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1966 Pt.1



DEPARTMENT OF INDUSTRY, OTTAWA

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# DOING BUSINESS IN CANADA

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CANADIAN  
CUSTOMS DUTIES

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CANADIAN CUSTOMS DUTIES

PREPARED BY  
DEPARTMENT OF INDUSTRY  
OTTAWA



F O R E W O R D

The information in this booklet deals with the Canadian Customs Tariff and the incidence of Canadian customs duties. Every effort has been made to accurately reflect the legislation in force at the time of preparing the material. It is believed that the text will prove to be a useful guide.

It should be appreciated, however that the law and its administration involve a considerable amount of detail. Since the text does not do more than refer to basic principles, it is suggested that an enquirer should consult with relevant authorities or solicitors of his choice or both when seeking precise and detailed advice on a given problem at a specific time.

The Department of Industry is prepared to assist manufacturers who feel the need of guidance on these matters.

Other publications available from the Department of Industry and included in the complete series "Doing Business in Canada" are:

The Canadian Environment

Forms of Business Organization

Taxation - Income, Business, Property

Taxation - Sales Excise, Commodity

Labour Legislation

Construction and Equipment Standards

Federal Incentives to Industry

Patents, Copyrights and Trade Marks

Tariff Preferences for Canadian Goods Abroad

C A N A D I A N C U S T O M S D U T I E STable of Contents

Introduction .....	C-4
Marking of Imported Goods .....	C-5
Tariff Structure Classification and Rates .....	C-5
Tariff Changes - Department of Finance .....	C-6
Valuation for Duty - Department of National Revenue .....	C-7
Cash Discounts .....	C-10
Freight Allowances .....	C-11
Manufacturing - Valuation for Duty .....	C-11
Machinery and Equipment .....	C-12
Dies, Moulds, Patterns, Jigs and Fixtures, etc. Temporary Entry .....	C-13
Made in Canada .....	C-13
Special or Dumping Duty .....	C-14
Drawbacks .....	C-14
Processing of Canadian Goods Abroad - Remission of Duties .....	C-15
Settlers' Effects .....	C-16

Date of Revision: November, 1966.

CANADIAN CUSTOMS

The Canadian Customs Tariff and Canadian Customs Act are enactments of Parliament and are administered by the Customs and Excise Division of the Department of National Revenue, with headquarters in Ottawa, and ports and out-ports located in the major centres and border points throughout Canada.

Goods entering Canada, unless specifically provided otherwise, usually are cleared at the nearest customs port. The person entering the goods inward is required to present to the collector or proper officer a customs invoice of such goods, in triplicate, signed by the exporter, showing the place and date of purchase, and the name of the firm or person from whom the goods were purchased, a full description giving the quantity and value of each of the goods, and a bill of entry of such goods, in triplicate, containing the name of the importer and if imported by water, the name of the ship, the full description of the goods, the place from which the goods are imported and of what country the goods are the growth, product or manufacture.

If a previous ruling has not been obtained from the Department of National Revenue, Customs and Excise, in Ottawa, the Collector or other proper officer will determine the value and classification applicable. Such entries are forwarded to headquarters in Ottawa, where each entry is rechecked and if the reviewing officer is of the opinion the goods have been erroneously classified or appraised or allowed entry at an erroneous rate of valuation, a fresh appraisal may be made and the entry may have to be amended with payment of additional duty on such goods or refund of part or the whole of the duty paid as the case requires.

In view of this, if the goods are to be imported on a continuing basis, it is advisable to approach the Customs and Excise Division of the Department of National Revenue, in Ottawa, in order to obtain the ruling as to classification, rate, and valuation, prior to commencing importation.

### MARKING OF IMPORTED GOODS

There is no general requirement that goods imported into Canada must bear "country of origin" markings. However, authority does exist under Section 15 of the Canadian Customs Tariff for the Minister of National Revenue to set forth certain goods which must be so marked and the manner in which they are to be marked, labelled, stamped or branded. These regulations and the listing of goods requiring "country of origin" markings are published in Memorandum D42. This memorandum is revised at regular intervals and the goods mentioned therein are broadened as the Minister of National Revenue deems necessary.

