

SPC&B Update

May 12, 2015 - In This Issue:

Canadian Court Rules on R&D Expenses

ISF Enforcement Grace Period Ends



Canadian Court Holds That R&D Expenses Paid to the Vendor May be Included in Their Entirety in Transaction Value

In a decision that could have a far-reaching impact for companies importing into Canada, the Canadian Federal Court of Appeals (FCA) recently held in *Skechers USA Canada Inc. v. President of the Canada Border Service Agency*, that an importer's payments of general R&D expenses to a vendor can be dutiable in their entirety when a sufficient link exists between the payments and the goods imported.

In the case, Skechers Canada reimbursed its vendor, Skechers U.S., for R&D costs involving the development of prototypes. Only a small portion of the prototypes resulted in styles that were shipped to Canada. Nevertheless, the FCA held that the whole R&D process was interrelated and the development of unsuccessful prototypes was required to produce the imported goods. It concluded, therefore, that all R&D payments made by Skechers Canada to Skechers USA were sufficiently linked to the imported styles to be "in respect of" those styles, and therefore dutiable as a part of the transaction value.

As a result of the *Skechers* decision, importers should expect greater scrutiny from the CBSA with regard to the dutiability of R&D payments, even those that may seem unrelated to their actual imports. It is therefore recommended that importers review their R&D programs to determine how this decision may affect the valuation of their products. We will keep you apprised of further developments, particularly on how the CBSA interprets the scope of *Skechers*.

Reminder -- ISF Grace Period Expires Tomorrow

For almost two years, U.S. Customs & Border Protection (CBP) had a policy that liquidated damages claims would only be issued after "three strikes" against an importer for ISF filing violations and that every liquidated damages claim was to be reviewed by CBP Headquarters. This policy was designed to allow importers sufficient time to implement their ISF filing procedures and

make changes or improvements when issues arose. CBP has indicated that there are no plans to extend the grace period, which expires tomorrow.

Nevertheless, ISF enforcement has been aimed at the more severe violations, including failure to file an ISF, extremely late ISF filings, and repeated ISF violations that are detrimental to CBP's ability to screen cargo arriving in the U.S. Now that the grace period is expiring, we can expect to see more enforcement efforts on an ongoing basis. Typically a liquidated damages claim will be issued within six months of the violation, although statute of limitations is up to six years after the violation. It is important for importers to monitor their compliance with the ISF regulations and implement better procedures if there is a history of ISF violations.

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