

CUSTOMS LAW SETTLED IN MATTEL: OR IS IT?

Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.
2001 SCC 36

Keywords: *Valuation; customs duties; royalties.*

On June 7, 2001, the Supreme Court of Canada released its decision in *Mattel*.⁵⁸ The decision addresses three fundamental questions of Canadian customs law:

- 1) When should royalties and licence fees be included in the value for duty (VFD) of imported goods under the transaction value method (TVM)?
- 2) What standard of review should courts exercise in reviewing decisions of the Canadian International Trade Tribunal (CITT)?
- 3) What does "sale for export to Canada" mean?

Royalties and Licence Fees

Canadian customs duties are calculated at the applicable rate on the VFD. The VFD of goods imported into Canada is determined primarily using the TVM. Under the TVM, the VFD is the "price paid or payable" by a purchaser ("the import price") in a "sale of goods for export to Canada," subject to certain adjustments. The TVM may be used provided that the import transaction satisfies certain conditions in section 48 of the Customs Act,⁵⁹ including the following:

- the goods must be sold for export to Canada; and
- the price paid or payable must be determined at the time the goods are imported into Canada.

Section 45(1) of the Customs Act defines the import price 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.” Under section 48(5)(a)(iv) of the Customs Act, an importer must add “royalties and licence fees” to the import price where they are paid or payable “in respect of the goods” and as “a condition of the sale of goods for export to Canada.” The provision specifically includes “payments for patents, trademarks and copyrights” and excludes “charges for the right to reproduce the goods in Canada.”

In the *Mattel* case, the importer, Mattel Canada, paid licence fees (“the direct royalty payments”) to an unrelated third party for the right to manufacture, import, distribute, and sell in Canada products based on certain trademarks or licensed materials. The direct royalty payments were equal to a percentage of Mattel Canada’s net invoiced billings for goods sold to Canadian customers. In addition, Mattel Canada periodically reimbursed its indirect US parent, Mattel Inc., for licence payments (“the indirect royalty payments”) that Mattel Inc. made to various licensors (“the master licensors”). The master licensors granted to Mattel Inc. and, ultimately, Mattel Canada certain licence rights in respect of various goods manufactured in Hong Kong.

CITT Decision

The CITT held that Mattel Canada did not make the direct royalty payments “as a condition of the sale of goods for export to Canada” on the basis that there was not a sufficient nexus between the payments and the sales for export. Specifically, the CITT concluded that

the payments were more closely related to rights, in respect of the goods, exercised in Canada and quantified in reference to resales in Canada and other factors that bore little or no connection to the sales for export. Furthermore, the evidence was to the effect that some goods were purchased and imported into Canada without the appellant ever making a royalty payment in respect of the goods.⁶⁰

The CITT also relied on a “control” test in reaching its decision, stating that

the appellant was making payments to a third-party licensor, which was unrelated to the vendor of the goods. The evidence did not support a finding that the licensor actually exerted control or influence over the sales for export through ownership, contract or otherwise to the extent that sales were made conditional on royalty payments.⁶¹

For essentially the same reasons, the CITT reached a similar conclusion about the indirect royalty payments.

The CITT also considered whether section 48(5)(a)(v) of the Customs Act would capture the indirect royalty payments in the VFD. That provision requires an adjustment to the import price for “the value of any part of proceeds of any subsequent resale, disposal or use of the goods by the purchaser thereof that

accrues or is to accrue, directly or indirectly, to the vendor." The CITT found that Mattel Inc. did not receive "the economic benefit or value of the indirect royalty payments passed through Mattel [Inc.] and accrued to the master licensors."⁶² Accordingly, these payments could not be added to the VFD.

Federal Court of Appeal Decision

The Federal Court of Appeal agreed with the CITT on the issue of the direct royalty payments. In coming to this conclusion, the court relied on the "control" test. Under the control test, the licensor must have the ability to impede the goods' importation if the importer fails to pay the royalties. According to the court, if Mattel Canada failed to make the direct royalty payments, the licensor could not impede the goods' importation but could only terminate the licence agreement. The court found that the control exercised by the licensor was "not associated with an importation of the goods to Canada, but rather with their subsequent sale in Canada."⁶³

Overturing the CITT's decision on the indirect royalty payments, the court found that these payments were subsequent proceeds accruing for Mattel Inc.'s benefit and were therefore caught by section 48(5)(a)(v) of the Customs Act. The court observed, "Were it not for the reimbursement of such fees by the respondent [Mattel Canada], the income or assets of Mattel Inc. would necessarily have been reduced by that amount."⁶⁴

