

MEMORANDUM

DEPARTMENT OF NATIONAL REVENUE, CANADA

(CUSTOMS DIVISION)

OTTAWA, 18th August, 1937.

To Collectors of Customs and Excise and others concerned

Section 6 of the Customs Tariff and General Regulations thereunder

Section 6. (1) In the case of articles exported to Canada of a class or kind made or produced in Canada, if the export or actual selling price to an importer in Canada is less than the fair market value of the same article when sold for home consumption in the usual and ordinary course in the country whence exported to Canada at the time of its exportation to Canada, or is less than the fair market value or value for duty thereof as determined under the provisions of section thirty-six of the *Customs Act* or is less than the value for duty thereof as determined by the Minister under the provisions of paragraphs (a) and (e) of section forty-one of the *Customs Act*, or is less than the fair market value thereof as fixed under the provisions of section forty-three of the *Customs Act*, there shall, in addition to the duties otherwise established, be levied, collected and paid on such article, on its importation into Canada, a special or dumping duty, equal to the difference between the said selling price of the article for export and the said fair market value thereof or value for duty thereof; and such special or dumping duty shall be levied, collected and paid on such article although it is not otherwise dutiable.

Under-valuation.

R.S. C. 42.

Special or dumping duty.

Provided that when it is established that any articles though of a class or kind made or produced in Canada are not offered for sale to the ordinary agencies of wholesale or retail distribution or are not offered to all purchasers on equal terms under like conditions, having regard to the custom and usage of trade, such articles may be exempted from special or dumping duty.

Exemptions from dumping duty.

Provided that the said special duty shall not exceed fifty per centum *ad valorem* in any case, and the following goods shall be exempt from such special duty, namely:—

Not to exceed 50% *ad val.* exemptions.

Goods of a class subject to duty under the *Excise Act*.

(2) Excise duties or excise taxes shall be disregarded in estimating the market value of goods for the purposes of special duty when the goods are entitled to entry under the British Preferential Tariff, Intermediate Tariff, or any tariff more favourable than the General Tariff.

When excise duties disregarded.

Governor in Council may order that certain duties and taxes be disregarded. (2A) The Governor in Council, whenever it is deemed expedient to do so, may order that import, excise or other duties and taxes, in whole or in part, shall be disregarded in estimating the market value for the purpose of special duty of goods of any kind imported into Canada from any specified country.

When customs duties of United Kingdom disregarded. (3) Customs duties of the United Kingdom shall be disregarded in estimating the market value of wines for the purposes of special duty when the same are entitled to entry under the Intermediate Tariff or any tariff more favourable than the General Tariff and are bottled in bond in the United Kingdom and imported direct therefrom.

"Export price," "Selling price." (4) "Export price" or "selling price" in this section shall be held to mean and include the exporter's price for the goods, exclusive of all charges thereon after their shipment from the place whence exported directly to Canada.

Evasion of special duty. (5) If at any time it appears to the satisfaction of the Minister that the payment of the special duty by this section provided for is being evaded by the shipment of goods on consignment without sale prior to such shipment, the Minister may in any case or class of cases authorize such action as is deemed necessary to collect on such goods or any of them the same special duty as if the goods had been sold to an importer in Canada prior to their shipment to Canada.

Additional special or dumping duty. (6) If at any time it appears to the satisfaction of the Minister that any person owning or controlling or interested in a business in Canada and also in any other country, or any person carrying on a business in any other country and owning or controlling or interested in a business operating in Canada, and by reason thereof is enabled to import goods for further manufacture or assembling or for resale, and while complying with the legal requirements on importation disposes of such imported goods, whether in the form as imported or as further processed, assembled or manufactured, at prices below the duty paid value thereof as entered at Customs plus or including all charges upon the goods after shipment from the place whence exported directly to Canada, including sales, distribution and advertising costs, and plus, if any, the cost of processing, assembling or further manufacturing in Canada, the Minister may declare that goods of such class or kind were and are on importation subject to an additional special or dumping duty not exceeding fifty per cent and authorize such action as is deemed necessary for the collection thereof.

Enforcing payment. (7) If the full amount of any special duty of Customs as herein provided has not been paid on goods imported, the Customs entry thereof shall be amended and the deficiency paid upon the demand of the Collector.

Regulations. (8) The Minister may make such regulations as are deemed necessary for carrying out the provisions of this section and for its enforcement.

(9) (a) Notwithstanding the provisions of any other law, the Governor in Council may, from time to time and as occasion requires, order and direct, subject to such exceptions as may be made, what shall be the rate of exchange fixed for any currency in computing the value for duty of goods imported into Canada from any place or country the currency of which is depreciated, and in case a sum in Canadian currency less than the invoice value of the goods in the currency of the place or country of export, computed at the rate of exchange so ordered, be paid for the goods, the actual selling price of the goods to the importer shall be regarded as less than the fair market value of the goods when sold for home consumption, and the provisions of this section shall apply and special or dumping duty shall apply equal to the difference between the value of the invoice computed at the current rate of exchange or at the average current rate from time to time fixed by order of the Governor in Council, and the value of such invoice, computed at the rate of exchange for duty so ordered as aforesaid, or may be less than such difference as the Governor in Council may from time to time order and direct; and the Governor in Council may order and direct that in all cases of sales or consignments of goods imported into Canada, where the importer owns, controls or is interested in the business of the exporter, or the exporter owns, controls or is interested in the business of the importer, or the importer and exporter operate under a controlling holding company, notwithstanding the expressed terms of the sale or consignment, the transaction shall be regarded as a sale and the actual selling price to the purchaser in Canada shall be taken to be the value of the goods in the currency of the place or country of export converted into Canadian currency at the current rate of exchange, or at the average current rate from time to time fixed by order of the Governor in Council, and shall be regarded as less than the fair market value of the goods when sold for home consumption, and the provisions of this section shall apply and special or dumping duty shall be deemed to apply equal to the difference between the value of the invoice computed at the current rate of exchange or at the average current rate from time to time fixed by order of the Governor in Council, and the value of such invoice computed at the rate of exchange for duty so ordered as aforesaid, or may be less than such difference as the Governor in Council may from time to time order and direct.

