

CANADA
PROVINCE OF QUÉBEC
District of Montréal

SUPERIOR COURT

Class Action

No.: 500-06-000895-173

EMANUEL FARIAS,

Plaintiff

vs.

**FEDERAL EXPRESS CANADA
CORPORATION, dba FEDEX EXPRESS**

Defendant

NOTICE OF COMMUNICATION OF AN EXPERT REPORT
(Art. 239 al. 2, 293 C.C.P. and art. 17 of the *Regulation of the Superior Court of Quebec in civil matters*)

TO: Me Sandra Mastrogiuseppe
Me Jérémie Longpré
Kugler, Kandestin s.e.n.c.r.l., L.L.P.
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Lawyers for Plaintiff

TAKE NOTICE that at the hearing of the present case, Defendant intends to have **BARB MILLER**, recognized and heard as an expert in customs and compliance.

A copy of her report dated August 16, 2020 is attached hereto as well as her curriculum vitae and her Declaration regarding the carrying out of the mission of an expert.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, August 16, 2021

Borden Ladner Gervais S.E.N.C.R.L., S.R.L.

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EMANUEL FARIAS,

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Defendant

**EXPERT REPORT OF BARB MILLER
PRESIDENT, OTIMO CUSTOMS INC.**

I. MANDATE

1. I have been retained by the law firm BLG LLP, counsel to the Defendant Federal Express Corporation Canada (“FedEx”) as an expert in the present matter.
2. I was asked to do the following:
 - a. Review the processes and actions taken by FedEx, as a customs broker, as it relates to the preparation and implementation of CETA with their systems prior to implementation and Canada Border Services Agency (“CBSA”) initiatives rolled out to the trade community;
 - b. Review the compliance measures in place for importations and the CETA trade agreement;
 - c. Review the corrective measures taken by FedEx as it relates to CETA for
 - (i) Personal/Casual goods
 - (ii) Commercial goods
3. I have been provided with the pleadings and the exhibits for the Class action lawsuit of case number 500-06-000895-173 by the defendant FedEx. I have also been provided with customs import data and trade documents for Québec importations cleared by FedEx for shipments from the European Union, between September 21, 2017 and December 20, 2018.

4. In the review of the trade data I saw the following:
 1. Personal/Casual Goods – Courier Low Value Shipment (C-LVS)
 2. Personal/Casual Goods – High Value Shipments (HVS) courier shipments
 3. Commercial Shipments – Courier Low Value Shipment (C-LVS)
 4. Commercial Shipments – High Value Shipments (HVS) Courier shipments
5. From the above list we would further break down these shipments into two buckets as detailed below. The buckets would be:

Bucket 1 – Personal/Casual Goods which would include #1 and #2 from the above list.

Bucket 2 – Commercial Goods which would include #3 and #4 from the above list.
6. It is important to note the distinction of the above buckets as CBSA functionalities, release functions, operational process, import requirements, CETA eligibility and post entry compliance processes are significantly different between the two different modes. The regulations are split out to address the separate buckets, as listed above, with importers being expected to comply with the import regulations.¹
7. Regulated Products are not only the jurisdiction of CBSA. If a product is regulated by another government department within Canada, there is reporting that is required by a customs broker, FedEx in this case, prior to entry or release into Canada. Other Government Departments (OGD) have regulations to ensure the safety of Canada. These departments include Transport Canada, Health Canada, Canadian Food Inspection Agency and Canadian Nuclear Safety Commission are only of the few departments.
8. Of the trade data I was provided electronic B3 reporting import data², the same data provided to opposing counsel, for the following:
 - a. Casual Goods – total of 519 shipments

¹ Relevant import regulations include section 32 of the *Customs Act*. Further reference can be made to CBSA Memorandum D-17-1-3 entitled “Casual Importations”, CBSA Memorandum D17-1-4 entitled “Release for Commercial Goods”, CBSA Memorandum D17-4-0 entitled “Courier Low Value Shipment Program”. Regulations regarding refunds of duties include Sections 59 (1)(a), 60(1), 60.1(1), 74 and 76 of the *Customs Act*. Further reference can be made to CBSA Memorandum D6-2-6 entitled “Refund of Duties and Taxes on Non-commercial Importations” and to CBSA Memorandum D6-2-3 entitled “Refund of Duties”, for Commercial importations.