It is important to note that goods exported to Canada requiring such markings and not bearing these markings may be refused entry at Customs until properly marked.

### TARIFF STRUCTURE CLASSIFICATION AND RATES

The schedules of the Canadian Customs Tariff comprise over 2,000 classifications, or tariff items, and, sub-items with differing criteria as to the basis for the structure of each. While the majority of the classifications refer to specific commodities, many classifications and, in some instances, the classification of most general application, have been set up with reference to the component material of chief value. Others refer solely to end use, some have class or kind 'made or not made in Canada', as the basis for distinction, while still others are combinations of the foregoing.

The rates of duty, applicable under each tariff item of the Customs Tariff, are set out in three columns. The first column itemizes the rates applying under the 'British Preferential Tariff' to goods which are the growth, product or manufacture of most British Commonwealth countries, colonies, properties or territory under British trusteeship when conveyed without trans-shipment from a port of any British country enjoying these benefits, to a port in Canada. The rates of customs duties set forth in column two, 'Most-Favoured-Nation Tariff', apply to goods the growth, product or manufacture of countries (i.e. United States, France, Italy, Western Germany, Belgium, Holland, Sweden, Norway and Denmark, etc.) to which the benefit of such 'Most-Favoured-Nation Tariff' treatment has been accorded either through treaties or

through the General Agreement on Tariffs and Trade (GATT). The rates of customs duties, if any, set forth in column three, 'General Tariff', apply to all goods not entitled to admission under the 'Most-Favoured-Nation Tariff' or under the 'British Preferential Tariff'.

In order to obtain a firm ruling as to the tariff classification and rate applicable to an article to be shipped to Canada, the Department of National Revenue, Customs and Excise Division, Ottawa, should be contacted and information as to the name under which the product is known in the trade, the name and address of the manufacturer should be provided. It is always of assistance in classifying products if descriptive literature, complete specifications and/or photographs together with a statement as to the process of manufacture are included. In some instances, it may be necessary to provide a sample of the product.

Rates of duty are usually levied either on an 'ad valorem' or 'specific' basis. The term 'ad valorem' refers to duty charged at a percentage of the value of the article, i.e.,  $7\frac{1}{2}$  per cent 'ad valorem'. 'Specific' duties are duties charged by unit of weight or other measure of quantity, and in some instances, a compound duty is levied, for example, 25 per cent 'ad valorem' plus five cents per pound.

#### TARIFF CHANGES - DEPARTMENT OF FINANCE

The Minister of Finance is responsible for recommending to Cabinet and Parliament any changes in the wording of tariff items or in the rates to be applied. The Department of National Revenue is responsible only for the administration of the Customs Tariff and has no power to apply rates other than those found in the existing Tariff or to collect duties at rates other than those authorized by statute.

Duties may be lowered by Order-in-Council under the authority of Section 273 of the Customs Act. This section provides that Cabinet may reduce or abolish duties or authorize a drawback of duties on "articles used as materials in Canadian manufactures". Requests for such reductions in duty are investigated by the Tariff Section of the Department of Finance, which advises the Minister of Finance as to whether or not, in its view, the reductions should be made. Reductions in duty under Section 273 of the Customs Act can be made only for a definite period

of time. When the Order-in-Council, authorizing any such reduction, is about to expire, the situation will again be investigated by the officials of the Department of Finance, who will advise the Minister whether or not the reduction should be continued.

In addition to lowering the tariff on materials used in manufacture, the Cabinet may, by Order-in-Council, reduce any tariffs on any goods in return for a concession granted to Canada by another country. The authority for such reduction is section 10 of the Customs Tariff. It is under this authority that a number of tariff reductions were made during the course of negotiations under the General Agreement on Tariffs and Trade (GATT). Increases and decreases of duty, other than those referred to above, must be approved by Parliament and are put forward by the Minister of Finance as part of his annual budget and become effective the following day. Subsequent legislation is made retroactive to that date.

