Canada Border Services Agency | Agence des services frontaliers du Canada

Ottawa, September 9, 2008

MEMORANDUM D11-6-6

In Brief

SELF-ADJUSTMENTS TO DECLARATIONS OF ORIGIN, TARIFF CLASSIFICATION, VALUE FOR DUTY, AND DIVERSION OF GOODS

This memorandum has been amended to clarify specific issues that have arisen since the last revision. Main changes have been made to paragraphs addressing the goods and services tax issues and correction to the origin of the goods.

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Ottawa, September 9, 2008

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SELF-ADJUSTMENTS TO DECLARATIONS OF ORIGIN, TARIFF CLASSIFICATION, VALUE FOR DUTY, AND DIVERSION OF GOODS

This memorandum outlines and explains the legislative framework and administrative guidelines for the "self adjustment process" relating to changes to the declarations of origin, tariff classification, value for duty, as well as the diversion of goods. The self-adjustment provisions, policies, and guidelines contained in this memorandum apply to all goods that are accounted for under subsections 32(1), (3), or (5) of the *Customs Act* (the Act) on or after January 1, 1998.

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Legislative References

32.2 (1) An importer or owner of goods for which preferential tariff treatment under a free trade agreement has been claimed or any person authorized to account for those goods under paragraph 32(6)(*a*) or subsection 32(7) shall, within ninety days after the importer, owner or person has reason to believe that a declaration of origin for those goods made under this Act is incorrect,

(a) make a correction to the declaration of origin in the prescribed manner and in the prescribed form containing the prescribed information; and

(b) pay any amount owing as duties as a result of the correction to the declaration of origin and any interest owing or that may become owing on that amount.

(2) Subject to regulations made under subsection (7), an importer or owner of goods or a person who is within a prescribed class of persons in relation to goods or is authorized under paragraph 32(6)(*a*) or subsection 32(7) to account for goods shall, within ninety days after the importer, owner or person has reason to believe that the declaration of origin (other than a declaration of origin referred to in subsection (1)), declaration of tariff classification or declaration of value for duty made under this Act for any of those goods is incorrect,

(a) make a correction to the declaration in the prescribed form and manner, with the prescribed information; and

(b) pay any amount owing as duties as a result of the correction to the declaration and any interest owing or that may become owing on that amount.

(3) A correction made under this section is to be treated for the purposes of this Act as if it were a re-determination under paragraph 59(1)(*a*).

(4) The obligation under this section to make a correction in respect of imported goods ends four years after the goods are accounted for under subsection 32(1), (3) or (5).

(5) This section does not apply to require or allow a correction that would result in a claim for a refund of duties.

(6) The obligation under this section to make a correction to a declaration of tariff classification includes an obligation to correct a declaration of tariff classification that is rendered incorrect by a failure, after the goods are accounted for under subsection 32(1), (3) or (5) or, in the case of prescribed goods, after the goods are released without accounting, to comply with a condition imposed under a tariff item in the List of Tariff Provisions set out in the schedule to the *Customs Tariff* or under any regulations made under that Act in respect of a tariff item in that List.

(7) The Governor in Council may make regulations prescribing the circumstances in which certain goods are exempt from the operation of subsection (6) and the classes of goods in respect of which, the length of time for which and the conditions under which the exemptions apply.

(8) If a declaration of tariff classification is rendered incorrect by a failure referred to in subsection (6), for the purposes of paragraph (2)(*b*), duties do not include duties or

taxes levied under the *Excise Tax Act*, the *Excise Act* or the *Special Import Measures Act*.

1993, c. 44, s. 82; 1996, c. 33, s. 29; 1997, c. 14, s. 36, c. 36, s. 152; 2001, c. 25, s. 22; 2002, c. 22, s. 333.

58.(1) Any officer, or any officer within a class of officers, designated by the President for the purposes of this section, may determine the origin, tariff classification and value for duty of imported goods at or before the time they are accounted for under subsection 32(1), (3) or (5).

(2) If the origin, tariff classification and value for duty of imported goods are not determined under subsection (1), the origin, tariff classification and value for duty of the goods are deemed to be determined, for the purposes of this Act, to be as declared by the person accounting for the goods in the form prescribed under paragraph 32(1)(*a*). That determination is deemed to be made at the time the goods are accounted for under subsection 32(1), (3) or (5).