² When confirming data to CBSA a customs broker will produce a B3 coding form that is sent electronically to CBSA. As B3 data is sent electronically, a customs broker has the ability to extract the data into a spreadsheet and review electronically for commercial shipments. An importer is provided a B3 form in hard copy for commercial shipments, and a receipt for casual shipments that shows confirmation of what has been transmitted. This is a requirement under the Customs Act.

- (i) 74 Casual HVS
 - (ii) 445 CLVS
 - b. Commercial goods – total of 639 shipment
 - (i) 334 CLVS
 - (ii) 305 HVS
- 9. I understand those shipments to be the shipments that have been identified by FedEx, in the Quebec region only, as having had the omission of claiming preferential CETA duty rates if time of import.
- 10. As per CBSA regulations, to summarize, a CLVS – Courier Low Value Shipments are:
 - a. Low risk
 - b. Under \$2,500 CAD at the time of CETA implementation (currently \$3,300 CAD)
 - c. Option to use “basket tariffs” as set out in the nomenclature
 - d. Non-regulated products
 - e. Timeline to confirm entries to CBSA averages 24-54 days
- 11. As per CBSA regulations, to summarize, HVS – High Value Shipments are:
 - a. • All shipments over \$2,500 CAD
 - b. • All regulated shipments regardless of value
 - c. • Mandatory tariff classification required
 - d. • Timeline to confirm entries to CBSA is 5 days maximum
- 12. I was subsequently provided the documentation back up for the casual goods to align with CBSA submitted import data to perform random testing on a total of 50 casual shipments. I further requested and obtained the documentation back up and B3 coding form of the random files to test commercial shipments in the same manner. I reviewed a total of 16 commercial shipments that represented shipments that were refunded, not refunded, claims were denied and claims not pursued.

II. INTRODUCTION

- 13. The object of my review surrounded import trade data as it related to a new trade agreement called the Canada – European Union Comprehensive Economic &

Trade Agreement (CETA). After reviewing the data provided and doing random sampling between all entry types it is my opinion that the actions taken by FedEx surrounding a very time intensive process of implementation, deployment and post entry compliance of the CETA agreement was extremely detailed and conformed to standard business practices within the customs brokerage industry. It should not be minimized the magnitude of the CETA trade agreement and the timing of its implementation. CETA was the largest trade agreement of its kind in the history of Canada, which included more countries than any other trade agreement to date. Additionally, during this period CBSA was in the process of sunsetting their current Legacy operating system and implementing a new operating system called Single Window Initiative (SWI). These are important factors to understand when understanding the lengths that FedEx took to ensure a very proactive approach was made to program their systems to the best of their ability from information provided from the scope of the CBSA Electronic Commerce Client Requirements Document (ECCRD), CETA Trade Agreement and the time frame allowed.

III. CETA ELIGIBILITY

14. The CETA trade agreement is the largest and most complex trade agreement that Canada has implemented to date as it included 27 countries and not all countries has signed at the time of implementation. A common misunderstanding of any trade agreement is that all product shipped from a country with a trade agreement is automatically duty free when imported to Canada. This is false. A trade agreement is about supporting manufacturing between two countries with the conditions of obtaining a preferential rate of duty on imports be based on a degree of manufacturing, direct shipping and documentation confirming origin requirements have been met. In short, not all goods qualify for preferential rate of duty which I was able to confirm with my review. The rules for qualification between Bucket #1 and Bucket #2 are substantially different as Bucket #2 must have a valid certification statement or Certificate of Origin accompanying the goods. For Bucket #1 there are conditions that will allow preferential duty rates to apply. Rules of Origin criteria, for Casual Goods, can be found under Memorandum D11-4-13 issued by the CBSA and entitled "Rules of Origin for Casual Goods Under Free Trade Agreements" and, for Commercial Goods, under Memorandum issued by the CBSA and entitled "Canada-European Union Comprehensive Economic and Trade Agreement (CETA) Rules of Origin". In my review I saw that:
 - a. Bucket #1 Personal/Casual Goods
 - (i) Ship dates versus customs clearance dates surrounding "go live" impacted duty application of some shipments;
 - (ii) Many goods did not qualify for "CLVS" which required HVS release by FedEx to be taken;