Supreme Court Decision

The Supreme Court found in favour of Mattel. In reaching its decision, however, the court rejected both the sufficient nexus and control tests and applied a third test. The court found that the phrase "condition of the sale of goods" should be interpreted in accordance with its settled legal meaning under common law and relevant sale of goods legislation. Explaining its use of this test, the court emphasized its desire to clarify the law by relying on time-honoured legal principles. The court noted:

Rather than create a complex series of tests not strictly based on the settled legal meaning of words, it is preferable to rely on common law and sale of goods law to determine whether royalties and licence fees are paid "as a condition of sale of the goods for export to Canada" in accordance with s. 48(5)(a)(iv) of the *Customs Act*. The Court of Appeal erred when it concluded that "the word 'condition' is not used in the Act as a term of art which carries the meaning generally ascribed to it in the law of sales."⁶⁵

In the following statement, the Supreme Court explains the well-established meaning of "condition of sale" and its application to the direct royalty payments:

The royalties in the present appeal were not paid as a condition of sale. If Mattel Canada refused to pay royalties to Licensor X, Mattel U.S. could not refuse to sell

the licensed goods to Mattel Canada or repudiate the contract of sale. The sale contract and the royalties were separate agreements between different parties. In fact, the CITT's decision notes that "some goods were purchased and imported into Canada without [Mattel Canada] ever making a royalty payment in respect of the goods."⁶⁶

The court found that the control test was too broad because it would capture virtually all royalties and licence fees, owing to the remedies that the Trademarks Act affords to trademark owners. Under that Act, a registered trademark owner may obtain an order directing the minister to take reasonable measures to detain trademarked goods where the court is satisfied that the goods are about to be imported into Canada and that the distribution of the goods in Canada would be contrary to the Trademarks Act. According to the court, interpreting the phrase "condition of sale" by applying the control test would render the phrase virtually meaningless.⁶⁷

In allowing Mattel Canada's appeal in respect of the indirect royalty payments, the court found that since those payments were not paid as "a condition of sale" and did not come within the royalty provision in section 48(5)(a)(iv) of the Customs Act, it was not necessary to consider the subsequent proceeds provision in section 48(5)(a)(v) of that Act. To do otherwise would render the limiting language in section 48(5)(a)(iv) meaningless.

The Supreme Court's ruling on the indirect royalty payments directly contradicts the Court of Appeal's judgment on the issue. The latter court had found that since the indirect royalty payments fit within the scope of section 48(5)(a)(v) as subsequent proceeds, it was not necessary to consider the royalty provision in section 48(5)(a)(iv).

A Tortuous History

A brief history of the issue will clarify the significance of the Supreme Court's decision. The CITT and the courts have long struggled with the meaning of "condition of sale" and have adopted different tests. Decisions generally have proceeded along two lines, with one line adopting the sufficient nexus test and the other adopting the control test. In fact, in *Mattel* the CITT applied both tests in reaching its decision.

In *Reebok Canada Inc. v. DMNR C&E*,⁶⁸ the CITT applied the sufficient nexus test. Reebok Canada imported footwear produced by unrelated manufacturers in Taiwan and paid royalties to a related company for the right to use certain Reebok trademarks in its Canadian sales and distribution activities. Reebok Canada also imported Rockport footwear, manufactured in Korea by the Rockport Company ("RC"), and paid royalties to RC for the right to use certain Rockport trademarks in its Canadian distribution and sales activities.

The CITT found a sufficient nexus between the royalty payments and the imported Reebok footwear to treat the payments as a condition of sale of the footwear. The CITT found an even clearer nexus between the royalty payments

made to RC and the imported Rockport footwear because RC manufactured and sold the footwear.

The Federal Court Trial Division upheld the CITT's decision in *Reebok*.⁶⁹ This decision created uncertainty because it came after two CITT decisions where importers had successfully argued against the dutiability of royalties on the basis of the control test.⁷⁰ In one of these decisions, *Jana & Company v. The Deputy Minister of National Revenue*, the CITT outlined the control test as follows:

[T]he evidence provided is not sufficient to show that the licensors exercised a substantial degree of control over the manufacturers such that the appellant's ability to purchase clothing from those manufacturers would be restricted if the appellant did not pay the royalties to the licensors.⁷¹

Still greater uncertainty followed. Relying on the Federal Court's decision in *Reebok*, the CITT ruled against importers in *Nike Canada Ltd. v. D/MNR*⁷² and *Chaps Ralph Lauren, a Division of 131384 Canada Inc. and Modes Alto-Regal Inc. v. D/MNR and GFT Mode Canada Inc.*⁷³ on the basis of the sufficient nexus test. Yet, in later decisions, the CITT reverted to the control test to rule in the importers' favour.⁷⁴ The Federal Court of Appeal in *Nike*⁷⁵ overturned the CITT decision and found that the royalties or licence fees payable to a related offshore company were non-dutiable.