(3) A determination made under this section is not subject to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 59 to 61.

R.S., 1985, c. 1 (2nd Supp.), s. 58; 1992, c. 28, s. 11; 1997, c. 36, s. 166; 2005, c. 38, s. 73.

59.(1) An officer, or any officer within a class of officers, designated by the President for the purposes of this section may

(a) in the case of a determination under section 57.01 or 58, re-determine the origin, tariff classification or value for duty or marking determination of any imported goods at anytime within

(i) four years after the date of the determination, on the basis of an audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1, or

(ii) four years after the date of the determination, if the Minister considers it advisable to make the re-determination; and

(b) further re-determine the origin, tariff classification or value for duty of imported goods, within four years after the date of the determination or, if the Minister deems it advisable, within such further time as may be prescribed, on the basis of an audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1 that is conducted after the granting of a refund under paragraphs 74(1)(*c*.1), (*c*.11), (*e*), (*f*) or (*g*) that is treated by subsection 74(1.1) as a re-determination under paragraph (*a*) or the making of a correction under section 32.2 that is treated by subsection 32.2(3) as a re-determination under paragraph (*a*).

(2) An officer who makes a determination under subsection 57.01(1) or 58(1) or a re-determination or further re-determination under subsection (1) shall without delay give notice of the determination, re-determination or further re-determination, including the rationale on which it is made, to the prescribed persons.

(3) Every prescribed person who is given notice of a determination, re-determination or further re-determination under subsection (2) shall, in accordance with that decision,

(a) pay any amount owing, or additional amount owing, as the case may be, as duties in respect of the goods or, if a request is made under section 60, pay that amount or give security satisfactory to the Minister in respect of that amount and any interest owing or that may become owing on that amount; or

(b) be given a refund of any duties, or a refund of any duties and interest paid (other than interest that was paid because duties were not paid when required by subsection 32(5) or section 33), in excess of the duties owing in respect of the goods.

(4) Any amount owing by or to a person under subsection (3) or 66(3) in respect of goods, other than an amount in respect of which security is given, is payable immediately, whether or not a request is made under section 60.

(5) For the purposes of paragraph (3)(*a*), the amount owing as duties in respect of goods under subsection (3) as a result of a determination made under subsection 58(1) does not include any amount owing as duties in respect of the goods under section 32 or 33.

(6) A re-determination or further re-determination made under this section is not subject to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 59(1) and sections 60 and 61.

R.S., 1985, c. 1 (2nd Supp.), s. 59; 1997, c. 36, s. 166; 2001, c. 25, s. 41; 2005, c. 38, s. 74.

60. (1) A person to whom notice is given under subsection 59(2) in respect of goods may, within ninety days after the notice is given, request a re-determination or further re-determination of origin, tariff classification, value for duty or marking. The request may be made only after all amounts owing as duties and interest in respect of the goods are paid or security satisfactory to the Minister is given in respect of the total amount owing.

(2) A person may request a review of an advance ruling made under section 43.1 within ninety days after it is given to the person.

(3) A request under this section must be made to the President in the prescribed form and manner, with the prescribed information.

(4) On receipt of a request under this section, the President shall, without delay,

(a) re-determine or further re-determine the origin, tariff classification or value for duty;

(b) affirm, revise or reverse the advance ruling; or

(c) re-determine or further re-determine the marking determination.

(5) The President shall without delay give notice of a decision made under subsection (4), including the rationale on which the decision is made, to the person who made the request.

R.S., 1985, c. 1 (2nd Supp.), s. 60; 1992, c. 28, s. 12; 1997, c. 36, s. 166; 1999, c. 17, s. 127; 2001, c. 25, s. 42; 2005, c. 38, s. 85.