- (iii) Regulated goods that did not have supporting documentation to qualify for importation as casual and/or possibly commercial;
 - (iv) Commercial goods being transmitted as “personal”.
- b. Bucket #2 Commercial Goods
- (i) Ship dates versus customs clearance dates surrounding “go live” impacted duty application of some shipments;
 - (ii) Some goods did not meet CETA qualification criteria as per CBSA Memorandum D11-5-15.
 - (iii) FedEx was not able to apply preferential tariff at time of import on some goods due to missing verification statements or documents to claim necessary CETA preferential duty rates for those specific shipments.
 - (iv) For some shipments, FedEx had followed up with importers, post importation, to obtain missing documents and/or origin statements to request refunds for CETA preferential rate of duty to which no documents were obtained or the goods did not qualify.
 - (v) Some importers opted “not” to obtain duty refunds for specific shipments
 - (vi) For some shipments, origin confirmed as not European Union (“EU”) or not one of the EU signatories at the time of importation, thus meaning it did meet CETA qualification criteria.

IV. ELECTRONIC COMMERCE CLIENT REQUIREMENTS DOCUMENT (ECCRD)

15. A customs broker will transact entries electronically through application program interfaces (APIs) that are provided by CBSA to the trade chain industry through a means of an ECCRD. An ECCRD will provide the information for business and system requirements for electronic transactions. These must be tested in a test environment prior to “go live” in what is called the production environment. When new programs or initiatives are implemented by CBSA, there is ECCRD data that is communicated in advance for programming, however, CBSA will continue testing internally until their “go live” date which means:
- a. Many changes prior and post implementation to the trade community’s systems; and
 - b. All programming completed in test environment with no live testing for the trade community until “go live”.

16. FedEx is an approved courier in the CBSA Courier Low Value Shipment (CLVS) program as well as approved for personal/casual goods transmission to CBSA. As a result FedEx would be required to update systems for separate programs but also address the CBSA new SWI system, mentioned above, that was also coming into force/going for September 2017. This meant that FedEx, along with the whole trade community handling not one but multiple ECCRD implementations at the exact same time that happened to align with the largest trade agreement in history affecting 28 countries.
17. The industry was provided less than 90 days ECCRD data for system configurations. During this time, FedEx was limited to configuring their system and testing only in a test environment. CBSA does not currently allow customs brokers to send live data to test prior to “go live”. CBSA will communicate with the customs industry through what is called a Customs Notice. This Customs Notice serves as legal notification to the trade industry about changes in legislation coming into force which was done on CN17-30. When a change also impacts the nomenclature for tariff classification and treatments there will be a Tariff Notice which provides the most current and update tariff information. On June 15, 2017 a tariff notice for T2017-2A, as shown at Appendix “A”, stipulates the tariff changes were coming for the “possible implementation” of CETA but also that only “eligible countries” will be allowed. It further stipulates when files will be available for download for updating your system, which was July 1, 2017.
18. During the period of July 2017 to implementation in September 2017, I can attest, from my review, that every effort was taken by FedEx to ensure that staff were trained in the test environment of the FedEx system and that it was impossible for FedEx to do more until the “go live” date with CBSA. After the official CBSA “go live” date for the CETA program came into force in September 2017, FedEx was able to move from the test environment to a production environment which is the only time confirmation of testing could be done. However, as every customs broker in Canada went live at the same time, any glitches in the CBSA ECCRD would be identified which resulted in multiple changes to the ECCRD being required by the trade community. At this time is when live shipments were being processed and documentation received would have training required to align with clarifications to the legal text within the CETA agreement.
19. Text of the CETA trade agreement was not sent to the trade community until September 2017, as not all countries had signed at time of implementation and context of the trade agreement was not clarified until post October 2017. It was only as each country signed could one apply the CETA preferential tariff. Additionally, glitches in the Legacy and SWI system were not addressed by the CBSA Technical Commercial Commerce Unit (TCCU) division until December 2017 that required ECCRD updates to continue into 2018 based on new signatories to the agreement.