#### VALUATION FOR DUTY - DEPARTMENT OF NATIONAL REVENUE

Value for duty is determined in accordance with the provisions of the Customs Act, specifically Sections 35 to 40B inclusive. The more important of these sections and the circumstances under which they are invoked, are described hereunder.

The basic principle is set forth in Section 36 (1) which reads as follows:

Section 36(1) - Subject to section 38, the value for duty shall, notwithstanding any invoice or affidavit to the contrary, be the fair market value, at the time when and place from which the goods were shipped directly to Canada, of like goods when sold

(a) to purchasers located at that place with whom the vendor deals at arm's length and who are at the same or substantially the same trade level as the importer, and

(b) in the same or substantially the same quantities for home consumption in the ordinary course of trade under competitive conditions.



A number of clarifying rules are set out in subsections (2) and (3) of Section 36 which are to be used in applying subsection (1) as indicated above. Contingencies of distribution prevailing in the exporter's domestic market such as quantity differentials, articles produced under private trade mark and sales which are not considered to be at arm's length are covered by subsections (2) and (3).

Section 37, subject to section 38, provides that, in circumstances where similar but not like goods are sold in the country of export, value for duty shall be cost of production of the imported goods plus the same gross profit percentage as is earned on cost of production when similar goods are sold for home consumption in the country of export.

Section 37A. Where the Governor in Council is satisfied, on a report from the Minister, that the application of subparagraph (i) of paragraph (e) of subsection (2) of section 36 or subsection (3) of section 36 is inequitable in that it results in discrimination against the importation of goods of a class from any country, as compared with the importation of goods of that class from any other country, the Governor in Council may prescribe the manner in which the value for duty of goods of that class, as determined under section 36 or 37, shall be reduced; but the value for duty of any imported goods upon being reduced as provided in this section shall not be less than an amount equal to the cost of production of the goods plus such amount for gross profit as is deemed reasonable by the Governor in Council.

Section 38(a) provides for cases, where value for duty cannot be determined under section 36 or 37 for a number of reasons i.e. like or similar goods are not sold in the country of export or are not sold in such country in the circumstances described in those sections.

Section 38(b), (c) and (d) provide, that, the value for duty of goods imported for assembling, packaging or further manufacture, used or obsolete goods, remnants, close-outs, discontinued or surplus goods, job lots, goods leased but not sold in the country of export, or goods imported to be used directly in the process of manufacture or production of goods shall be determined in such manner as the Minister prescribes.

Section 39 provides that, where the Minister is satisfied Canadian industry has been injured or may be injured by the importation of new or unused goods at a

value for duty less than cost of production plus a reasonable amount for gross profit, he may so report to the Governor in Council. The Governor in Council may order that the value for duty, in such circumstances, be increased to an amount equal to the cost of production thereof plus a reasonable advance for gross profit, having regard to the gross profit generally earned in that trade in the country of export. An order under this subsection may be revoked at any time by the Governor in Council and, unless revoked sooner, expires at the end of one year.

In cases where insufficient information has been furnished or is not available, Section 40 enables the Minister to prescribe the manner of determining cost of production, gross profit or fair market value, for purposes of sections 36, 37 and 39.

Section 40A states that if value for duty as determined under the preceding sections is less than the selling price to the purchaser, exclusive of all charges thereon after their shipment from the country of export, the value for duty shall be such selling price less the amount, if any, by which the fair market value of the goods has decreased between the time of purchase and the time of importation. This section outlines the circumstances under which internal taxes imposed within the country of export are deductible in establishing value for duty. Some other points covered by this section are the conditions under which discounts are deductible in determining value for duty and who is considered to be the importer when goods are shipped to Canada on consignment.