74.(1) Subject to this section, section 75 and any regulations made under section 81, a person who paid duties on any imported goods may, in accordance with subsection (3), apply for a refund of all or part of those duties, and the Minister may grant to that person a refund of all or part of those duties, if

(a) they have suffered damage, deterioration or destruction at any time from the time of shipment to Canada to the time of release;

(b) the quantity released is less than the quantity in respect of which duties were paid;

(c) they are of a quality inferior to that in respect of which duties were paid;

(c.1) the goods were exported from a NAFTA country or from Chile but no claim for preferential tariff treatment under NAFTA or no claim for preferential tariff treatment under CCFTA, as the case may be, was made in respect of those goods at the time they were accounted for under subsection 32(1), (3) or (5);

(c.11) the goods were imported from Costa Rica or from Israel or another CIFTA beneficiary but no claim for preferential tariff treatment under CCRFTA or CIFTA, as the case may be, was made in respect of those goods at the time they were accounted for under subsection 32(1), (3) or (5);

(c.2) [Repealed, 1997, c. 14, s. 43]

(d) the calculation of duties owing was based on a clerical, typographical or similar error;

(e) the duties were paid or overpaid as a result of an error in the determination under subsection 58(2) of origin (other than in the circumstances described in paragraph (*c*.1) or (*c*.11)), tariff classification or value for duty in respect of the goods and the determination has not been the subject of a decision under any of sections 59 to 61;

(f) the goods, or other goods into which they have been incorporated, are sold or otherwise disposed of to a person, or are used, in compliance with a condition imposed under a tariff item in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, or under any regulations made under that Act in respect of a tariff item in that List, before any other use is made of the goods in Canada; or

(g) the duties were overpaid or paid in error for any reason that may be prescribed.

(1.1) The granting of a refund under paragraph (1)(*c*.1), (*c*.11), (*e*) or (*f*) or, if the refund is based on tariff classification, value for duty or origin, under paragraph (1*)(g*) is to be treated for the purposes of this Act, other than section 66, as if it were a re-determination made under paragraph 59(1)(*a*).

(1.2) The duties that may be refunded under paragraph (1)(*f*) do not include duties or taxes levied under the *Excise Tax Act*, the *Excise Act* or the *Special Import Measures Act*.

(2) No refund shall be granted under any of paragraphs (1)(*a*) to (*c*) and (*d*) in respect of a claim unless written notice of the claim and the reason for it is given to an officer within the prescribed time.

(3) No refund shall be granted under subsection (1) in respect of a claim unless

(a) the person making the claim affords an officer reasonable opportunity to examine the goods in respect which the claim is made or otherwise verify the reason for the claim; and

(b) an application for the refund, including such evidence in support of the application as may be prescribed, is made to an officer in the prescribed manner and in the prescribed form containing the prescribed information within

(i) in the case of an application for a refund under paragraph (1)(*a*), (*b*), (*c*), (*c*.11), (*d*), (*e*), (*f*) or (*g*), four years after the goods were accounted for under subsection 32(1), (3) or (5), and

(ii) in the case of an application for a refund under paragraph (1)(*c*.1), one year after the goods were accounted for under subsection 32(1), (3) or (5) or such longer period as may be prescribed.

(4) A denial of an application for a refund of duties paid on goods is to be treated for the purposes of this Act as if it were a re-determination under paragraph 59(1)(*a*) if

(a) the application is for a refund under paragraph (1)(*c*.1) or (*c*.11) and the application is denied because at the time the goods were accounted

for under subsection 32(1), (3) or (5), they were not eligible for preferential tariff treatment under a free trade agreement; or

(b) the application is for a refund under paragraph (1)(*e*), (*f*) or (*g*) and the application is denied because the origin, tariff classification or value for duty of the goods as claimed in the application is incorrect.

(5) For greater certainty, a denial of an application for a refund under paragraph (1)(*c*.1), (*c*.11), (*e*), (*f*) or (*g*) on the basis that complete or accurate documentation has not been provided, or on any ground other than the ground specified in subsection (4), is not to be treated for the purposes of this Act as if it were a re-determination under this Act of origin, tariff classification or value for duty.

Regulations

PRESCRIBED CLASSES OF PERSONS IN RESPECT OF DIVERSION OF IMPORTED GOODS REGULATIONS

Prescribed Classes of Persons

2. The following persons are hereby prescribed as classes of persons for the purposes of section 32.2 of the Act, where a declaration of tariff classification is rendered incorrect by a failure referred to in subsection 32.2(6) of the Act:

(a) persons who purchase or otherwise acquire the imported goods after the goods are accounted for under subsection 32(1), (3) or (5) of the Act; and

(b) persons who sell or otherwise dispose of the imported goods after the goods are accounted for under subsection 32(1), (3) or (5) of the Act.