Why was there such uncertainty in the law before the Supreme Court's decision in *Mattel*? A careful examination of the competing principles underlying Canadian customs law can help answer these questions and, in turn, explain why the Supreme Court decided as it did in *Mattel*.

In 1985, Canada adopted the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade ("the GATT valuation code")⁷⁶ into its customs legislation. The GATT valuation code did not generally intend to include the value of intangible and intellectual property in determining the VFD under the TVM.⁷⁷

Before the GATT valuation code was adopted, the Customs Act used fair market value (FMV) as the basis for determining the VFD of imported goods.⁷⁸ At that time, the value of any trademark attached to imported goods would be included in the goods' FMV and the VFD under section 36(1) of the Customs Act. In addition, section 36(2) provided for the value of any trademark to be added to the FMV and VFD of imported goods where the importer delayed the application of the trademark until after the goods were imported.

Under the current Act, the VFD, as determined under the TVM, includes any amount paid or payable by the purchaser to the vendor for "the sale of goods for export to Canada." However, in the circumstances set out in section 48(5)(a)(iv), royalties and licence fees paid for intangible property will be added to the VFD.

In summary, general principles would tend to exclude royalties from the VFD as determined under the TVM on the basis that the value of intangible property, payments to third parties, and any value added to the goods after importation or

at the time of distribution or resale in Canada, are generally excluded. Section 48(5)(a)(iv), however, introduces the following contrary principles into the law:

- Intangible property can be so closely identified with imported goods that it effectively becomes part of, and inseparable from, the goods.
- Royalties need not accrue to the vendor's benefit to be dutiable.
- Although certain rights, such as exclusive rights to resell goods in Canada with certain valuable trademarks, relate to post-importation sales activities, these rights may be so closely tied to the "sale of the goods for export to Canada" that Canadian customs law includes the value of those rights in the VFD of the imported goods.

The courts have struggled to reconcile these contrary legal principles, and the Supreme Court seems to have struck the right balance in *Mattel*.

Thanks to the Supreme Court's decision in *Mattel*, the manufacturer/vendor and importer/purchaser can arrange their affairs to eliminate the duties on the value of intangible/intellectual property attributable to the resale or distribution of goods in Canada. The court's reliance on contract and sale of goods law focuses on the vendor's and purchaser's intentions and respects the paramountcy of freedom and privity of contract in commercial matters.

In *Customs Notice* no. 390, "Impact of Supreme Court Decision in *Mattel* Canada," released by the CCRA on July 10, 2001, the CCRA indicates that it may try to do an end-run around the *Mattel* decision where the foreign vendor and licensor are one and the same person (or are related to each other). According to the customs notice, the royalties or licence fees would be considered part of the import price (and VFD) under section 45(1) of the Customs Act. In my view, section 48(1) suggests otherwise. It specifically refers to the import price as "the price paid or payable for the *goods* [emphasis added]."

The real issue is whether the royalties are paid as a condition of sale. Apparently, in a D-memorandum soon to be released, the CCRA will rely on an alternative basis for holding that the royalties are dutiable, by reading an implied condition of sale into the sale contract.

Prudent planning might include having two separate contracts, with one covering the royalties and the other covering the goods' sale for export to Canada. The latter should clearly indicate that the payment of the royalties is not a condition of sale. Since the *Mattel* decision did not deal with a situation where the vendor and licensor were the same party or related to each other, the CITT and federal courts may ultimately have to decide the issue of dutiability of royalties in these circumstances.