This same section sets out methods which may be used in establishing value for duty where the market price in the country of export of manufactured goods or fresh fruits and vegetables has declined owing to the advance of the season or marketing period.

Section 40B reads as set forth hereunder:

"(1) If the value for duty as determined under sections 36 to 40A does not include

(a) The amount of any subsidy or drawback of customs duty that has been allowed by the Government of any other country, or

(b) the amount or money value of any so-called royalty, rent or charge for use of any machine or goods of any description, that the seller or proprietor does or would usually charge thereon when the same are sold or leased or rented for use in the country of export.

Such amount shall be added thereto.

(2) There shall be added to the value for duty as determined under section 36 to 40A the amount of consideration or money value of any special arrangement between the exporter and the importer, or between any persons interested therein, because of the exportation or intended exportation of such goods, or the right to territorial limits for the sale or use thereof."

In order to effect a ruling where goods have a fair market value within the meaning of section 36(1), the Customs Division would require the exporter to submit the following documentary evidence to substantiate such fair market value:

(1) Certified copies of commercial invoices covering sales of like products to a representative number of different customers in the exporter's domestic market purchasing for home consumption, under competitive conditions and in the same or substantially the same quantities.

(2) Copies of domestic price lists and discount schedules, if available.

Obviously, the onus of proving the fair market value rests with the exporter. If he or the importer does not obtain an advance valuation ruling, the exporter may be requested at a later date to prove the fair market value which he has certified on the customs invoice.

#### CASH DISCOUNTS

The Customs Act makes no provision for deduction of a cash discount for ordinary duty purposes. The fair market value shown on customs invoices requires to be that of usual credit terms and the cash discount which may be taken for cash settlement should be shown in accordance with home market practice only as terms with details as to percentage and time limitations.

FREIGHT ALLOWANCES

Where goods are sold generally in the home market of the exporter at a common delivered price (freight pre-paid or allowed) to all destinations in a prescribed territory in which the place of direct shipment to Canada is located, a similar allowance may be granted to the purchaser in Canada without rendering importations liable to special or dumping duty. Such allowances may not exceed the actual carrying charges to destination in Canada. These allowances are not allowable for ordinary duty purposes and should be deducted only in the selling price column on customs invoices but not deducted when showing the fair market value or value for duty as determined by the Department.

MANUFACTURING - VALUATION FOR DUTY

Where a manufacturing operation is involved the method of calculating the acceptable value for duty is somewhat different. It is based on full factory cost (cost of production) plus a percentage advance for administration cost, selling costs and profit. The reason for using such a formula is the fact that the materials and components imported for production are not usually sold in the same condition and for the same purpose, therefore valuation for duty must be ascertained as prescribed under Section 38 of the Customs Act.

The amount of the advance to be applied to factory cost (material, direct labour and factory overhead) of the production components is determined by two factors. The first factor is the gross mark-up earned on factory cost by the exporter when selling the completely finished article for home consumption in the country of export under fully competitive conditions; the second is the foreign content in the semi-finished article to be further manufactured in Canada. The advance to be applied will decrease as the foreign content in the article produced in Canada is lowered. To establish a production ruling, the Customs Division of the Department of National Revenue will require the following data:

1. The selling price of the completely finished article in the country of export with appropriate verification of such selling price i.e. domestic invoices, price lists and discount schedules.



2. The factory cost of the completely finished article, broken down under the headings material, direct labour and factory overhead only.

3. The factory cost similarly broken down under the headings material direct labour and factory overhead only, of the semi-finished article in its condition as it will be exported to this country for further manufacture and combination with materials and labour of Canadian origin.

When this data has been submitted to Customs and examined by their officials, a "factory cost plus" ruling is issued covering production components fabricated in the exporter's plant. This same ruling will give proper cognizance to parts purchased by the exporter from outside sources and exported to Canada "as is", not further fabricated in the exporter's plant or incorporated into sub-assemblies. Such purchased parts may be advanced by nominal percentages and the advance is higher when they have been produced to the exporter's specifications. Further, if some production components are imported in rough casting form as taken from the mould or as stampings from the original press, the valuation basis is factory cost plus a nominal advance.