DETERMINATION, RE-DETERMINATION, AND FURTHER DETERMINATION OF ORIGIN, TARIFF CLASSIFICATION AND VALUE FOR DUTY REGULATIONS

Time Period

2. The time period within which an officer may further re-determine the origin, tariff classification or value for duty under paragraph 59(1)(*b*) of the Act is five years from the date of the determination under section 58 of the Act, where the granting of the refund or the making of a correction referred to in paragraph 59(1)(*b*) of the Act occurs within the period of time beginning on the first day of the 37th month and ending on the last day of the 48th month after the date on which the determination was made under section 58.

GUIDELINES AND GENERAL INFORMATION

WHAT IS SELF-ADJUSTMENT?

1. Self-adjustment is a way for an importer or owner of goods (the importer) to make required amendments to his/her accounting declarations. It can be used to make corrections to the declaration of origin, tariff classification or value for duty under section 32.2 of the Act or apply for a refund of duties under section 74 of the Act.

2. The self-adjustment provisions apply only to changes to the origin, tariff classification, value for duty, and diversion of goods to a qualified or non-qualified use or user.

3. When the CBSA accepts a declaration under subsection 32(1), (3), or (5), of the Act, to account for imported goods, this is considered a deemed determination under subsection 58(2). An importer may make a correction to a declaration of origin, tariff classification, value for duty, and the diversion of goods to a qualified or non-qualified use or user subsequent to a deemed determination.

4. Pursuant to section 32.2 of the Act, an importer shall make a correction to the declaration whether or not the correction results in money owing to the CBSA or is revenue neutral.

5. Pursuant to section 74 of the Act, a person who paid duties on any imported goods may file an application for a refund when the correction results in monies owing to the importer.

WHERE IS THE AUTHORITY TO FILE SELF-ADJUSTMENTS?

Adjustments – Money owing to the CBSA or revenue neutral

6. Section 32.2 of the Act is the legislative authority that places responsibility on an importer to make an adjustment to an accounting declaration of origin, tariff classification, and value for duty, which results in money owing to the CBSA or a revenue neutral correction. The legislation refers to this adjustment as a "correction." Specifically, the correction must be filed under the following authorities:

32.2(1) – correction to the declaration of origin for which a preferential tariff treatment under a free trade agreement has been claimed (e.g., NAFTA, CIFTA);

32.2(2) – correction to all other declarations of origin (other than a declaration of origin referred to in subsection (1)), (e.g., LDCT, CCCT);

– correction to the tariff classification of the imported goods;

– correction to the value for duty of the imported goods; and

– correction as a result of the diversion of the imported goods.

7. Subsection 32.2(6) of the Act requires a correction to a declaration when the goods have been diverted to a non-qualifying use or user as specified under a tariff item on the List of Tariff Provisions set out in the schedule to the *Customs Tariff* or under any regulations made under that Act for a tariff item on that List.

8. In the case of diversions, the *Prescribed Classes of Persons in Respect of Diversion of Imported Goods Regulations* require the persons who purchase or otherwise acquire the imported goods, and the persons who sell or otherwise dispose of the imported goods, after the goods are accounted for under subsections 32(1), (3), or (5), of the Act, to make a correction to the declaration.

Adjustments resulting in a refund of duties

9. Section 74 of the Act is the legislative authority for a person who paid duties on any imported goods to make an adjustment to an accounting declaration that results in a refund. Refund applications filed under paragraphs 74(1)(*a*), (*b*), (*c*), (*d*), and (*g*), (that are not treated as re-determinations) are not part of the self-adjustment process. Please refer to Memorandum D6-2-3, *Refund of Duties*, for information relating to the refund of duties for goods imported on or after January 1, 1998. Specifically, refund applications may be filed under the following authorities, if:

74(1)(*c*.1) the goods were exported from a NAFTA country or from Chile but no claim for preferential tariff treatment under NAFTA or no claim for preferential tariff treatment under CCFTA, as the case may be, was made in respect of those goods at the time they were accounted for under subsection 32(1), (3) or (5);

74(1)(*c*.11) the goods were imported from Costa Rica or from Israel or another CIFTA beneficiary but no claim for preferential tariff treatment under CCRFTA or CIFTA, as the case may be, was made in respect of those goods at the time they are accounted for under subsection 32(1), (3) or (5);

74(1)(*e*) the duties were paid or overpaid as a result of an error in the determination under subsection 58(2) of origin (other than in the circumstances described in paragraph (*c*.1) or (*c*.11)), tariff classification or value for duty in respect of the goods and the determination has not been the subject of a decision under any of sections 59 to 61;

74(1)(*f*) the goods, or other goods into which they have been incorporated, are sold or otherwise disposed of to a qualified end-use or user that results in a refund of duties;

74(1)(*g*) the duties were overpaid or paid in error for any reason that may be prescribed. For example, the goods qualify under a retroactive order-in-council (e.g., an amendment to the *Customs Tariff*).

