



Valerie Dinis
Acting Director, Commercial and Trade Policy Division
Traveller, Commercial and Trade Policy Directorate
Strategy Policy Branch
Canada Border Services Agency
Submitted via email to CBSA.OCT/CECO.ASFC@cbsa-asfc.gc.ca

July 26, 2023

RE: Consultation on *Proposed regulations amending the Valuation for Duty (VFD)*, as published in *Canada Gazette, Part I, Volume 157, Number 21*

Dear Ms. Dinis:

On behalf of the Canadian fresh fruit and vegetable industry, we welcome the opportunity to provide comments to the Canada Border Services Agency (CBSA) consultation on *Proposed regulations amending the Valuation for Duty (VFD)*, as published in *Canada Gazette, Part I, Volume 157, Number 21* on May 27, 2023.

About CPMA

Based in Ottawa, the Canadian Produce Marketing Association (CPMA) is a not-for-profit organization representing companies active in the marketing of fresh fruit and vegetables in Canada, from the farm gate to the dinner plate, spanning the entire produce industry. The Association's members include major growers, shippers, packers and marketers; importers and exporters; transportation and logistics firms; brokers, distributors and wholesalers; retailers and foodservice distributors; and fresh cut operators and processors. Founded in 1925, CPMA is proud to represent over 830 domestic and international members who are responsible for 90% of fresh fruit and vegetable sales in Canada.

CPMA is actively engaged in CBSA stakeholder committees and working groups, including within CBSA's Border Commercial Consultative Committees (BCCC), and has been a member of the CBSA Assessment and Revenue Management (CARM) Trade Chain Partner Working Group since 2019. Members of CPMA's Customs Working Group, representing different areas of the fresh produce supply chain, have also participated in these fora.

Comments

To begin, CPMA voices our support for the similar views expressed in the submission made to this consultation by the Canadian Association of Importers and Exporters (I.E. Canada) and others. We strongly encourage the government to rescind the current proposal as written, seriously consider industry's significant concerns, thoroughly consult with all relevant industry stakeholders, (including through the

BCCC Trade and Recourse Committee), and substantially revise this proposal before a potential future publication in *Canada Gazette I*.

CPMA is generally supportive of the Government of Canada's stated objectives outlined in the Rationale of the *Canada Gazette I* proposal. However, CPMA has significant concerns that, as written, the proposed regulations would not ensure alignment with Canada's international obligations, would be detrimental to Canadian importers' ability to compete on a level playing field with Non-Resident Importers (NRIs), and would fail to provide greater certainty and predictability for the importing community.

Of particular note, while the stated purpose of the proposed regulatory amendments is to level the playing field between Canadian importers and NRIs, Figures 6-8 pose serious and substantial unintended consequences for resident importers operating a franchise, distribution or wholesale model, which would include a high percentage of operations responsible for fresh produce sales in Canada.

- The broadened definitions of "sale for export to Canada", "purchaser in Canada" and "relevant sale" could be construed to encompass intercompany transfers scenarios from warehouses outside Canada to a company's Canadian warehouse, or simply utilizing U.S. storage facilities for goods that are ultimately being used to fulfil orders. In these cases, because the contract for the goods exists, the final sale rule is triggered and the importer of record must use the contract price to their Canadian buyer (a domestic sale) as the relevant sale for valuation for duty (VFD), resulting in higher duties/taxes for the domestic importer of record.
- In addition, as currently written in the proposed amendments, duties paid at an earlier sale that crosses the Canada-U.S. border are treated as inputs in the Cost of Goods Sold (COGS), which would be included in a downstream domestic sale price that would then be considered the "relevant sale" for VFD. Division III GST for imports would therefore be calculated on higher, downstream transactions, resulting in input tax credits (ITCs) that would exceed the Federal Portion of HST assessed on the same calculation for the "relevant sale".
- Furthermore, the proposal as written does not appear to have a limit as to how far down the supply chain the importer would be required to follow to confirm the last sale. The complexity of the produce supply chain would make this process complicated, costly, difficult to validate and, where companies are not related, could cause challenges with regard to the disclosure of confidential trade information.

In its cost benefit analysis of the proposed amendments, the Government of Canada asserts: *"Since the regulatory amendments are intended to give clearer and enforceable direction to importers when determining which sale price is to be used for assessing the value of their imports, it is anticipated that local importers would now compete on a level playing field with NRIs and reduce potential revenue losses to the Government of Canada, while ensuring the Regulations impose no further cost on local importers."*

CPMA must emphasize that the proposed amendments, as written, will not only fail to achieve the stated objectives outlined by the Government of Canada, but will penalize Canadian companies and drive up the cost of fresh fruit and vegetables for domestic supply chain partners and, ultimately, for Canadian consumers, with no benefit to the Canadian public.

Particularly in the current inflationary environment, it is imperative that the Government of Canada reconsider the proposed amendments as they are currently written and thoroughly engage with stakeholders to find a workable solution to meeting its objectives.

We thank you for taking the time to review our comments and would be pleased to answer any questions you may have.

Regards,

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line.

Ron Lemaire
President
Canadian Produce Marketing Association