Standard of Judicial Review

Section 68(1) of the Customs Act allows a party to a CITT proceeding to appeal any question of law to the Federal Court of Appeal. In *Mattel*, the Supreme Court examined the standards of judicial review applied in other court cases and found

that the standards had ranged “from patent unreasonableness at the more deferential end of the spectrum, through reasonableness *simpliciter*, to correctness at the more exact end of the spectrum.”⁷⁹

In its decision, the court referred to a number of its previous decisions, including *Pezim v. British Columbia (Superintendent of Brokers)*⁸⁰ and *Canada (Director of Investigation and Research) v. Southam Inc.*⁸¹ Both of these cases involved a statutory right of appeal from a decision of a specialized tribunal, the British Columbia Securities Commission in *Pezim* and the Competition Tribunal in *Southam*. In both cases, the governing legislation did not include a privative clause that would suggest a standard of “patent unreasonableness” (where discretion is at its highest and requires a jurisdictional error). In both cases, the Supreme Court applied a reasonableness *simpliciter* standard of review. The issue in *Pezim* was whether a particular event was a “material change” for the purposes of the disclosure requirements in the British Columbia Securities Act. The court upheld the commission’s decision. In coming to this conclusion, the court held that a standard of absolute correctness was too exacting, considering that the issue went to the core of the commission’s mandate and expertise and that the Securities Act gave the commission a “broad discretion to determine what is in the public interest.”⁸²

Southam involved a decision of the Competition Tribunal ordering Southam Inc. to divest itself of one of its publications because, without divestiture, competition in the real estate print advertising market on British Columbia’s north shore would likely lessen substantially. In this case, the Supreme Court upheld the tribunal’s decision on the basis that the tribunal had acted reasonably in determining the relevant market. On the question of the appropriate standard of review, the court stated:

The standard of reasonableness *simpliciter* is the same standard that was applied in *Pezim*, and for good reason: the parallels between this case and that one are obvious. *Pezim* involved the decision of a securities commission, one of whose tasks was to be sensitive to and enhance capital market efficiency; this appeal involves the decision of the Tribunal, one of whose tasks is to recognize and in its own way to promote the efficiency of the Canadian economy. In *Pezim*, appeals from the decisions of the securities commission lie as of right; in this case, appeals from decisions of the Tribunal lie as of right. The questions in *Pezim* were entirely within the competence of the commission to answer; the question in this appeal is entirely within the competence of the Tribunal to answer.⁸³

The court found that the Competition Tribunal’s conclusion was not “without foundation or logical coherence.”⁸⁴ To the Supreme Court then, the standard of reasonableness *simpliciter* means applying a “clearly wrong” test.⁸⁵

Like *Pezim* and *Southam*, *Mattel* involved no privative clause and a statutory right of appeal on any question of law. Nevertheless, in *Mattel*, the Supreme Court decided to apply the most exacting standard of “legal correctness.” The court acknowledged that the CITT has experts in international economic relations and international trade relations. In *Pezim* and *Southam*, the court found that the legal

and factual issues in question were within the mandate and expertise of the commission and the tribunal, respectively. By contrast, the issues in *Mattel* did not require any special expertise in international economic relations and international trade relations. Rather, the *Mattel* case involved “pure questions of law that require the application of principles of statutory interpretation and other concepts which are intrinsic to commercial law.”⁸⁶ These issues are traditionally the province of the courts, and the CITT did not have any particular expertise related to these issues. Accordingly, there was nothing to suggest that the court should defer to the CITT’s decision.

Encroachment on the CITT’s Power?

Does the exacting standard of legal correctness constitute an *inappropriate encroachment* on the CITT’s decision-making powers? Not necessarily. The Supreme Court has left the door open for the courts to apply the standard of reasonableness *simpliciter* in appropriate circumstances. Not all questions of statutory interpretation require the most exacting standard of legal correctness. For example, the court cited *Minister of National Revenue (Customs and Excise) v. Schrader Automotive Inc.*⁸⁷ as an appropriate customs case for the use of the reasonableness *simpliciter* standard because it involved highly specialized technical matters in determining the appropriate tariff classification of certain imported goods. In *Mattel*, the court clearly contrasted the nature of the statutory interpretation involved in *Schrader* with that in *Mattel*.⁸⁸

To analyze and understand the Supreme Court’s decision, one has to take into account the history of the jurisprudence concerning the dutiability of royalties. In *Reebok*, the Federal Court confirmed the CITT’s sufficient nexus test for determining whether a condition of sale exists. In reaching its decision, the Federal Court exercised considerable deference toward the CITT, arguably adopting a patently unreasonable standard of review, or at least a reasonableness *simpliciter* standard, as the following confirms:

It [the CITT] is a specialized tribunal with substantial experience in the law, and its administration, in regard to international trade and customs duties. Unless a court on appeal is persuaded that the tribunal has clearly erred in law, recognizing substantial scope for the tribunal in interpreting the law applicable within its area of expertise, or that this tribunal’s findings of facts, essential for its decision, are perverse or without regard to the evidence, in my opinion the Court has no basis to allow the appeal.⁸⁹

As noted previously, the CITT then relied on the Federal Court’s *Reebok* decision to reach its decisions in *Nike* and *Chaps Ralph Lauren*. The Federal Court’s substantial deference to the CITT in *Reebok* probably contributed to the later confusion in the jurisprudence. Procedural law can intersect with substantive law, changing the course of substantive law. With this concern in mind in *Mattel*, the Supreme Court asserted the pre-eminent role of the courts to review questions of legal statutory interpretation and commercial law.