IS IT REQUIRED TO CORRECT GOODS AND SERVICE TAX (GST) ISSUES?

10. Section 212 of the *Excise Tax Act* states that the liability to pay duty on imported goods at the time of importation includes a liability to pay the GST on goods that were subject to duty or would have been subject to duty, if duty were payable. This means that goods that are duty free may be subject to the GST.

11. According to subsections 216(2) and 216(3) of the *Excise Tax Act*, any changes to the GST status of imported goods under Division III, Tax on Importation of Goods, are treated as if they were a determination, re-determination, or further re-determination of the tariff classification, or an appraisal, re-appraisal, or further re-appraisal of the value for duty of the goods. As a result, corrections affecting only the GST status of the goods (e.g., the incorrect use of a GST status code) must be submitted under section 32.2 of the *Customs Act* where amounts are owing to the CBSA or there is no revenue impact. Furthermore, any GST amounts owing are subject to the interest and penalty provisions contained in the *Customs Act* that pertain to duty amounts owing.

12. Subsection 32.2(5) of the *Customs Act* does not require or allow a correction that would result in a claim for a refund of duties. The exception provided for under subsection 32.2(5) does not apply in situations where GST/HST has been overpaid on duty-free goods. Therefore, where goods are duty free but taxable, importers shall make a correction to a declaration pursuant to section 32.2 when they have reason to believe that the declaration was incorrect.

Example
An importer imported duty-free and taxable (GST) goods with a value for duty of $1,500. Two months following the importation of the goods, the importer has reason to believe that the declared value for duty was overvalued and should have been $1,000. The importer is required to make a correction to the value for duty under section 32.2 of the Act even if it would result in a decrease in the GST assessed on the classification line. The decrease in GST would not result in a refund under the *Customs Act*.

WHAT IS THE TIME FRAME TO FILE ADJUSTMENTS?

13. Under section 32.2 of the Act, the importer has ninety days to make a correction after the importer has reason to believe that the original declaration was incorrect. The obligation to make a correction ends four years after the goods are accounted for under subsection 32(1), (3), or (5), of the Act.

14. An importer may discover that he or she has made an error on a declaration, but that the 90-day time limit to make a correction has expired. Therefore, the qualifying importer may come forward with this information and use the Voluntary Disclosures Program (please refer to paragraph 52 of this memorandum).

15. Under paragraphs 74(1)(*c*.11), (*e*), (*f*), and (*g*), of the Act, the person who paid duties on any imported goods has four years after the goods were accounted for under subsection 32(1), (3) or (5), to file an application for a refund. Requests for refunds made under paragraph 74(1)(*c*.1) for goods imported from a NAFTA country or Chile, must be filed within one year after the goods were accounted for under subsection 32(1), (3) or (5) or such longer period as may be prescribed (refer to subparagraph 74(3)(*b*)(ii); currently, there is no prescription for a longer period).

WHAT THE CBSA MAY DO

16. The CBSA may re-determine or further re-determine the origin, tariff classification, or value for duty on its own initiative or in response to a self-adjustment.

17. Before or after a correction is made under section 32.2 of the Act, or the granting or denial of a refund application made under section 74, an officer can re-determine or further re-determine the origin, tariff classification, or value for duty of the goods under paragraphs 59(1)(*a*) or (*b*). This would happen on the basis of an audit, verification or examination, the making of a correction under section 32.2, or in other instances where the Minister considers it advisable. A re-determination or further re-determination may be made within four years after the date of a determination under section 58, or within such further time as may be prescribed.

WHAT HAPPENS AFTER AN ADJUSTMENT IS FILED?