20. These changes impacted not only FedEx but every customs broker in Canada until late 2018 which is to be expected with implementing a new CBSA program initiatives and ensuring compliance electronically with CBSA.
21. To clarify, the electronic set up is directed by CBSA, not FedEx. To provide further context, the SWI is fully implemented currently but the trade community is still receiving multiple updates to the ECCRD for updates and glitches being worked out on the CBSA. Additionally, as shown in Customs Notice 19-12, at Appendix "B", the CLVS program, as of 2019, is currently not taking any further applications due to the changes coming. This further impacts electronic configurations.
22. I believe that my review of test data shows a reasonable understanding of documentation and certification errors that happen on both the casual and commercial importation side. Applying a preferential tariff treatment is not a right but a privilege based on providing accurate declarations and documentation or qualifying goods. It is clear that many shipments did not have this and as a result preferential tariff could not be claimed until confirmation was provided.
23. In my opinion FedEx went above and beyond to get their systems ready for the CETA implementation but was limited to validation until the "go live" date, context of agreement and signatories of the CETA trade agreement were confirmed. Tariff treatments are linked to a country which requires FedEx to update their system for each country. As each country had not signed and there were 27 countries, the system had to be continually updated well after the "go live" to account for changes and updates for CETA. As changes occurred, FedEx had to update their system, but only as their legal date.
24. In my opinion, not only FedEx but all customs brokers in Canada, did what they could to train their staff based on not have anything more than a "CETA declaration". Not one customs broker was provided documentation of any shipment to review or provide to staff for training. Every customs broker had to wait until they were in receipt of a live shipment to ensure documentation confirmed to the Customs Act regulations. Additionally, given the geographical region of the "EU", the educational training requirements of each person is massive to have them understand "whom is part of the EU". The CETA trade agreement did not represent one country, it was a region of 27 countries, and all customs brokers struggled to educate their trade professionals whom were part of "EU" and if they signed the CETA agreement at the time of the shipment importation. I believe that the sample documentation shows a good summary of what FedEx was dealing with.

V. POST ENTRY COMPLIANCE PROCEDURES

25. From my review, FedEx has demonstrated that they followed industry standards within the customs brokerage industry to minimize exposure to risk and ensure

compliance within the Customs Act. Though my own investigation/inquiry of the data provided and internal practices of FedEx, I can confirm that they demonstrated reasonable care to ensure program compliance to CETA application for their client's import entries. There were minimal entries where CETA was simply omitted at time of importation but multiple shipments where trade data from the importer was incorrect, incomplete or not eligible to be processed in the CLVS stream with CBSA. There were also multiple entries on CLVS that were regulated products and not able to be cleared without approval and further documentation. FedEx was correct to not apply CETA until such time their staff could confirm the data and supporting documentation to support a claim.

26. The CETA trade agreement allows corrections to errors or adjustments to duty rates up to four (4) years after release. As claiming preferential tariff at time of release is not a mandatory requirement, it is an industry practice to claim duty back for preferential tariff on all trade agreements once documentation is confirmed, received, or reviewed for compliance. CBSA has a Beyond the Border Action Plan that was aimed to enhance security and travel/trade with a strong emphasis on ensuring that CBSA is adequately managing customs duties. The Auditor General audit report from November 9, 2017 indicated that corrective measures were required to be taken by CBSA to ensure that duties were collected correctly and that compliance measures were enforced to the trade community. The report indicated that CBSA allowed goods to enter Canada without proper duties being paid which results in revenue loss to Canada. An Action Plan was created for CBSA to carry out to the trade community. The importance of this report is that it was cited at least 20% of entries are adjusted post entry which is well below FedEx's estimated 8% of errors in the application of preferential tariff in the context of the CETA trade agreement in Canada for the period of September 21, 2017 to December 20, 2018.
27. In addition, from my review I found that numerous import shipments had submitted incorrect or incomplete information at time of import. FedEx had identified these shipments as part of that 8% but these would be errors of the importer, not FedEx. As per section 32.2 of the *Customs Act* requires an importer that has "reason to believe" that declaration of origin data that was incorrect at time of importation to be fixed within 90 days to avoid a potential Administrative Monetary Penalty System (AMPS). In my review there were multiple imports shipments where declarations made was false and that should have been corrected by the importer.
28. It is important to establish that an importer is defined as a person or company, in Canada, whom causes the goods to be imported into Canada. It is the responsibility of the importer to ensure accuracy and compliance of all trade documents. Regardless of a shipment being personal/causal or commercial the final validation is the responsibility of the importer.
29. A product that is imported is defined to CBSA by a tariff classification. A tariff classification is a 10 digit number that tells CBSA what a product is and indicates

if the product is regulated by another government department. This tariff drives all statistical and trade data within our government. Linked to that tariff is a country code that indicates what is the country of origin/manufacturing is but also what country the product was exported from. European Union automatically gets the Most Favoured Nations (MFN) rate of duty assessed under tariff treatment 2. If in fact the product imported is classified correctly and incurs a duty rate higher than zero, it is only then you would look at eligibility for preferential tariff application under the new CETA trade agreement. If a product is duty free you would not need to apply the CETA tariff treatment of 31.

