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By Email

British Columbia Utilities Commission
Suite 410 – 900 Howe Street
Vancouver, BC V6Z 2N3

Attention: Ms. Marija Tresoglavic, Acting Commission Secretary

Dear Madam:

Re: Consultation Process for Order in Council No. 474/20
Fuel Price Transparency Regulation

I am writing further to your letter to the industry with respect to the draft Reporting Guidelines that were issued on September 11, 2020 in relation to the *Fuel Price Transparency Regulation*,¹ which will come into effect on November 1, 2020, as set out in Order in Council No. 474/20 (the “Order”).

More specifically, I am writing to confirm that the importer of reportable fuel is the person who imports the fuel for purposes of the *Customs Act*.²

Discussion

In our experience, gasoline and diesel fuel that are imported by ship are typically sold to Canadian purchasers pursuant to international contracts where the standard term provides that title and risk transfers from the seller to the buyer as the product is discharged from the vessel under Incoterms “DES” or Product Delivered Ex-Ship. Under these terms, the Canadian buyer, who is a wholesale purchaser of reportable fuel, is legally required to report the importation of the fuel to the Canada Border Services Agency (“CBSA”) and pay all import duties and taxes owed on the fuel.

Under DES terms, the seller, who is typically not resident in Canada, bears the cost and risk of ownership of the fuel up to the arrival at the named port while the buyer bears the costs of unloading the fuel. As a general rule, the seller will charge a separate amount for freight to bring the fuel to the port; the freight charge is typically quoted based on the number of barrels purchased. The cost incurred

¹ BC Reg 52/2020.

² RSC 1985, c 1 (2nd Supp).

by the non-resident seller to transport the fuel to British Columbia is not known to the purchaser nor is it readily available to the seller because of the complexities involved.

Section 5 of the Order requires importers of reportable fuel to submit reports setting out required fuel data. Subsection 5(1) of the Order defines an “importer of reportable fuel”, in part, as “a person who imports reportable fuel into British Columbia from another country or Canadian province”.

The term “import” is not defined in the *Fuel Price Transparency Act* or in the Order. Unfortunately, the term has a number of different meanings depending on the context in which it is used. For example, for the purpose of the payment of duties, the courts have ruled that the goods are imported when the importer becomes liable for the duty, not when they came within Canada’s 12-mile limit, whereas in the context of importing illegal drugs, goods are imported when they are simply brought into the country.

In light of these conflicting interpretations, we would like to clarify who is responsible, under the Order, for reporting the import transaction described above.

In our experience, the industry considers the importer to be the person who reports or is required to report the importation of the fuel to the customs authorities (i.e. the CBSA) under the *Customs Act*. Accordingly, the transaction described above should be reported pursuant to section 5 of the Order by the Canadian buyer. The Canadian importer/buyer has all of the information required to comply with the Order.

Adopting this interpretation will alleviate confusion and confirm that the reporting obligations are intended to apply to members in the fuel industry who are in the Province rather than including sellers who may be located anywhere in the world. Adopting this interpretation would also clarify the reporting requirements under section 6 of the Order to capture the resale of the imported fuel.

Ideally, the definition of “importer of reportable fuel” in subsection 5(1) of the Order would be clarified to mean “a person who is responsible for reporting the importation of reportable fuel into British Columbia under the *Customs Act* or who imports reportable fuel from a Canadian province, for the purposes of that reportable fuel being supplied, directly or indirectly, to (a) retail dealers, or (b) suppliers of reportable fuel.”

Please let us know if you would like any further information on this.

Yours truly,



for: Rosemary Anderson, CPA, CA

RJA:tb