18. Once an adjustment is filed under sections 32.2 or 74 of the Act, an importer will be given a notice under subsection 59(2). The adjustment is treated as a re-determination under paragraph 59(1)(*a*). Subsection 59(1) allows the CBSA four years after the date of the original determination to review any adjustments that have been approved. However, when an importer has filed an adjustment during the last year of the adjustment period (i.e., 37th to 48th month from the declaration), the CBSA will have five years, from the date of accounting, to further re-determine the goods as stated in section 2 of the *Determination, Re-determination and Further Re-determination of Origin, Tariff Classification, and Value for Duty Regulations*.

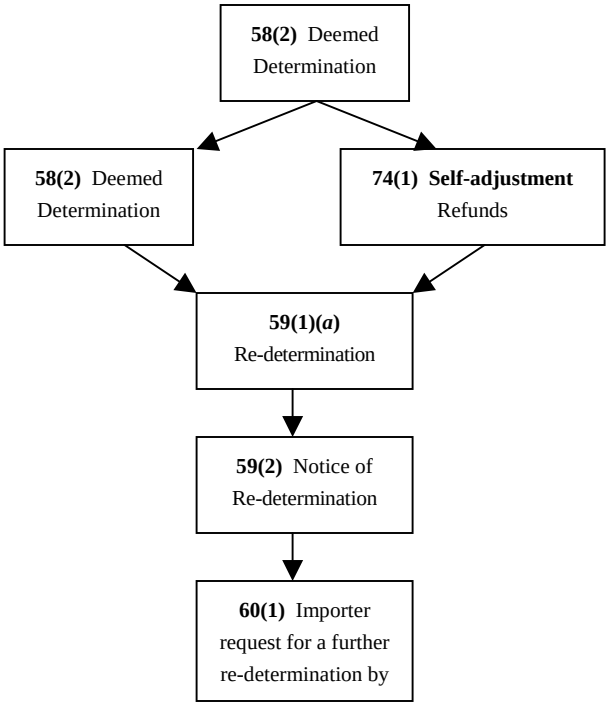
CHALLENGING THE CBSA DECISION

19. Once notice of a decision has been given under subsection 59(2) of the Act, an importer of the goods may file a dispute notice to let the CBSA know that he or she disagrees with its decision (i.e., re-determination), and would like a further review. The *Customs Act* refers to this dispute as a request for a further re-determination under subsection 60(1). The request must be filed within 90 days after the date the notice was given under subsection 59(2).

20. The process that the CBSA and importers use to resolve disputes about the origin, tariff classification, or value for duty of imported goods, is referred to as the dispute resolution process. For more information on the dispute resolution process, please refer to Memorandum D11-6-7, *Importer's Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods.*

21. If no request is made under subsection 60(1) of the Act within the time set out in that section, a person may make an application to the President for an extension of the time within which the request may be made pursuant to section 60.1 of the Act, and the President may extend the time for making the request. The application must be made as soon as possible, but no later than one year and 90 days after the date the notice was given under subsection 59(2). For more information, refer to D11-6-9, *Application to the Commissioner for an Extension of the Time to File a Dispute Notice.*

SELF-ADJUSTMENT FLOW CHART



"REASON TO BELIEVE"

22. In regards to the provision of section 32.2 of the Act, specific information regarding the origin, tariff classification, value for duty, or diversion of the imported goods that gives an importer reason to believe that a declaration is incorrect can be found in:

(a) legislative provisions that are evident (obvious, apparent) and transparent (clear, self-explanatory), such as specific tariff provision, specific valuation provision, specific origin provision, etc.;

(b) formal assessment documents issued by the CBSA to the importer, relating to the imported goods, such as determinations (other than "deemed determinations"), re-determinations, further re-determinations, etc.;

(c) final tribunal or court decisions in which the importer was either the appellant, respondent or intervenor;

(d) information received from exporters, suppliers, etc. (e.g., cancellation of certificates of origin or corrections to the value for duty);

(e) written communication addressed directly to the importer or his/her agent by the CBSA such as a ruling (e.g., National Customs Ruling), an Advance Ruling under section 43.1 of the *Customs Act*, a final post-release verification report, or an official notification as a result of an exporter origin verification;

(f) a final report from an importer-initiated internal audit or review, or, from an external company conducting an audit or review of an importer company; or

(g) knowledge that the goods no longer qualify or comply with a condition of relief or restriction imposed by the concessionary tariff item declared (e.g., goods diverted to a non-qualified end-use or end-user).

