



ADVICE SHEET

Responsibility of Importers and/or Authorized Agents with Respect to Valuation of Equine Semen

Issue

A recent review of import data has revealed that equine (horse) semen imported from the United States (US) is being **undervalued**. It appears that there may be a lack of understanding on the part of the importer and/or authorized agent regarding how to determine the proper value for duty as required by the Canada Border Services Agency. This "Advice Sheet" is intended to clarify certain issues pertaining to the valuation of these importations.

Background

- Proper classification and valuation of imported goods is at the heart of meaningful and useful trade data. When goods are misclassified and/or improperly valued, the integrity of trade data – used by businesses and governments alike – is called into question. Whether the imported goods are subject to duty or not, the accurate determination of "what was imported", "how much was imported", and "at what price", has a crucial impact on the balance of trade internationally and on achieving a level playing field for importers domestically.
- The submission of incorrect or non-compliant documentation can have unwanted consequences, namely: (1) delays at time of release at the border; (2) suspension of privileges; and (3) monetary penalties assessed under the Administrative Monetary Penalty System (AMPS). Especially as it relates to the importation of fresh or frozen horse semen, delays of this highly perishable commodity due to improper documentation can be extremely costly.
- For a succinct discussion of the importance of correctly classifying and valuing goods and of the AMPS program, please refer to the following two pamphlets available on the Canada Border Services Agency (CBSA) Web site at www.cbsa-asfc.gc.ca: *Why is Trade Compliance Important?* (BSF5108); and *The Administrative Monetary Penalty System (AMPS)* (BSF5013).
- Under the *Customs Act*, there is a clear obligation to provide true, accurate and complete trade information which includes correct tariff classification, origin and values.
- According to Departmental Memorandum D13-2-1, "importers and/or their authorized agents are responsible for the calculation and declaration of the value for duty of imported goods in accordance with the valuation provisions of the *Customs Act*".
- Additionally, the determination of value for duty (VFD) must be based upon objective and quantifiable information that establishes the accuracy of the value declared (for example, the agreement of sale, commercial invoice from the vendor, proof of payment, etc.)



- Sections 48 to 53 of the *Customs Act* outline the six valuation methods which importers must use in order to arrive at the proper value for duty.
- Of the six valuation methods, the most common and widely applicable is the **Transaction Value Method (TVM)** which has four basic and irrefutable requirements:
 1. The imported goods were sold;
 2. The sale was for export to Canada;
 3. The purchaser in the sale for export is the purchaser in Canada; and
 4. The price paid or payable for the goods can be determined.
- Further, the "price paid or payable" is defined as: **"the aggregate of all payments made or to be made, directly or indirectly, in respect of the goods by the purchaser to or for the benefit of the vendor"**. This definition is purposely wide-open so as to include "indirect" payments such as, for example, storage expenses, warranty payments, settlement of a vendor's debt; in essence, payments that may not appear on the commercial invoice or in the contract but which were paid by the purchaser for the imported goods.
- For a detailed explanation of the methods of valuation, refer to the *Importers Guide to Valuation* (BSF5000) and to the D13 series of Departmental Memoranda available on the CBSA Web site.

Specific Considerations

The nature of the horse breeding industry presents certain challenges to arriving at the correct price paid or payable or value for duty of semen importations. The US vendor bears numerous costs in relation to obtaining and transporting equine semen to the Canadian customer in a timely manner and these costs can vary between clients (for example, there may be a private treaty possibly involving subsequent proceeds).

Whether or not they are listed separately in the contract between the US vendor and Canadian purchaser, the following costs should be **included** in the calculation of the price paid or payable:

- Stud fees
- Booking fees, which may include: first collection, semen processing, health certificates, shipping container fee, some shipping fees
- Semen collection and handling fees; analysis and lab testing fees; DNA testing
- Veterinary fee: Charged by the USDA Accredited Veterinarian to collect and complete the *US Origin Health Certificate for Export of Equine Semen to Canada* (Zoosanitary Export Certificate) at the semen collection premises
- Trip fee: Expense incurred by the vendor to bring the *US Origin Health Certificate* to the USDA Veterinarian's office for signature and seals
- Health certificate fee: Charged by the USDA Veterinarian for signing and stamping the *US Origin Health Certificate*

Certain costs associated with the importation of semen should **not be included** in the calculation of the price paid or payable:

- Costs to transport the semen directly from the US vendor to Canada (i.e., transportation costs **from** the point of direct shipment and only if the **exact** cost is known and documented)



- Fees paid to the Canadian Food Inspection Agency (CFIA) for the required Import Permit
- Fees paid to a Canadian customs broker to clear and account for the semen importations into Canada
- Canadian duties and GST

It appears that US horse semen is sold for export to Canada under three common scenarios wherein the price is based upon:

1. Total contract price
2. Per shipment price
3. Payment is made after a foal is born

For all three of these scenarios, the transaction value method of valuation applies insofar as there is a sale for export to Canada, to a purchaser in Canada, and there is a price paid or payable that can be determined. Per these three scenarios, the value that should be declared is as follows:

1. Where a firm contract exists, the importer should declare the goods quoting the **total contract price**.
2. When the goods are entered on a per shipment basis, the importer should declare **the total price of that particular shipment**.
3. When final payment is not made until the mare foals, the importer knows, nevertheless, exactly what the **full price** of the agreement to sell is, and should declare that price.

For all three scenarios: A price has been agreed to; the price is known at the time of importation; and that price is what should be declared on the import entry.

When an Error Occurs

Under the *Customs Act*, there is an obligation to correct wrong information regardless of the dutiable status of the goods. For horse semen, even though the goods are not subject to duty they are subject to GST and if the importer has "**reason to believe**" that the declared value is wrong, then under Section 32.2(2) of the *Customs Act* the importer must correct the error.