30. I also reiterate that all goods must qualify for preferential tariff based on documentation and it should not be presumed to be applied simply based on origin criteria. The goods are declared correctly by using tariff treatment 2 and it is not an error to not apply a preferential tariff.
31. Customs brokers are limited to the documentation provided to them at time of importation. A customs broker is not party to the transaction between a vendor and importer, which is why an importer must ensure that the products they import are eligible to import, meet CBSA regulations and have valid documentation to support preferential duty rates. There is no requirement of a customs broker or an importer to claim preferential tariff on imports to Canada. In fact, many importers choose not to claim preferential tariff at time of importation until information can be validated. The current regulations do allow for all importers/customs brokers to take up to four (4) years to make corrections to transactions submitted to CBSA that need to be updated to claim preferential tariff treatment for the CETA trade agreement.
32. As this new initiative came into force it was the only time the trade community, CBSA and customs brokers would be able to assess and validate processes. The trade community worked together with each other, CBSA and the national customs brokers organization CSCB to implement and process imports and corrective measures that needed to be made to fully implement.

VI. MR. FARIAS' SHIPMENT

33. I have reviewed the documentation for the shipment in question by that of Mr. Farias³ and find that there was not sufficient information from the importer at time of importation for Mr. Farias to make the CETA claim. A CETA statement is not confirmation of country of origin as per the *Customs Act*. The CETA statement is used for preferential tariff claims, but the country of origin must still be confirmed. It would appear to be presumed by the importer that the country of origin was Sweden, but it was in fact Italy. This is not listed anywhere in the documentation. Europe is not a country, it is a region and a specific country must be listed as per Section 35.1 of the *Customs Act*. In review of Mr. Farias vendor's

³ Exhibits P-6, P-7, P-8 and Exhibit D-7

website, it does indicate the country of origin of the product, which would suggest that the country was known, just missing from the documentation submitted by the importer for the CETA claim. The tariff applied by FedEx was a basket tariff for personal goods under Chapter 98 of the nomenclature, which is allowed.

34. For personal/casual goods, the CBSA does not require customs brokers to use normal tariff classifications for low risk, low value and non regulated goods. For these types of personal/casual goods the Canadian nomenclature provides for what is called basket tariff classifications that put products into buckets for average rates of duties based on where they would originally appear into the nomenclature. There are three basket tariffs in total that would put a product into a rate of duty that is free, or 8% or 20%. As Mr. Farias product is textile it would fall into basket #3 and attract a 20% rate of duty, regardless of the country of origin, unless it clearly allows a CETA claim. The document provided does not actually list the country of origin but does include the CETA statement, however, specifically indicating the country of origin is a requirement for importation. The country of origin declared was Sweden but as supported later, the origin is actually Italy. If in fact this was on the documentation at time of importation, most likely CETA would have been able to be applied. It should also be noted that at the time of implementation Sweden had not ratified the CETA agreement as that only happened on September 10, 2018. Additionally textiles have their own separate section of the CETA trade agreement and come with their own import requirements and proof of origin requirements.
35. As a result, while Mr. Farias' shipment qualified for a CETA claim, the documentation submitted by the importer was incomplete as it did not clearly identify the appropriate country of origin, which the result that a CETA claim could be dismissed for that reason.

VII. CBSA REFUNDS

36. FedEx took a detailed review of their import trade data from all countries under the CETA trade agreement within 90 days of implementation of CETA. Imports were split into commercial and personal/casual to review compliance to the new regulations. FedEx treated this review as an overall review of the new CETA program and did not treat errors in documentation any different to potential system glitches. The review completed by FedEx was not completed to just find glitches in their system but also opportunities for importers to utilize the CETA trade agreement.
37. FedEx assigned staff to review the different import streams in further detail to identify any or all issues so it could be not only fixed but also communicated to the importers and CBSA for correction. In order to identify potential issues in data it meant that FedEx staff had to resort to paper to validate data. This voluntary process by FedEx was above and beyond what I have seen within the trade community.