23. Written communications from the CBSA, such as national customs rulings, advance rulings, or final verification reports, will apply exclusively to:

(a) the same goods that were the subject of the communication (e.g., tariff classification for particular goods);

(b) the same valuation issue (e.g., an adjustment to the price paid or payable of goods for a royalty payment made after importation); or

(c) the same origin issue (e.g., a determination that specific goods do not qualify for preferential treatment).

24. A final report or final letter resulting from an importer-initiated audit or review may be considered specific information that gives importers reason to believe provided that:

(a) there was no previous information available to give the importer reason to believe that a declaration is incorrect,

(b) the CBSA did not already initiate a post-release verification, and

(c) the report recommends only a revenue neutral situation or one in which duty is owing to the CBSA.

25. A CBSA post-release verification may determine that a report from an importer-initiated internal audit or review, or, from an external company conducting an audit or review, as described in paragraph 21(*f*) above, is incorrect. In this case, the results of the CBSA final post-release verification report will take precedence over the internal importer-initiated or external audit report and will become the importer's new "reason to believe."

26. The self-adjustment process is activated when the importer has "reason to believe" that the declaration of origin, tariff classification, or value for duty is incorrect. The 90-day period to make corrections pursuant to section 32.2 of the Act starts on the date that the importer has specific information on how to account for the goods correctly (e.g., the written communication from the CBSA) and has made an incorrect declaration of origin, tariff classification or value for duty.

27. Importers are strongly encouraged to ask the CBSA for a ruling if there is any doubt whether specific information applies to the goods. The procedures for obtaining a ruling are outlined in Memorandum D11-11-1, *National Customs Rulings*, Memorandum D11-11-3, *Advance Rulings for Tariff Classification*, and if the ruling concerns a preferential trade agreement, Memorandum D11-4-16, *Advance Rulings*.

28. "Reason to believe" does not occur if there is conflicting information issued by the CBSA. In such a case, importers are encouraged to contact their regional client services office. If an officer determines that the information is conflicting or provides some uncertainty to the importer, the officer will provide corrective action, in the form of a new ruling, for example. The date of the new ruling will then constitute the date of "reason to believe" for purposes of self-adjustment.

29. Rulings (e.g., national customs rulings, advance rulings) or decisions made by CBSA officials under sections 58, 59, 60, or 61 of the Act, for example, which may be erroneous, will be honoured by the CBSA until they are modified (and, thereby, superseded) or revoked. When it is determined that a ruling or decision is erroneous and must be modified, an effective date of the replacement ruling or decision will be established (e.g., within 90 days from the date that the error comes to the attention of the CBSA) and the client will be notified.

30. There may be instances when the importer has reason to believe that a correction should be filed, but is also aware of another situation dealing with the same declaration that may arise to further change the declaration. For example, an importer may have information to require the importer to amend the value for duty of the imported goods to include transportation costs to the place of direct shipment. However, as a result of a subsequent proceed being payable,

the actual amount cannot be determined until the imported goods are sold in Canada. Should this occur, the importer should contact their local CBSA office to discuss the matter prior to making a correction.

WHAT IS THE REASSESSMENT PERIOD TO CORRECT DECLARATIONS?

31. The reassessment period relates to a time period for which corrections are to be made to incorrect declarations of origin, tariff classification or value for duty.

32. When an importer has prior "reason to believe," such as a previous ruling, previous CBSA verification or audit findings, or clear legislative provisions, the importer shall correct the declarations back to the earliest date of the specific information, to a maximum of four years as provided for in the Act.

33. In all other cases, as a result of a CBSA verification or audit, the importer shall correct for its previous 12-month fiscal period from the date of notification of the verification, up to and including the end of the verification. However, in the case of an exporter origin verification, the importer shall correct for the verification period identified in the notification. For any future importations, the importer shall correctly account for the goods.

34. In the case of an importer-initiated internal audit or review, or in the case of an external company conducting an audit or review of an importer company, the importer shall correctly account for the goods from the date of the report resulting from that audit or review. This can be done provided that all conditions in paragraph 24 are met. Therefore, the importer may not be required to correct any declarations for goods accounted for prior to the date of the report.

35. Please refer to Memorandum D11-6-10, *Reassessment Policy* for additional information regarding the reassessment period for importers to correct their declarations of origin, tariff classification, value for duty and diversion of goods.

HOW OFTEN CAN AN IMPORTER SELF-ADJUST?