Reason to believe occurs when specific information regarding the value for duty of the imported goods is available to the importer and gives reason to believe that a declaration is incorrect.

Example

If the importer of horse semen sees that the value declared on an entry is \$400 but knows that the amount paid to the US vendor was \$800, then that importer has **reason to believe** that a correction should be made to the CBSA accounting document.

The **specific information** that led to this belief is the contract itself which indicates what was actually paid for the goods; import transactions must accurately reflect the accounts payable data contained in the importer's books and records.



It is important to be aware that corrections to import declarations **must** be made when it would result either in additional money owing to the CBSA or in a revenue-neutral situation. Additionally, there must be concrete evidence available to support any correction, i.e., commercial invoices, a copy of the contract itemizing the costs included in the total price paid to the vendor, etc.

Revenue-neutral situations would occur when the declared value for duty was higher than that which was actually paid to the vendor. If *duty* was paid on the importation, then the importer would be eligible for a refund, but horse semen is *duty free* and so only GST would have been paid. Technically, it would be a "refund" situation but CBSA does **not** refund GST on commercial importations; therefore, the importer must correct the value with a B2 adjustment but the result would be "revenue-neutral". If the importer was **not** a GST registrant, then a copy of the non-revenue B2 along with supporting documentation of the actual price paid would be submitted to Summerside, PEI, with Canada Revenue Agency (CRA) Form 189E for a possible refund of GST. If the importer was a GST registrant, then the decrease in the GST paid would be handled through the mechanisms related to the Input Tax Credit (ITC) program. Any questions about GST refunds should be submitted directly to the CRA; their main Web site address is www.cra.gc.ca.

Consequences of Non-Compliance

- Under Section 32.2 of the *Customs Act*, importers have a four year legal obligation to correct errors contained in past import transactions whether it be for value, classification, or origin, when the correction would result in either money owing to the CBSA or in a revenue-neutral situation. Further, this provision requires an importer to make a correction within 90 days of having reason to believe that there is an error in a prior transaction.
- When the 90 day time limit for corrections has expired and no correction has been made, then an AMP may be applied against the importer or authorized agent responsible for the importation. In the case of undervaluation, penalties escalate from \$150 to \$450 per infraction. Clearly, it is in the importer's best interest to correct valuation errors in a timely manner.
- When the importer notices that corrections should have been made but were not made within 90 days, the importer should contact CBSA to discuss possible options for correction outside of AMPS (may be eligible for Voluntary Disclosures Program).
- Refer to the CBSA Web site for Departmental Memoranda D11-6-6 regarding self-adjustments to import entries and D11-6-10 for the reassessment policy.



Assistance

- CBSA, **Client Services**, is available to offer guidance on how to determine the proper value for duty of imported goods. Via client visits or telephone conversations, Client Services can offer a verbal opinion of what valuation method should be used and what costs should be included or excluded from the price paid or payable regarding importations of equine semen.
- Client Services offers free **information seminars** on various topics, one of which deals specifically with valuation. <http://www.cbsa-asfc.gc.ca/events-evenements/on/menu-eng.html>
- The **CBSA Web site** offers audience-specific information helpful to importers of any commodity; the "Small and Medium Enterprise" link is especially helpful to the small business client. <http://www.cbsa-asfc.gc.ca/sme-pme/menu-eng.html>
- Finally, CBSA offers **National Customs Rulings** which provide legally binding, written advice regarding the valuation of goods. Consult Departmental Memorandum D11-11-1, *National Customs Rulings (NCR)*, for details regarding the procedures to follow for written rulings.

Summary

- Importers or their authorized agents are responsible for calculating and declaring the proper value for duty of imported goods.
- Incorrect valuation can lead to delays at time of release; non-compliance with CBSA requirements can lead to monetary penalties (AMPS).
- In the majority of cases, the transaction value method should be used to calculate the proper value for duty for importations of horse semen.
- The total contract price should be declared to CBSA for the semen importations, regardless of whether or not the contract has been paid in full at the time of importation.
- Certain costs specific to the horse breeding industry must be included in the declared VFD; certain other costs are not to be included in the VFD.
- Once the importer has "reason to believe" that the declared VFD is incorrect, a correction must be made regardless of dutiable status of the goods and regardless of whether there will be a revenue-neutral outcome.
- Reason to believe for valuation is very straightforward: When the importer's accounts payable file indicates a different value than what was declared to CBSA, then there is reason to believe that an error has been made and a correction is required (when the result will be either money owing or revenue-neutral).
- If incorrect valuation data is not corrected within the legislated time limits, a monetary penalty may be assessed (AMP).
- CBSA, Client Services, via client meetings, telephone calls, and information seminars, offers guidance in determining the correct value for duty of imported goods. Written advice is also available in the form of a National Customs Ruling (please reference this Advice Sheet in your submission).



Contacts and References

Call **Rina Antinucci**, Client Services, Windsor, at (519) 967-4189 or e-mail her at Rina.Antinucci@cbsa-asfc.gc.ca. Contact Rina to discuss the current issue of undervaluation of importations of horse semen and/or to inquire about possible information seminars on the topic.

For the information pamphlets and Departmental Memos cited, go to the CBSA Web site at www.cbsa-asfc.gc.ca and choose "Publications and Forms" from the menu.

For any inquiries related to classification, valuation, duty rates, application of the *Customs Tariff*, permit requirements for certain goods, or other CBSA programs, contact the **Border Information Service at 1-800-461-9999**. From outside Canada, call (204) 983-3500 or (506) 636-5064 (long distance charges will apply). TTY within Canada is also available at 1-866-335-3237.