressed interest in the requirements attendant to importing into Canada. Accordingly, you have requested that we provide you with information on key issues one should consider with regard to doing business with Canada, generally, as well as in the capacity of a non-resident importer.

Residency Issues

It is not necessary to be a resident of Canada to act as the importer of record, however, it is necessary for importers to **register** with Canada Revenue Agency (*CRA*) and have a **Business Number**. Importers may register on line at [Business Registration On-line](#)¹ and request a *Business Number (BN)* by completing the [Form RC1, Request for a Business Number \(BN\)](#),² In doing so, all business names that may appear on customs release forms and documents, such as invoices, should be included. If the name on the customs release document is different from the name CBSA has on file, the goods may be held up at the border.

Record Keeping Issues

One of the legal requirements for importing into Canada is to keep the records in Canada. Nonetheless, this requirement has not been an obstacle for all U.S. resident importers; at its discretion, *CBSA* has authorized certain such importers to maintain the records in the United States. The request may be denied or even cancelled, but there is the possibility to do so if the firm enters into an agreement with the agency by which the non-resident firm undertakes to make available its books and records “*in Canada upon request (at a location to be determined should the records be requested) or that [the firm] will bear the full cost and expenses of one or more officers from the Canada Border Services Agency (CBSA)*”³ travelling to” the address where the records will be maintained. Naturally, the firm has to provide the details of where the records will be kept. (Importers may obtain a copy of the document at the following website http://www.cscb.ca/listinfo/IMP46-books_and_records.pdf.)

One should keep in mind that there are also penalties for not complying with requests: Administrative Monetary Penalty System.

¹ <https://www.businessregistration-inscriptionentreprise.gc.ca/dchmf/brom/bro/servlethome.html>

² <http://www.cra-arc.gc.ca/E/pbg/tf/rc1/rc1-01e.pdf>

³ The agency was previously known as Canada Customs and Revenue Agency and referred to either as *CCRA* or *Revenue Canada*.

AMPS At A Glance

The Administrative Monetary Penalty System (“AMPS”) is a civil penalty regime that secures compliance with Customs legislation through the application of monetary penalties.

- AMPS largely replaces the use of seizure and forfeiture provisions for technical infractions. Seizure and ascertained forfeiture will only be used for the most serious offences.
- AMPS applies to contraventions of the *Customs Act* and the *Customs Tariff*, the corresponding regulations, as well as contraventions of the terms and conditions of licensing agreements and undertakings.
- AMPS will impose monetary penalties in proportion to the type, frequency, and severity of the infraction. Most penalties are graduated and will take the compliance history of the client into consideration.
- AMPS does not pose any new obligations to comply with Customs legislation, regulations and undertakings. AMPS will not affect businesses that continue to comply with Customs requirements.
- AMPS was partially implemented on December 3, 2001 with the introduction of penalties for five Customs Self-Assessment contraventions. For the remaining contraventions, a transition period was in effect from December 2001 to October 2002. The transition period provided businesses an opportunity to become aware of weaknesses in their customs-related systems and processes and take corrective action before AMPS came into affect.
- Full implementation of AMPS in the commercial stream took place on October 7, 2002.
- Link for the AMPS - <http://www.cbsa-asfc.gc.ca/general/amps/menu-e.html>.

Value Issues

The method of appraisal in Canada is similar to that in the United States: the primary basis of determining the value for duty purposes is *transaction value*. Value for duty is based upon the price paid or payable for the goods. Certain adjustment, both additions and deductions, can be made to this price to arrive at the transaction value of the goods. If the transaction value meets certain criteria for acceptability set out in subsection 48(1), it will be the value for duty.

Subsection 48(1) of the *Customs Act* stipulates the requirements in order to value imported goods pursuant to its provisions. It reads in part “...the value for duty of goods is the transaction value of the goods if the goods are sold for export to Canada to a purchaser in Canada and the price paid or payable for the goods can be determined . . .”

The definitions and explanations for a “Purchaser in Canada” are in Memorandum D13-1-3, which stipulates four requirements that must be met for applying the transaction value method:

- a) The imported goods were sold;
- b) The sale was “for export to Canada”;
- c) The purchaser in the sale for export is the “purchaser in Canada” and
- d) The price paid or payable for the goods can be determined.

Accordingly, Section 48 can only be applied in cases, where the goods being appraised are sold.

