NON-RESIDENT IMPORTER (NRI):
"Paint by Numbers" Checklist

1. PLANNING / MAP THE SUPPLY CHAIN

a. Inventory

i. Consider options respecting where to source the supply of inventory taking into account such factors as: (a) the price and quality of the goods; (b) any preferential (duty-free) tariff treatment that might be claimed on the importation of the goods into Canada; and (c) legislation that may prohibit, restrict or control the import of the goods into Canada. Pay particular attention to recent amendments to the Customs Tariff prohibiting the importation into Canada of any goods that are mined, manufactured or produced wholly or in part by forced labour.

ii. Consider the use of a third party logistics ("3PL") company for e-commerce / wholesale fulfillment, value added activities (e.g. packaging, assembling, labelling) and distribution.

iii. Consider whether to use: (a) a warehouse for storage of the import goods; or (b) a customs sufferance warehouse for short-term in-bond storage; or (c) a customs bonded warehouse for long-term in-bond storage and permitted staging activities.

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b. Pre-import sales / business structure

i. Create a "permanent establishment" within the meaning of the *Canadian Valuation For Duty Regulations* in order to value goods on the basis of their supply cost (not the higher customer cost). A permanent establishment is a fixed place of business in Canada, where the business is carried on through the activities of one or more employees.

ii. In consultation with your tax advisors, determine whether to create:

A. a Canadian corporation with non-resident directors for tax and limitation of liability purposes (e.g.: under the corporate statutes of British Columbia, Alberta, Ontario, Québec or any of the territories); or

B. a British Columbia, Alberta or Nova Scotia unlimited liability company, (which can be treated as a flow-through entity for U.S. tax purposes); or

C. a branch office of a foreign company and whether or not any such company/branch should be extra-provincially registered in provinces or territories where it will carry on business.

2. OPERATIONS / ACCOUNTING FOR DUTY AND TAXES

a. Valuation

Goods Imported by an NRI on Speculation / Inventory

i. Set up operations to fit within the plan to minimize duty and import taxes, including ensuring that:

A. business operations support the position that the NRI imports goods as unsold inventory on speculation of sale; and

B. contractual, forecasting, and other documentation supports the position that the NRI imports goods as unsold inventory on speculation of sale.

Goods Imported By A NRI Business With A Permanent Establishment

i. Ensure that business operations fit within the plan to minimize duty and import taxes, including that:

- **A.** the NRI has a fixed place of business in Canada over which it exercises exclusive control;
- **B.** the NRI holds out its fixed place of business to the public via signage, business cards, and / or other means;
- **C.** the fixed place of business has one or more employees or dependent contractors who carry out some aspect of the management of the business (while leaving overall management and control in the hands of non-resident directors) and who dedicate time, attention and labour to the management of the commercial entity in Canada; and
- **D.** the business is carried on in a manner consistent with the CBSA's policy requirements (e.g.: incurs liabilities to other persons in Canada, carries out activities with the expectation of making a profit in Canada, maintains separate books and records in relation to the Canadian operations, and is the purchaser of the imported goods, etc.).

Appraising the Value for Duty: Purchaser in Canada

i. An NRI that is considered to meet the definition of a "purchaser in Canada" on the grounds that it imports unsold inventory or has a permanent establishment, should be entitled to value imported goods on the basis of their lower supply cost.

b. Classification	**i.** Classify the goods and rate the duty levied on the goods under that classification. Canadian customs classification provisions are set out in a list of provisions attached as a schedule to the *Customs Tariff*. **ii.** Obtain an advance ruling in cases where the classification of the goods is in doubt.
c. Origin / Preferential Tariff Treatment	**i.** Determine the country of origin of the goods. **ii.** Determine whether the goods are entitled to any preferential tariff treatment under a Free Trade Agreement (e.g. USMCA/CUSMA or CETA) or Preferential Tariff (e.g. General Preferential Tariff or Least Developed Countries Tariff). **iii.** Obtain an advance ruling in cases where the origin of the goods in in doubt.
d. Anti-Dumping, Countervailing, Provisional	**i.** Determine whether the goods are subject to any provisional duty, anti-dumping or countervailing duty orders issued by the CBSA or the Canadian International Trade Tribunal. **ii.** If applicable, take steps to mitigate against any provisional, anti-dumping, or countervailing duty orders by obtaining "normal values" or a "dumping margin."
e. Supply Management	**i.** Consider how to optimize the logistics aspects of the business (e.g. centralized warehousing, use of bonded warehouses, the deduction of certain freight costs from value for duty, etc.) **ii.** Consider industry standards and benchmarks for best practices in supply chain management.