#### MACHINERY AND EQUIPMENT

The importation of used machinery and equipment warrants special mention particularly in respect of appraisal for duty purposes.

In many instances, particularly where a Canadian subsidiary is being established, the parent company does not wish to load its branch plant with substantial expenditures for capital machinery and equipment. If used but adequate machinery and equipment are available it may be desirable to release same to the branch plant operation. Although such machinery and equipment may have been fully depreciated and have a "nil" book value in the records of the parent organization, the Customs and Excise Division of the Department of National Revenue reserves the right to appraise it at the time of importation and the appraised valuation may not coincide with the exporter's book value. The general principle followed is to allow depreciation from the current replacement price of comparable machinery and equipment in the country of export if purchased in new condition at the time of importation.

Assuming the machinery and equipment have been manufactured to the specifications of the foreign exporter, or constructed in his own plant facilities, a cost plus ruling is developed and from that estimate of value a reduction is allowed in respect of depreciation.

In order to avoid any subsequent misunderstandings, it is well to discuss this very important subject with the officials concerned in advance of importation.

DIES, MOULDS, PATTERNS, JIGS AND FIXTURES, ETC. -  
TEMPORARY ENTRY

The temporary entry of dies, moulds, patterns and related jigs and fixtures with duty levied on a prorated basis, depending on the length of time this equipment remains in Canada is of significance to new and existing operations considering the introduction of higher domestic content into the product finished here. Such equipment may be entered temporarily with duty levied on 1/60th of the appraised value for each month or portion thereof they remain in Canada. There is a minimum levy of \$25.00 for each importation and the duty is not refundable on proof of export, which must take place within twelve months from the date of importation.

This arrangement obviates the costly duplication of dies, moulds, patterns, etc. for short production runs and enables manufacturers to reduce customs costs and attain a higher Canadian content in the finished product.

The Department of National Revenue has revised its "Temporary Entry Remission Order" (Memorandum D.4-5) to include additional equipment and certain machinery which may be entered on a temporary basis for specific purposes. Interested manufacturers should contact Collectors at ports of entry or write directly to the Port Administration Branch, Department of National Revenue, Ottawa, for further information.

MADE IN CANADA

For the purpose of the Customs Tariff, articles shall not be deemed to be of a class or kind produced in Canada unless established Canadian industry is manufacturing at least 10% of the normal Canadian consumption.

In addition to the above, the article must be of substantial Canadian content. There is no fixed minimum content requirement established by regulation before an article may be ruled of a 'class or kind made in Canada'. Each case is determined on its own merits.

There are a number of items in the Customs Tariff authorizing a lower rate of duty for goods of a class or kind not made in Canada than for goods of a class or kind made in Canada: for example, machinery of a class or kind made in Canada and not otherwise specifically provided for in the Customs Tariff, is rated for duty under Tariff Item 42701-1 at  $22\frac{1}{2}$  per cent ad valorem under the Most-Favoured-Nation Tariff, and if considered to be of a class or kind not made in Canada, is rated for duty under Tariff Item 42720-1 at  $7\frac{1}{2}$  per cent ad valorem under the Most-Favoured-Nation Tariff.

Assuming the Customs and Exise Division of the Department of National Revenue rules an article to be of a class or kind made in Canada importations of similar articles will not only be subject to the higher duty, if applicable, but also to the anti-dumping provisions of section 6 of the Customs Tariff.

#### SPECIAL OR DUMPING DUTY

Section 6(1) of the Customs Tariff provides, in the case of goods exported to Canada of a 'class or kind made in Canada', if the export or actual selling price to an importer in Canada is less than the fair market value or the value for duty of the goods as determined under the provisions of the Customs Act, in addition to the duties otherwise established, there will be collected on such goods (with some exceptions) on their importation a special or dumping duty equal to the difference between the selling price of the goods for export and the established value for duty. Such special or dumping duty shall be collected regardless of whether the goods are permitted free entry or subject to ad valorem or specific rates of duty. This special or dumping duty shall in no case exceed 50% ad valorem.