38. The fact that FedEx was able to identify errors and take the necessary steps to address the opportunity for importers to claim back duties for both commercial and personal goods in such detail given all the changes and updates that impact this new initiative was quite impressive, in my opinion.
39. CBSA currently has two processes for refunds based on the type of clearance that was originally completed. Bucket #1 listed above would require a B2G where as Bucket #2 would require a B2 Amendment.
40. A B2G refund can be applied for by the importer (person) directly with CBSA or FedEx can apply. As an example, Mr. Farias had the opportunity to apply for a refund directly to CBSA and did not require involvement from FedEx.
41. For personal/casual shipments there would be few customs brokers that would correct any shipments for CETA as it is the preference of CBSA to have the importer file the B2G directly.
42. A B2 is typically processed by a customs broker.
43. Bucket #1 Refunds - The money from a B2G refund submitted to CBSA are refunded to the importer directly only if they apply directly to CBSA with the appropriate form, otherwise refunded directly to the approved customs broker. FedEx had no obligation under the regulations to provide refunds to the importers for duty that was not claimed.
44. I understand that FedEx took the decision to refund all of the Bucket#1 Refunds directly to the importers for CETA claims and took the undertaking to file all the required B2G claims with the CBSA. This is not a typical process by any customs broker to refund monies without an approved B2G claim with CBSA on file. This was a big gesture by FedEx to their importers and not only goes beyond what other customs brokers in the industry would do but also has FedEx taking on potential loss for any rejected claims by CBSA. Refunds based on trade agreements are not a guarantee and must be supported with proper documentation. If a custom broker chooses to refund an importer to await payment until such time that CBSA issues a refund cheque, it takes the chance that the CBSA determines that the shipment is not CETA eligible and is, as a consequence, not provided with a refund from the CBSA.
45. The current regulations direct importers or casual and personal goods to claim back this duty directly, not through a customs broker. Most customs brokers will not file a B2G claim for personal/casual goods, but will rather give instruction the person to follow the regulations as written.
46. Bucket #2 - Refunds for imports under the commercial stream would be completed via a B2 Adjustment request. CBSA Customs Notice 16-01 brought into force the Accounts Receivable Ledger (ARL) that shifts the accounting of commercial transaction from a customs broker to an importer by way of the business's importer number. As a result of this change, the duty owing or refunded is between CBSA

and the importer, not a customs broker. This was only one step to the CBSA taking greater control over the collections of money owed as ARL is only one component of the CBSA Accounts Receivable Management (CARM) initiative that will become fully in force effective 2022. As an importer is responsible for the payment of duties and taxes, the CARM initiative will make it mandatory that duty is between importer and CBSA under CARM and ARL legislation via an online portal. This means that all refunds that an importer may have will be refunded directly to their CARM account, not that of a customs brokers.

47. Under ARL, CBSA does not provide “cheques” for refunds but rather credits to an ARL account that is directly linked to the importer. FedEx does not have the ability to obtain a refund directly to FedEx for commercial shipments under ARL. It is an industry standard for the commercial importing community to await the refund credit by CBSA to their ARL account and apply the offset to debt owing to CBSA or request a further refund. Only in specific cases will CBSA process a refund cheque to importers. FedEx instructed commercial importers to complete the required B2 Adjustment in conformity with that standard.
48. Processing a B2G or B2 claim is a post entry work that is a chargeable service by all customs brokers.
49. Although errors do happen it is not possible to simply “fix a system”. Customs brokers are highly regulated by the Customs Act and must ensure compliance for processing trade data. FedEx cannot just “fix an invoice” or “adjust the system” in order to reverse duty. Once an shipment has been confirmed to CBSA it is considered to be a legally binding. If there are adjustments to a shipment an importer/customs broker must take the necessary stream for updating or changing these documents. Importers, whether personal or commercial, have a legal obligation to ensure that documentation is correct or corrected correctly in order to ensure compliance under Reason to Believe regulations. I am of the opinion that FedEx conducted themselves within the industry standards of customs brokers, who are bound by the applicable *Customs Act*. It is reasonable to expect learning curves or hiccups within the customs brokerage industry when new CBSA initiatives come into force, especially when one was as complex as CETA trade agreement. All the entries I reviewed were corrected via the B2G or B2 process that were eligible and/or had supporting documentation for processing well within the four (4) year time frame allotment by CBSA for this trade agreement.