In the event that the transaction value cannot be determined, value for duty is established based on one of five subsequent methods. The methods must be applied in sequential order. These subsequent methods are the transaction value of identical goods method, the transaction value of similar goods method, the deductive, the computed and the residual value methods. At the request of the importer, the order of application may be reversed with respect to the deductive and computed value methods.

As with the guidance provided in our own Customs regulations, one must refer to, in this case, the appropriate D memos for instructions and application of these methods.

Tax Issues

In addition to Duty, the merchandise may also be subject to Excise Duty and or Excise Tax, in addition to Goods and Services Tax (*GST*). *GST* is a “flow through” tax, payable upon importation and based on the duty paid value of the merchandise. It is an end-use tax collected, credited, and remitted at each level of a transaction until purchased by the ultimate consumer.

Textile Labeling Act (“*TLA*”)

Certain textile merchandise, such as hosiery and hats [not of straw or felt] belong in the category of “consumer textile articles.” As such, they must bear a label on which the information is “factual, legible and accessible to the prospective consumer at the time of purchase.” The required information consists of fiber content information, and the “dealer”⁴ identity, which consists of business name and address. **If** the dealer has a Canadian address, it may apply for and use a CA identification number. In addition, the label must be bilingual, except in areas where only one official language is used in consumer transactions.

Articles subject to the *TLA* must have a “Care Label” and Either a Canadian importer’s [/ distributor’s] CA number OR the Name & Address of the Non-Resident Importer.

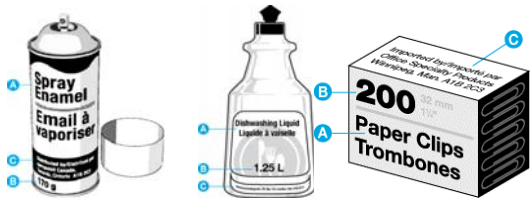
Canada’s Consumer Packaging and Labeling Act

Under the Consumer Packaging and Labeling Act, (“*CPLA*”) the following information must appear on the label of a consumer good sold in Canada:

- (A) The Product Identity Declaration describes a product's common or generic name, or its function. The declaration must be in both English and French.
- (B) The Net Quantity Declaration should be expressed in metric units of volume, when the product is a liquid, gas, or is viscous; or in metric units of weight, when the product is solid; or by numerical count. Net quantity may be expressed in other established trade terms. [as applicable to the product, see inserts, below]
- (C) The Dealer’s Name and Principal Place of Business where the pre-packaged product was manufactured or produced for resale. In general, a name and address sufficient for postal delivery is acceptable. The declaration should be in both English and French.

⁴ “Dealer” is defined as a person who is a Manufacturer, processor, finisher, retailer or a person engaged in the business of importing or selling any textile fiber product.

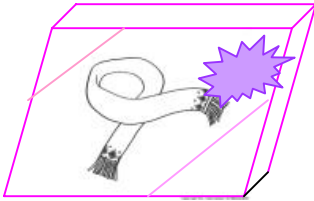
QUANTITY REQUIRED



QUANTITY NOT REQUIRED



In this regard, it is important to note that articles, which would otherwise be exempt from the requirements of the *CPLA*, become subject to it if packaged. For example, a scarf shipped / to be displayed free of packaging needs only the *TLA* information. However, if packaged so that the scarf cannot be viewed / examined, then one must supply on the package the information required by the *CPLA*.



Stuffed Article Registration and Labeling Issues

Certain products that incorporate stuffing materials, such as stuffed toys [which according to some authorities, may include doll / toy cases if incorporating stuffing], pillows, bedding materials, are subject to additional requirements of registration and labeling.⁵ These vary according to the article, as well as the Region of Canada into which the merchandise will be imported and or sold.

In addition, there is a basic, minimum “*Flammability Standard*” applicable to consumer textile articles, including children’s soft toys and bedding articles.

Please remember that the above information is intended for general informational purposes only and should not be construed as legal advice or as all encompassing regarding the requirements and restrictions applicable to importations into Canada by Canadian laws and regulations. Legal advice can only be offered after a review of a client’s specific facts and circumstances, which may affect the applicability of any general comments contained herein.

If you require additional, more detailed information, please do not hesitate to call.

Sincerely,

TOMPKINS & DAVIDSON, LLP

E-MAIL SIGNATURE

Barbara Y. Wierbicki

⁵ These requirements are akin to registration and labeling requirements imposed by the various States in the USA.