Sale for Export to Canada

Mattel Canada acquired the goods imported into Canada through the following three-tier distribution system:

- A Hong Kong manufacturer, related or unrelated to Mattel Canada, sold to an intermediary Mattel company in Hong Kong.
- The intermediary sold to Mattel Inc. in the United States.
- Mattel Inc. sold to Mattel Canada in Canada.
- Each sale occurred at a progressively higher price. Before Mattel Canada took legal title to the imported goods, the intermediary company and Mattel Inc. took legal title. Mattel Canada held legal title when it imported the goods into Canada.

Mattel Canada argued that “the sale between the manufacturer and the intermediary constituted a sale for export to Canada, and that the price paid or payable for those goods should be the basis upon which the duty is calculated, subject to adjustments prescribed by s. 48(5).”⁹⁰ The Supreme Court expressed concern that importers would establish multitiered arrangements to use the first sale in the chain, the sale at the lowest price, as the “sale for export to Canada.”⁹¹ The court ruled that “the relevant sale for export is that sale by which title to the goods passes to the importer.”⁹² On that basis, the sale from Mattel Inc. to Mattel Canada constituted the sale for export to Canada.

Since September 17, 1997, the Customs Act has required that a sale for export to Canada be “to a purchaser in Canada.” The Regulations under the Act define a “purchaser in Canada” to be

- a person who qualifies as a resident in Canada, which, in the case of a corporation, means carrying on business in Canada and having central management and control in Canada;
- a non-resident who has a permanent establishment in Canada;
- a non-resident who imports goods into Canada for its own consumption, use, or enjoyment in Canada, but not for sale; and
- a non-resident who imports goods for sale in Canada and who has not entered into an agreement to sell the goods to a Canadian resident before purchasing the goods.⁹³

The *Mattel* case involved import transactions that occurred before the “purchaser in Canada” amendments took effect. The amendments intended to address the same concern as the Supreme Court would later address in *Mattel*—the concern that importers would establish multitiered arrangements to use the first sale in the chain, the sale at the lowest price, as the “sale for export to Canada.”

Importers may still have opportunities to use a lower sale price as the VFD. In certain cases, this objective could be achieved by establishing a Canadian distributor who meets the first definition of “purchaser in Canada” above, or a non-resident distributor who meets the second or fourth definition of “purchaser

in Canada" above.⁹⁴ However, as a general rule, the distributor should neither act, nor be seen to act, as the foreign vendor's legal sale agent.⁹⁵

Where no sale for export to Canada to a "purchaser in Canada" exists, an importer must resort to an alternative method of valuation to determine the VFD.⁹⁶

Conclusion

In *Mattel*, the Supreme Court has spoken forcefully in a unanimous judgment of the full court. The court set out to clarify the law and establish guidelines for importers. Importers should now use the guidelines to structure their transactions to reduce their declared VFD and attendant liabilities for import duties and taxes. Where an importer pays royalties in respect of its imported goods, the importer should avoid paying those royalties as a condition of sale of the goods. Otherwise, the royalties will become dutiable. Specifically, where the vendor can rescind or repudiate the sale contract and refuse to sell goods to the importer if the importer fails to pay royalties, the payment of those royalties is considered a condition of sale of the goods. To the extent that importers have previously paid duties in error on royalties, those importers have duty refund opportunities (subject to making those claims within the applicable statutory limitation period for doing so). Despite the Supreme Court's pronouncement on sale for export to Canada and the new purchaser in Canada requirement, opportunities remain for vigilant importers to use these rules to their advantage.

Poor planning can result in importers incurring additional duties and taxes as additional costs. Worse yet, importers who are unaware of the current law may face assessments for not only duties and taxes, but also substantial interest and penalties for underdeclaring the VFD.

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58 *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.*, 2001 SCC 36.