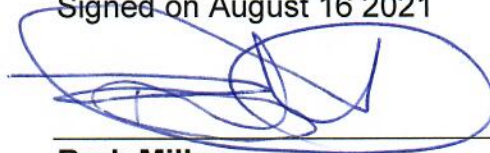
VIII. CONCLUSION

50. In conclusion, it is my opinion that after completing my review that FedEx was diligent and proactive in their actions for programming, implementing and assessment that allowed them to identify key changes and updates that were required for the extremely complex trade agreement between Canada and 27 European countries, called CETA. Their actions exceeded industry standards as it relates to corrections and/or adjustments that were eligible for duty refunds by importers for CETA well within the four (4) year allotment provided for by CBSA.

Report prepared by:

Barb Miller
President, Otimo Customs Inc.

Signed on August 16 2021

A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

Barb Miller

President, Otimo Customs inc.

Appendix A

T2017-2a

Effective date: 2017-06-15

- In preparation for the possible implementation of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), the Canada Border Services Agency (CBSA) has updated its Tariff Code and Tariff Classification files with the CETA data, showing an effective date of June 15, 2017. However, please note that until CETA comes into force and the CBSA updates the Country Code file to reflect eligible countries, submissions claiming the benefits of a CETA tariff treatment **will be rejected**. The implementation date for CETA is still unknown.
 - The [files](#) enable users to later install the T-2017-3 July 1, 2017 Tariff amendment package, which will provide rate updates on 59 tariff items relating to the existing Canada-EFTA Free Trade Agreement (i.e., the IT, NT & SLT tariff treatment) and the Information Technology Agreement Expansion, 2016. Details are available in [Customs Notice 17-21](#).
 - To avoid any system issues, the CBSA is advising clients to update their systems prior to the automatic download of T-2017-3 July 1 updates, scheduled for batch processing on June 30, 2017.
 - In the past, the CBSA's Technical Commercial Client Unit (TCCU) has provided the Expiries in the form of "AA" records. Due to the size and magnitude of this particular file, the Expiries will be in the form of "GA" records. The updates will, as usual, be GA records.
- [CADEX-formatted](#)

COURIER LOW VALUE SHIPMENT PROGRAM REDESIGN

CUSTOMS NOTICE 19-12

Ottawa, 19 June, 2019

1. The purpose of this notice is to advise that effective June 3, 2019, the Canada Border Services Agency (CBSA) has placed a moratorium on applications to the CLVS Program.
2. As such, no further applications to the CLVS Program will be considered.
3. The Agency will be looking to modernize the Program for an E-Commerce environment.
4. In the interim, the Program will remain in effect for existing participants only.
5. Please direct questions relating to the CLVS Program moratorium to the CLVS Program to: [Courier LVS Program-Programme des Messageries EFV@cbsa-asfc.gc.ca](mailto:Courier LVS Program-Programme_des_Messageries_EFV@cbsa-asfc.gc.ca)

Date modified:

2019-06-19

CANADA
PROVINCE OF QUÉBEC
District of Montréal

SUPERIOR COURT

Class Action

No.: 500-06-000895-173

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Plaintiff

vs.

**FEDERAL EXPRESS CANADA
CORPORATION, dba FEDEX EXPRESS**

Defendant

**DECLARATION REGARDING THE CARRYING OUT OF THE
MISSION OF AN EXPERT
(Art. 235 C.C.P.)**

I declare that I will carry out my mission as an expert with objectivity, impartiality and rigor. To enlighten the court in making its decision, I will give my opinion on the basis of my qualifications concerning the points submitted to me, taking into account the facts relating to the dispute or, if my services are required as a court bailiff, I will make an ascertainment describing the materials facts or situation of which I have personal knowledge.

I will, on request, provide the court and the parties with details on my professional qualifications, the progress of my work and, if applicable, the instructions received from a party. I will also comply with the time limits given to me and, if necessary, request the directives from the court that are necessary to carry out my mission.



Barb Miller

President CEO

Title

August 16/21

Date

BARB MILLER

366 Waterloo Street,
Winnipeg, MB R3N 0S6

Email barb@otimocustoms.com * [linkedin.com/in/barb-miller-5922176](https://www.linkedin.com/in/barb-miller-5922176)

To Whom it May concern:

I have been employed in the customs and logistics industry for just shy of 30 years. I am an industry expert in trade compliance and have dedicated my career ensuring towards supply chain management and coaching to mitigate exposure to risk throughout the supply chain network. My qualifications include:

Work Experience

1992 to 1999

Unicity Customs Brokers Inc.