Rate of exchange on depreciated currency in computing value for duty of goods imported.

Sales or consignments of goods imported, when importer and exporter have joint ownership or operate under holding company.

(b) Any Order in Council made hereunder may be varied, extended or revoked at any time by the Governor in Council.

Orders in Council.

(c) This subsection shall be deemed to have had effect from and after the first day of September, 1931. 1931, c. 30, s. 6; 1933, c. 37, s. 1.

Retroactive effect.

(10) For the purposes of this Act articles shall not be deemed to be of a class or kind made or produced in Canada unless so made or produced in substantial quantities; and the Governor in Council may by Order in Council provide that such quantities, to be sub-

Articles of class or kind made in Canada.

stantial, shall be sufficient to supply a certain percentage of the normal Canadian consumption and may in such Order fix such percentage.

Rate of exchange on appreciated currency in computing value for duty of imported goods.

(11) (a) Notwithstanding the provisions of any other law, the Governor in Council may, from time to time and as occasion requires, and without having regard to the requirements of section fifty-five of the Customs Act, order and direct, subject to such exceptions as may be made, what shall be the rate of exchange fixed for any currency in computing the value for duty of goods imported into Canada from any place or country, the currency of which is appreciated in terms of the Canadian dollar.

Special or dumping duty.

(b) In cases where, under the power granted by this subsection, the Governor in Council shall have fixed the rate of exchange for any currency in computing the value for duty of goods imported into Canada, special or dumping duty shall not apply when the export or actual selling price is equal to or greater than the value for duty so computed and where the same is less than the value for duty so computed, special or dumping duty applicable shall not be greater than the difference between the said export or actual selling price and the value for duty so computed.

GENERAL REGULATIONS

Under Section 6 of the Customs Tariff

1.

Order in Council P.C. 1618, 2nd July, 1936 (Memorandum D No. 33 Supplement B). Articles shall not be deemed to be of a class or kind made or or produced in Canada unless a quantity sufficient to supply ten per centum of the normal Canadian consumption of such article is so made or produced.

2. BONA FIDE SAMPLES ADMITTED WITHOUT SPECIAL DUTY

Articles of merchandise for use bona fide as samples for sale of similar goods are to be admitted without special duty (subject, however, to ordinary duties as heretofore).

3. ADVANCE IN MARKET VALUE AFTER PURCHASE OF GOODS BY IMPORTER NOT SUBJECT TO SPECIAL DUTY

The amount of any advance in the market value of goods between the time of their purchase by the importer and the date of their exportation to Canada shall not be subject to special or dumping duty, provided the purchase agreement firmly establishes the price and quantity, and final shipment is made within a period in accordance with usual home market practice, and further provided that the actual date of purchase is established to the satisfaction of the Collector by contracts or other sufficient documentary evidence produced for his inspection and attested to.

Under this regulation, increases in the rate of exchange between the date of purchase and date of shipment may be considered as effecting an advance in the market value of goods.

NOTE.—In respect of goods subject to an ad valorem duty, the *ordinary duty* shall be collected on the fair market value of the goods at the time and at the exchange rate on the date of their direct exportation to Canada under the provisions of the Customs Act.

4. CASH DISCOUNTS

Special or dumping duty will not apply on account of the allowance to the purchaser in Canada of a cash discount similar in percentage and terms with that allowed generally by the exporter on home market sales.

NOTE.—The Customs Act makes no provision for deduction of a cash discount for ordinary duty purposes. The fair home market value shown on invoices requires to be that on 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 limitation. Where, through inadvertence, a cash discount is shown deducted on invoices, an undertaking will be required from the importer that same will not be taken unless earned by settlement in accordance with such terms.

5. FREIGHT ALLOWANCES

Where goods are sold generally in the home market of the exporter at a common delivered price (freight prepaid 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 duty. Such allowance may not exceed the actual carriage charges to destination in Canada.

NOTE.—This allowance is not allowable for ordinary duty purposes, and should therefore be deducted as such only in the selling price column on invoices but not deducted when determining and showing the fair market value in principal markets of the country of export and at the place of direct shipment to Canada.

6. DEFERRED QUANTITY ALLOWANCES

Deferred allowances granted generally in the home market on the basis of quantity purchased, when similarly granted to purchasers in Canada, will not subject importations to special duty.

NOTE.—Such allowances not shown and allowed and deducted on home market invoices may not be allowed for ordinary duty purposes.

Invoices to be consistent with the certificate thereon should bear a notation that the selling price is subject to a deferred quantity allowance as allowed generally in the home market.

7. JOB LOTS, SECONDS, ETC.

Special or dumping duty is not applicable to bona fide job lots, remnants, seconds or defective goods and used or second-hand goods, the values of which have been appraised, where the selling price to the purchaser in Canada is not less than the price as sold for home consumption under like conditions.

H. S. Riley

Commissioner of Customs.