59 RSC 1985, c. 1 (2d Supp.), as amended.

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- 60 *Mattel Canada v. D/MNR*, [1997] ETC 4506, at paragraph 30 (CITT).
- 61 *Ibid.*, at paragraph 31.
- 62 *Ibid.*, at paragraph 34.
- 63 (1999), 236 NR 285, at paragraphs 30 and 31 (FCA).
- 64 *Ibid.*, at paragraph 39.
- 65 *Supra* note 58, at paragraph 59. This finding is consistent with the Supreme Court's decision in *Will-Kare Paving & Contracting Limited*, *supra* note 18, which also looked to the common law and sale of goods legislation to determine the meaning of "sale of goods" as found in the Income Tax Act.
- 66 *Supra* note 58, at paragraph 62.
- 67 *Ibid.*, at paragraphs 60 and 61.
- 68 [1993] ETC 4599 (CITT).
- 69 *Reebok Canada v. D/MNR*, [1997] ETC 2891 (FCTD).
- 70 *Jana & Company v. The Deputy Minister of National Revenue*, [1996] ETC 4552 (CITT); and *PMI Food Equipment Group Canada, A Division of Premark Canada Inc. v. D/MNR*, [1997] ETC 4501 (CITT).
- 71 *Jana*, *supra* note 70, at paragraph 37.
- 72 [1997] ETC 4642 (CITT), particularly paragraphs 5 and 45.
- 73 [1998] ETC 4501 (CITT), particularly paragraphs 48, 56, and 60.
- 74 *Leeds Neckwear Inc. and Leeds International Inc. v. D/MNR*, [1998] ETC 4543 (CITT); and *Style-Kruft Sportswear Limited v. D/MNR*, [1998] ETC 4545 (CITT).
- 75 *Nike Canada Ltd. v. D/MNR*, [1999] ETC 2822 (FCA).
- 76 Signed at Geneva, March 1980, GATT BISD, 26th Supp., 116.
- 77 *Customs Valuation: Commentary on the GATT Valuation Code* (New York: ICC Publishing, 1988), paragraph 54.
- 78 Customs Act, RSC 1970, c. C-40, section 36(1).
- 79 *Supra* note 58, at paragraph 24.
- 80 [1994] 2 SCR 557.
- 81 [1997] 1 SCR 748. See also *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, at paragraph 27; and *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paragraph 55.
- 82 *Supra* note 80, at paragraphs 45 and 57.
- 83 *Southam*, *supra* note 81, at paragraph 58.
- 84 *Ibid.*, at paragraph 68.
- 85 *Ibid.*, at paragraph 60.
- 86 *Supra* note 58, at paragraph 33.
- 87 (1999), 240 NR 381 (FCA).
- 88 *Supra* note 58, at paragraph 33.
- 89 *Supra* note 69, at paragraph 44.
- 90 *Supra* note 58, at paragraph 36.
- 91 *Ibid.*, at paragraph 47.
- 92 *Ibid.*, at paragraph 45.

- 93 Sections 2 and 2.1 of the Valuation for Duty Regulations, as amended by the Regulations Amending the Valuation for Duty Regulations, PC 1997-1303, SOR/97-443 (1997), vol. 131, no. 2 *Canada Gazette Part II* 2819-20.
- 94 *Harbour Sales (Windsor) Ltd. v. D/MNR*, [1994] ETC 4647 (CITT), leave to appeal denied [1995] ETC 2824 (FCTD); and *Brunswick International (Canada) Limited v. The Deputy Minister of National Revenue*, [2000] ETC 4507 (CITT).
- 95 *JewelWay International Canada, Inc. et al. v. D/MNR*, [1996] ETC 4521 (CITT). On the other hand, in *Nu Skin Canada, Inc v. D/MNR*, [1997] ETC 4611 (CITT), the CITT treated Nu-Skin Canada Inc. (NSC) as part of the US-based Nu-Skin International Inc. (NSI) entity, but found that the sales of health care products by US/foreign manufacturers to NSI for import into Canada by NSC (really part of NSI) as inventory constituted sales for export to Canada to NSI.
- 96 See sections 46, 47, and 49 to 53 of the Customs Act. See, for example, *Tootsie Roll of Canada Ltd. v. The Deputy Minister of National Revenue*, [1997] ETC 4627 (CITT); and *Armstrong Brothers Tool Co. v. The Deputy Minister of National Revenue*, [1997] ETC 4603 (CITT), leave to appeal to the Federal Court of Appeal denied.