3. REGISTRATIONS

a. CRA Business Number
b. GST/HST Account
c. Payroll Account
d. Import/Export Account
e. CBSA Client Portal User Account – with delegation of authority to Customs broker, key employees, etc.

4. SECURITY

a. Importer Surety Bond in support of release prior to payment privileges (this will become a mandatory requirement in Spring 2022)
b. Non-resident GST/HST registrants are generally required to post security with CRA

5. ACCOUNT FOR COMMODITY TAX

a. **Federal GST/HST** - Applies to the sale of most goods, but there are some exceptions. Reconfigure checkout / invoicing procedures so tax is charged at the appropriate rate (varies between 5% and 15%).
b. **Provincial PST, RST, and QST** - British Columbia, Saskatchewan, Manitoba, and Québec have their own provincial sales tax in addition to the federal GST. Determine when provincial PST, RST, and/or QST applies to a sale and reconfigure checkout / invoicing procedures so tax is charged at the appropriate rate (varies between 6% and 9.975%).
c. **Registration and Credits/Refunds** - Record amounts of recoverable tax in accounting records and retain supporting documentation.
d. **Two Tax Points:**
   i. on importation
   ii. domestic sales
e. **Duty to charge, collect and remit tax** - Consider whether filing obligations can be completed internally or whether a Canadian accounting firm needs to be retained. Add filing deadlines and remittance due dates (including installments if required) to accounting system.

6. REPORT INCOME TAX

a. Tax Efficient Income Sweeps to the U.S. (if and when the business makes a profit and the parent corporation of an NRI subsidiary company wants to “sweep in” the profit, say into the U.S. parent).
b. Keeping the Profit in Canada (if and when the decision is made to keep any profit in the NRI subsidiary company as retained earnings in order to grow the Canadian business).

7. CREATE CONTRACTS

a. **General** - Depending on the supply chain structure selected in Steps 1.a and 1.b, above, you may require a warehousing agreement or a commercial lease agreement.
b. **Consumer Terms and Conditions** – Note that each Canadian province has consumer protection legislation setting out requirements for certain pre-sale disclosures and consumer contract requirements, particularly in connection with e-commerce and distance sales. In certain cases, this legislation prevents unilateral price changes and other material changes to contract terms without notice and/or express consent.
c. **Sales Agent/Distribution Agreements** - Note that these types of contracts will require careful review in light of the franchise disclosure laws in effect in several Canadian provinces, and also to ensure that all agents and distributors retain their independent contractor status
d. **Logistics Services Agreements**

8. RETAIN SERVICE PROVIDERS

- **a.** Legal counsel with international trade and customs expertise
- **b.** Accountants
- **c.** Customs Brokers including arrangements for customs-related recordkeeping
- **d.** Registered and Records Office (Legal)
- **e.** Banking

9. CONSIDER CONSUMER PRODUCT SAFETY ISSUES

Product Recalls and Incident Reporting – Depending on the product and whether or not it is regulated in Canada, there may be product-specific recall obligations and incident reporting requirements that apply to importers. In other instances, the recall requirements under the *Consumer Product Safety Act* (Canada) may apply in the event that there are reasonable grounds to believe that a consumer product is a danger to human health or safety. This legislation also imposes incident reporting obligations with respect to a consumer product in the event of an occurrence in Canada or elsewhere, that resulted in or may reasonably be expected to result in, an individual's death or serious adverse effects to their health, if there is a defect or characteristics in the product that may result in any of the foregoing and if there is incorrect, insufficient information or instructions on a label.