#### DRAWBACKS

A drawback of customs duties and sales or excise taxes is a rebate of those monies when imported goods are used in accordance with the regulations promulgated under the Customs, Customs Tariff, Excise Tax or Financial Administration Acts.

The Customs Tariff includes several drawback items which permit the return of duty to the importer when materials, machinery or equipment are applied to specific uses. These are set forth in Schedule B of the Customs Tariff.

In addition, there are customs drawback features of particular interest to Canadian exporters:

- (a) When goods on which duties and/or taxes have been paid are used or directly consumed in, wrought into or attached to, any articles manufactured or produced in Canada and exported, a drawback of 99% of the duties and/or taxes may be allowed.
- (b) When imported goods are subsequently exported from Canada to a third country, without having been used in Canada, a drawback of 99% of the duties and/or taxes that have been paid may be allowed.

There is one drawback provision which may be of interest to manufacturers using both imported and domestic materials of the same class in the production of goods subsequently exported. In order to avoid the maintenance of segregated stocks of domestic and imported materials for duty drawback purposes, the manufacturer is allowed to claim recovery of duty paid on the imported portion on the basis of equivalent content in the exported goods. An example of this would be a stock of soda ash composed partly of Canadian soda ash and partly imported. The soda ash would be used in the refining of metal sold domestically and exported. The manufacturer could claim a 99% duty drawback on the imported soda ash in an amount equivalent to the quantity of soda ash used to refine the exported metal. "Equivalents" must be applied to exports within twelve (12) months of actual use of the imported material.

#### PROCESSING OF CANADIAN GOODS ABROAD - REMISSION OF DUTIES

Under authority of section 22 of the Financial Administration Act authority may be obtained from the Department of National Revenue to export Canadian goods for processing and subsequent re-importation with remission of duty on all or a percentage of the Canadian content. In this regard the relevant sections of Customs Memorandum D5 are as follows:



6. Remission is granted of the duty and taxes payable on Canadian goods returned to Canada after having been advanced in value or altered in condition by any process of manufacture or other means outside of Canada where the following conditions have been fulfilled:

- (a) the goods were exported under Customs supervision;
- (b) no claim for drawback has been paid or will be filed in respect of the goods temporarily exported;
- (c) the Deputy Minister of National Revenue for Customs and Excise is satisfied that it is impracticable for the work to be done in Canada;
- (d) facilities will be established within twelve months from the date of exportation of the first shipment of the goods to do the work in Canada;
- (e) the goods were reimported into Canada within twelve months from the date on which they were exported; and
- (f) the duty and taxes payable under the Customs Tariff and the Excise Tax Act were paid on the fair market value of the work done outside of Canada.

7. Remission is granted of seventy-five per cent of the duty and taxes payable on the value at time of export from Canada of Canadian goods returned to Canada after having been advanced in value or altered in condition by any process of manufacture or other means outside of Canada where all the conditions set out in paragraphs (a), (b), (c), (e) and (f) of section 6 have been fulfilled.

#### SETTLERS' EFFECTS

The Customs Tariff makes provision under tariff item 70505-1 for the duty-free entry of settler's goods imported for his personal or household use, provided they were actually owned by the settler and in his possession and use prior to his removal to Canada. However, any goods imported under this tariff item which are sold or otherwise disposed of within twelve months after importation are subject to duties and taxes otherwise prescribed.

Non-residents wishing to avail themselves of this particular concession should make contact with the Canadian Immigration authorities in their particular area; with the nearest Canadian Government Trade Commissioner Office; with the Canadian Customs Attache, 1 Grosvenor Square, London, England: or directly with the Department of National Revenue, Customs and Excise Division, Ottawa, Canada.

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Printed  
in USA

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