



The Canada Border Services Agency Issues D-Memo of Imported Printed Flags and Banners

By Cyndee Todgham Cherniak on September 2nd, 2015

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On August 27, 2015, the Canada Border Services Agency issued D-Memorandum D-10-14-66 “Tariff Classification of Certain Printed Flags and Banners”. This D-memo does not apply to flags belonging to countries. It applied in respect of printed flags and banners such as corporate signage for a conference or event.

This D-Memo follows the decision of the Canadian International Trade Tribunal (CITT) in Appeal AP-2009-056 (*Future Product Sales Inc. v. President of Canada Border Services Agency*). The CITT sided with the appellant that the correct tariff classification of single-piece, textile flags and banners printed with National Hockey League (NHL) team logos was H.S. item number 49.11.99.90.

As a result of the CITT decision, the CBSA has developed an administrative policy (in D-Memo D-10-14-66) that provides examples of the type of printing that would result in a flag or banner being classified in heading 49.11 as “Other printed matter”:

- (a) Registered trademarks;
- (b) Logos;
- (c) Advertisements;
- (d) Corporate and organizational flags and banners, such as those used by the Red Cross;
- (e) National, military, head-of-state and regional flags would be included if they meet official proportion, colour and design specifications, etc;
- (f) School flags and banners with official designs, such as crests; and
- (g) Traffic flags and banners with text or symbols that are used to convey important information, such as the “men-at-work” symbol.

If these sorts of designs are on the printed flag or banner in such a manner that the design conferred the essential nature of the good, H.S. item number 49.11 would apply. For example, a corporate logo printed on a banner to be used at a conference or event to show the identities of sponsors would be classified pursuant to H.S. item number 49.11.

However, the CBSA has also stated that H.S. item number 69.07 would apply to any textile flag or banner with printed decorative pictures or designs if the pictures or designs did not represent the essential nature of the good. Examples provided by the CBSA of flags and banner that would be considered included in heading 63. "Other made up articles" are:

- (a) artisanal designs (e.g., flower, geometric or other decoration);
- (b) seasonal decorations (e.g., Christmas); and
- (c) repetitive designs (e.g., stripes, colours).

It is unclear where the CBSA would classify rainbow flags used by the LGBT community.

To add one more layer of complexity to the policy (being another H.S. item number), flags or bunting of heading 63.07 with festive decorations are excluded from heading 95.05 ("Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes") pursuant to Legal Note 1(f) to Chapter 95 and exclusionary note (e) in the Explanatory Note to heading 95.05. This means that the CBSA may not consider a festive flag (such as the LGBT rainbow flags to be festive if they should be classified under H.S. item 63.07.

Tags: advertisements, banner, Canada Border Services Agency, Canadian International Trade Tribunal Trade Tribunal, CBSA, CITT, corporate flags, crests, flag, LGBT, logo, logos, rainbow flag, registered trademarks, school flag, tariff classification, traffic flags

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