

<b>FEDERAL COURT OF APPEAL</b> <b>COUR D'APPEL FÉDÉRALE</b>	
F I L E D	16-MAR-2022
Ahmed Lagrani	
<b>MONTRÉAL, QC</b>	1

Court File No.: A-60-22

**FEDERAL COURT OF APPEAL**

BETWEEN:

**ATTORNEY GENERAL OF CANADA**

Appellant

-and-

**PIER 1 IMPORTS (U.S.), INC.**

Respondent

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**NOTICE OF APPEAL**Section 68 of the *Customs Act*

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TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard in Ottawa.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: March , 2022

Issued by : \_\_\_\_\_  
(Registry Officer)

Address of Local office:

Montréal Office  
30, McGill Street  
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**TO : Federal Court of Appeal**  
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***Canadian International Trade Tribunal***  
*Tower A, 11<sup>th</sup> Floor*  
*333 Laurier West Avenue*  
*Ottawa, Ontario K1A 0G7*

## APPEAL

**THE APPELLANT APPEALS** to the Federal Court of Appeal, pursuant to section 68 of the *Customs Act*,<sup>1</sup> from an Order of the Canadian International Trade Tribunal (“Tribunal”) dated December 16, 2021, issued in Appeal AP-2019-047 (“Order”), concerning the value for duty of goods imported by the Respondent.

**THE APPELLANT ASKS** this Court to:

**ALLOW** the Appeal;

**SET ASIDE** the Order; and

**RETURN** the matter back to the Tribunal for reconsideration.

**THE GROUNDS OF APPEAL** are as follows:

1. In its Order, when determining the value for duty of the goods using the flexible computed value method provided by section 53 of the *Customs Act*, the Tribunal made three errors of law by:
  - (a) Failing to determine an amount for profit, as required by paragraph 52(2)(b) of the *Customs Act*,
  - (b) Failing to consider, when determining an amount for profit and general expenses, what is “generally reflected in sales for export to Canada of goods of the same class or kind” (“comparable sales for export to Canada”), as also required by paragraph 52(2)(b) of the *Customs Act*,
  - (c) Breaching procedural fairness in not allowing the Appellant to file additional expert evidence on comparable sales for export, despite

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<sup>1</sup> *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.).

the Tribunal not being satisfied with the evidence on the record and requesting additional submissions from the parties.

2. The Respondent was a retailer of decorative home furnishings and accessories, which operated stores in both the United States of America (“US”) and in Canada.<sup>2</sup>
3. The Respondent imported goods from various manufacturers across the world to its warehouses located in the US. The Respondent subsequently shipped by land the goods destined to the Canadian market to its various Canadian stores.
4. The Respondent was a non-resident importer. As the Respondent did not sell its goods for export to purchaser in Canada, the value for duty of the goods could not be appraised based on their transaction value, and had to be determined by another calculation method.
5. In a Decision dated September 2, 2021 (“Decision”), the Tribunal had determined the goods had to be appraised based on the flexible computed value method provided in s. 52 and 53 of the *Customs Act*. The Tribunal identified only some of the amounts that comprised the value for duty of the goods, “[g]iven the relatively incomplete picture provided by the parties”.<sup>3</sup>
6. The Tribunal requested, by way of additional submissions, that the parties “identify the general expenses and profit [...] [of the Respondent’s distribution centres shipping goods to Canada], not already included in

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<sup>2</sup> On February 17, 2020, the Respondent and its subsidiaries commenced Chapter 11 of the *Bankruptcy Code* proceedings in the U.S. Bankruptcy Court for the Eastern District of Virginia.

<sup>3</sup> Decision and Reasons in Appeal no. AP-2019-047 par. [50].

the mark-up calculation”.<sup>4</sup> The Tribunal was not satisfied with the evidence on the record regarding the comparable sales for export.

7. Subsequent to the Decision, the Appellant sought permission from the Tribunal to allow both parties to file new comparable sales for export in order to complete the record.
8. The Tribunal denied the Appellant’s request, but nonetheless “reserved the option to accept additional expert evidence”.<sup>5</sup> In the end, the Tribunal did not accept any additional expert evidence.
9. In its Order, the Tribunal erred in determining an amount for general expenses based on the Respondent’s own financial statements, not on comparable sales for export to Canada. The Tribunal also erred in not determining an amount for profit.
10. Indeed, the flexible application of a method does not permit disregarding the requirements found in the prior methods altogether.

**The Appellant requests that the Tribunal send a certified copy of the following material that is not in the possession of the Appellant, but is in the possession of the Tribunal, to the Appellant and to the Registry:**

Transcripts of the hearing of March 15, 17, and 18, 2021, in Appeal AP-2019-047.

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<sup>4</sup> *Ibid.*

<sup>5</sup> Letter from the Tribunal to the parties dated October 19, 2021.

MONTREAL, March 16, 2022



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*Solicitors for the Appellant*