Cassels

Trade & Customs and Supply Chain Guidance

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The impact of COVID-19 has cut across many aspects of international trade, including supply chain management, manufacturing, importing, exporting, customs, and logistics.

Importance of Trade Compliance During Changing Supply Chains

COVID-19 is forcing companies to question the ability of their supply chains to effectively and reliably respond to rapidly evolving risk factors. Changing suppliers, logistics, and revising sourcing will become more prevalent as companies seek to secure their chains.

It is important that these changes do not cause inadvertent compliance issues, violations, or penalties going forward. No organization wants to redesign their business activities and incur related costs and disruption only to find out later that the changes are in violation of customs, sanctions, export control, or other trade laws. It is critical to ensure trade compliance in making these changes.

The issuance of compliance communications are not only helpful in reminding personnel of the importance of maintaining effective compliance safeguards during COVID-19, but also generate a record that reflects well on a company and can be shared, if necessary, with regulators, or investors to document continuity in a company's compliance program commitments during COVID19.

Internal company communications should remind employees to identify and raise issues that could have adverse trade compliance impacts during the COVID-19 period. For example, the following questions should be addressed:

- Are you considering changing a supplier?
- Are you considering selling to a new customer or country?
- Are you thinking of using different components or materials in manufacturing?
- Will your new plans require you to alter importing or exporting activities?
- Are you considering a new customs broker, agent, freight forwarder, carrier or other third-party service provider?
- Will travel restrictions require non-Canadian personnel to access new IT databases or locations?
- Will a new third-party or country be involved in any other way?
- Will the end-use of your items be changing, including will they be directed toward fighting COVID-19?

- Will the company provide ongoing services or support to new parties or countries?
- Will imported finished goods or raw materials/components be substituted with others?
- Will imported goods be contaminated by the virus?
- Is there a possibility that the downstream supply chain for the existing supplier or any new supplier will be disrupted?
- Will the manner of shipment of imports be changed from rail or sea to air and will this cause late deliveries?
- Am I able to request price reductions of imported goods from my supplier?

These types of questions could help surface a range of issues in international trade compliance:

- Restricted party screening of new suppliers for economic sanctions
- Export control and sanctions licensing/authorization requirements
- New country of origin issues under customs laws, free trade agreements, and the issuance of new certificates of origin to qualify new imports for preferential duty rates
- Access to export-controlled information
- Customs tariff impacts resulting from new supply chain routes and product mixes
- Customs valuation issues including those surrounding decreases in the price of imported goods and the requirement for the importer to have a written agreement with the exporter on the price reduction prior to importation in order for the price reduction to be reflected in the Customs value of the goods at the time of importation
- Whether substituted or new imports have been quality tested and are in accordance with Canadian specifications
- Assurances from the supplier that imported goods have not been contaminated with the virus
- Contingency plan commitments from the supplier if its supply chain of raw materials is disrupted
- Assurances against freight escalation charges

Canadian Customs & Related Government Actions

To date, the Canada Border Services Agency (CBSA) has introduced the following import duty relief. It is likely that CBSA will be issuing new relief measures as the situation evolves.

Notwithstanding the issuance of relief, importations continue to be subject to examination at the time of importation and to post-release verification for compliance with the Tariff Classification, Valuation, Origin and Marking programs, and any other applicable provisions administered by the CBSA.

Extension of Timelines for the Payment of Duties (Customs Notice 20-11**)**

Effective March 27, 2020, pursuant to section 33.7(1) of the *Customs Act*, the Minister of Public Safety and

Emergency Preparedness has extended the timeframe for duty (customs duties and GST on regular imports, re-assessments, penalties, etc.). The timeframe for all payments due on March 31, 2020 has been extended to June 30, 2020. This also includes charges on a statement of account of March due on April 1, 2020. Importers should note however that there no other changes to the accounting of goods timeframes prescribed by the *Accounting for Imported Goods and Payment of Duties Regulations*. Importers are required to submit accounting declarations for imported goods within the required timeframes.

Waiver of Late Accounting Penalties (Customs Notice 20-10)

Importers are required to submit accounting declarations for imported goods released within the required timeframes. Late accounting penalties are applied when these timelines are not met. Pursuant to section 3.3 of the *Customs Act*, the CBSA has introduced measures to provide for a 45 business days grace period for late accounting penalties. No application for relief is required. The waiver applies to import transactions released from CBSA between March 11, 2020, to May 14, 2020, inclusively. The grace period will be reviewed as the COVID situation evolves, and further extensions maybe be issued.

Extension to the 90-day Period to Submit Corrections (Customs Notice 20-09)

Pursuant to Section 3.3 of the *Customs Act*, effective immediately, the 90 day period for submitting corrections following a CBSA trade compliance verification where errors were found has been automatically extended by 30 days, for a total of 120 days.

Duty Relief on Imported Goods for Emergency Use in Response to COVID-19 (Customs Notice 20-08)

The *Goods for Emergency Use Remission Order* (C.R.C., c. 768), allows for the relief of duty and tax for goods required for an emergency and are imported by or on behalf of federal, provincial, or municipal entities involved such as centres for health care as well as by or on behalf of members of first response organizations such as police, fire, and local civil defence groups, including medical response teams. Individual applications for relief are required.

Duty Relief for Canadian Non-Resident Importers into the US

Canadian businesses that operate as non-resident importers into the US may apply for a deferral of US duties on exports into the United States from US Customs and Border Protection (CBP). The CBP will approve, on a case-by-case basis, additional days for payment of estimated duties, taxes, and fees. Further details are expected to be provided.

Canada–US Border

Goods

There are no restrictions on the cross-border supply of goods between Canada and the US or cargo shipments using air, freight rail, or sea. The CBSA advises that the border remains open and commercial operations are “business as usual.”

Travel

Over 80 countries have issued travel restrictions related to COVID-19. Most of the restrictions apply to inbound travelers from, or transiting through, China, South Korea, Iran, and Italy. The restrictions vary from quarantine periods to outright denial of entry.

The Government of Canada has put in place an Emergency Order under the *Quarantine Act* that applies to all travellers arriving in Canada. This is to slow the introduction and spread of COVID-19 in Canada. Effective March 25, 2020, all international visitors to Canada who are not Canadian citizens or permanent residents have been denied entry, with the exception of Americans, diplomats, and flight crews.

Canada and the United States have imposed temporary restrictions on all non-essential travel across the Canada-US border which will remain in place April 20, 2020, though they could be extended by both parties. All essential work and business travel will continue unimpeded. Individuals crossing the border to go to work or for other essential services, such as medical care, will not be impacted.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.