10. CONSIDER FOOD SAFETY ISSUES

- **a.** **Licensing** – Organizations that import food into Canada must obtain a Safe Food for Canadians (SFC) licence from the Canadian Food Inspection Agency (CFIA). As a non-resident, your fixed place of business must be in a country that the CFIA has recognized as having a food safety system that provides at least the same protection as the Safe Food for Canadians Act (SFCA). The food must be sent directly from the recognized country to Canada. Currently, NRIs in countries other than the United States are only permitted to import meat and shellfish into Canada under specified conditions. Imports of certain foods from the United States are also subject to certain limitations.
- **b.** **Preventative Control Plans** – Importers, including NRIs, are responsible for ensuring that the food they import is safe. The SFCA's regulations require importers to have a preventative control plan in place, which outlines how the importer ensures that the food is safe, fit for consumption in Canada, and conforms to the SFCA requirements. The preventative control plan should also outline recall and complaints procedures.
- **c.** **Traceability Records** – Importers are required to keep traceability records for all foods they import into Canada. Records should trace the food products one-step back to the immediate supplier and one-step forward to the immediate customer.

11. CONSIDER PRE-MARKET AUTHORIZATIONS AND NOTIFICATIONS, LABELLING / ADVERTISING, MARKETING AND LANGUAGE

- **a.** **Pre-Market Authorizations and Notifications** – Certain products are highly regulated in Canada (e.g. pharmaceuticals, natural health products, cosmetics, medical devices, cannabis and hemp) and may have pre-market authorizations and product registrations that must be obtained from the applicable regulator prior to importing the product into Canada. Certain products may require only a notification to the regulator prior to importation. Importers of regulated products are often required to obtain a licence from the applicable regulator to carry on certain regulated activities such as importation, distribution, packaging and labelling.
- **b.** **Labelling/Advertising** – Various pieces of legislation set out specific labelling and advertising requirements for regulated products in Canada. Importers should verify prior to importation whether there are prescribed requirements. For products that are not as highly regulated, the *Consumer Packaging and Labelling Act* may apply.
- **c.** **Insurance** - Confirm that product liability coverage extends to sales into Canada

d. **Marking** - Certain goods when imported into Canada are required to be marked (directly on the product or sometimes on the container) to indicate clearly the country in which the goods were made. The foreign exporter or producer usually applies the country of origin marking. However, the Canadian importers are responsible for ensuring that imported goods comply with marking requirements at the time that they import the goods. Importers should first determine whether or not their products are included on the lists of imported goods which are required to be marked under the applicable *Determination of Country of Origin for the Purposes of Marking Goods Regulations* (CUSMA and non-CUSMA countries), whether any exceptions apply and, if the product must be marked, the regulations from the country of origin will apply.

e. **Language** – Canadian legislation, depending on the product, may require certain portions of product labels to be stated in both English and French. If the product is being sold in the province of Quebec, the entire product label must be provided in French as well.

12. CONSIDER THE USE OF U.S. BASED FOREIGN TRADE ZONES (FTZS)

FTZs in certain instances can be used to reduce the appraised amount of the customs value ("value for duty") of the goods imported into Canada. Certain conditions need to be met in order to store goods in U.S. FTZs in order to minimize the value for duty for customs purposes.

13. PROTECTION OF IP (TRADEMARKS, TRADE NAMES, KNOW-HOW, ETC.)

a. Under Canadian IP laws:

   i. Importation of a product or service into Canada could potentially infringe Canadian intellectual property rights (if the importer does not own the Canadian intellectual property rights in the products/services being imported into Canada); and

   ii. license agreements are generally required to be in writing.

b. Therefore, an importer may want to take steps to recognize their IP risks, ensure there are contractual licenses in place, and seek IP rights that could help them protect their importation activities. The suggestions for additions to the list set out below reflect those considerations:

   i. **Freedom to Operate Searches** (to determine if importation of a product or service may infringe any Canadian patent, industrial design, trademark, copyright or other intellectual property rights) – if the importer does not own Canadian intellectual property rights for the products/services to be imported into Canada;

   ii. **Intellectual Property Licenses** (for Canadian trademarks, patents, industrial designs or other intellectual property rights relating to the products/services to be imported into Canada) – the licenses should ensure that the importer has rights to any IP that it does not own but needs for the importation of goods/services into Canada; and grant license rights to distributors acting on the importer's behalf in Canada; and

   iii. **Filing IP Applications** to protect imported products/services (if no such rights already exist, and if such filings are permitted in accordance with Canadian IP laws).