I did variety of positions within the organization that were customs brokerage operations, compliance and sales. Also in this period of I was on the transition team that implemented the CBSA ACROSS operating system.

1999 to 2001

Hartwick O Shea & Cartwright (HOC)

During my employment at HOC I was involved in customs brokerage compliance, sales and freight forwarding.

2001 to 2006

A.N. Deringer

Deringer was a US Customs Broker to which I was their Canadian Customs compliance specialist involved in sales and operations.

2006 to 2020

Expert Customs Brokers

As the Chief Operating Office (COO) I was responsible for the operations of the company that involved Canada/US customs brokerage, logistics, customs compliance, freight forwarding and freight.

2020 to current

Otimo Customs Inc (The OC)

I am the current owner, President and CEO of The OC which is a Canadian customs broker and logistics provider. Our focus is not only customs brokerage but trade compliance, customs coaching and logistics.

Customs Related Education

May 1994	Certified Customs Specialist (CCS) Canadian Society of Customs Brokerage
May 2012	Certified Trade Customs Specialist (CTCS) Canadian Society of Customs Brokerage
November 2013	CBSA Customs License

Training and Industry Involvement

LEAN Green Belt	I am a certified LEAN Green belt that validates my knowledge and experience with lean principles within an organization. Being LEAN means you find the most beneficial and cost effective ways to run an operations.
eManifest Committee	National committee through the CSCB which has been the team that works directly with CBSA for the implementation of eManifest and regulations associated with the initiative.
Commercial Operations	National committee through the CSCB which handles all regulatory issues and changes that are coming into force and works directly with CBSA on behalf or customs brokers.
Prairie Region Rep	Regional Committee through the CSCB that acts as conduit between customs brokerage community and CSCB. As the chair I am expected to call meetings, work directly with CBSA for regional issues and communicate with Ottawa directly on trade matters.

****References Available upon request****

Angers, Nathalie

De: Angers, Nathalie
Envoyé: August 16, 2021 4:35 PM
À: smastrogiuseppe@kklex.com; jlongpre@kklex.com
Cc: Chênevert, Karine; Saint-Onge, Jean
Objet: NOTIFICATION: 500-06-000895-173 / Emanuel Farias c. Federal Express Canada Corporation / Notice of Communication of Expert Report (Barb Miller), Declaration regarding the carrying out of the mission of an expert and Resume
Pièces jointes: Notice of Communication of Expert Report (Barb Miller)(123550410.1).pdf

Suivi:	Destinataire	Réception	Lire
	smastrogiuseppe@kklex.com		
	jlongpre@kklex.com		
	Chênevert, Karine	Remis: 2021-08-16 4:35 PM	
	Saint-Onge, Jean	Remis: 2021-08-16 4:35 PM	Lu: 2021-08-16 4:38 PM

BORDEREAU DE NOTIFICATION PAR COURRIER ÉLECTRONIQUE (ARTICLE 134 C.P.C.)

DATE :

Montréal, le 16 août 2021

EXPÉDITEUR :

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Notre dossier : 293004-000018

DESTINATAIRE(S) :

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Étude : Me Jérémie Longpré
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Votre dossier :

NUMÉRO DE DOSSIER DE COUR ET NATURE DU DOCUMENT NOTIFIÉ :

Numéro de dossier : 500-06-000895-173
Parties : Emanuel Farias c. Federal Express Canada Corporation
Nature du document : **Notice of Communication of Expert Report (Barb Miller), Declaration regarding the carrying out of the mission of an expert and Resume**

Nombre de pages : -21-
(pièces jointes seulement)



Nathalie Angers

Adjointe à la pratique pour / Practice Assistant for Karine Chênevert,
Ève Gaudet, Gabrielle Tremblay, Jasmine Kavadias Landry

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SUPERIOR COURT
(Class Action)
DISTRICT OF MONTRÉAL
N° : 500-06-000895-173

EMANUEL FARIAS,

Plaintiff

C.

**FEDERAL EXPRESS CANADA
CORPORATION dba FEDEX EXPRESS**

Defendant

**NOTICE OF COMMUNICATION OF EXPERT
REPORT**

(art. 239 al. 2, 293 C.C.P., and art. 17 of the
Regulation of the Superior court of Quebec in civil
matters)

ORIGINAL

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Me Jean Saint-Onge, Ad. E
Me Karine Chênevert
Dossier : 293004- 000018