36. Importers can only file one correction or refund for each declaration under section 32.2 or 74 of the Act on the same goods for the same issue (i.e., origin, tariff classification, or value for duty). A second correction can be filed on the same declaration and on the same good provided that it involves a different issue. One exception to this may occur in the case of split line adjustments. That is, for example, if a portion of goods accounted for on one line of the declaration was misclassified and a correction has been filed for those goods, the portion of the goods remaining on the original line will not be considered as being re-determined under paragraph 59(1)(*a*). Once an importer files a correction or refund request on an issue for that declaration, that re-determination can be disputed by filing an adjustment request under subsection 60(1) within 90 days of the date the notice was given under subsection 59(2). For an extension of time to make a request, refer to paragraph 21. For more information on the dispute resolution process, please refer to Memorandum D11-6-7, *Importer's Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods.*

37. Importers may adjust the same line of a declaration more than once if a different issue is involved. For example, an importer may make a correction to the tariff classification of the goods at one time, and later make a correction or seek a refund of duties paid for the origin for the same goods. (Section 32.2 of the Act cannot be used to make a correction to a declaration that results in a refund of duty. The importer may apply for a refund of duty pursuant to section 74).

38. Section 32.2 of the Act also applies when an importer makes a correction to the tariff classification of the goods, resulting in a higher rate of duty than that which was originally declared, and at the same time makes a correction to the origin of the goods, resulting in a "free" rate of duty. In this instance, the request for a revenue correction combined with adjustment request for a refund results in a revenue neutral adjustment. Adjustment requests to a preferential tariff treatment under a free trade agreement are acceptable only within the prescribed time limit as indicated in paragraph 15 of this memorandum.

39. In some instances, a retroactive order-in-council may be made to amend the CBSA legislation or other legislation relating to customs. Should this occur, a refund application may be filed under paragraph 74(1)(*g*) of the Act, regardless of whether an adjustment has been made on that declaration, as long as the refund application is filed within the four-year time limit.

FILING SELF-ADJUSTMENT REQUESTS

40. Adjustments to declarations filed under sections 32.2 and 74 of the Act, must be made on a properly completed Form B2, *Canada Customs – Adjustment Request,* pursuant to the relevant legislative authority of the Act [e.g., subsection 32.2(1), subsection 32.2(2), paragraph 74(1)(*e*)]. For instructions on the coding and completion of Form B2, please refer to Memorandum D17-2-1, *Coding of Adjustment Request Forms*. For information on filing adjustments under the Customs Self-Assessment (CSA) program, please refer to Memorandum D17-1-7, *Customs Self Assessment Program for Importers* or contact your client services office.

41. Form B2 must be sent by registered mail, by courier, or delivered by hand, to any CBSA office in the region where the goods were released under the Act. For goods imported by mail, requests may be sent by registered mail, by courier, or presented by hand to any CBSA office in Canada.

42. The date that Form B2 is sent by registered mail, by courier, or is delivered by hand, to the CBSA office is deemed to be the date of filing for the purposes of meeting the time limits specified under section 32.2 of the Act.

43. When the time limit referred to in this memorandum falls on a holiday or a non-working day (a day when the CBSA office is not open for business), the final day for filing Form B2 will be the first day following, that is not a holiday or non-working day.

WHAT TO DO IF THERE IS A SUBSEQUENT ADJUSTMENT THAT IS NOT A DISPUTE?

44. Occasionally, importers find that a subsequent adjustment request may be necessary on the same declaration and the same issue. For example, an importer may have received a re-determination under paragraph 59(1)(*a*) of the Act for a refund requested under paragraph 74(1)(*e*), related to the value for duty. However, a decision by the Canadian International Trade Tribunal (CITT) or the Federal Court related to the value for duty overturns the CBSA re-determination made under paragraph 59(1)(*a*). Therefore, a correction to the decision under paragraph 59(1)(*a*) may be requested by the importer under subsection 60(1).

45. In this instance, there is no "true dispute" with the CBSA, but the importer wants to amend the adjusted declaration. If the amendment is within the 90-day filing period from the notice issued under subsection 59(2) of the Act [as a result of the re-determination under paragraph 59(1)(*a*)], the importer may file a request for review under section 60. To distinguish this request from the dispute notice referred to in paragraph 18, please mark "SELF ADJUSTMENT TYPE" in the explanation field on Form B2. Please also include the reference number to the relevant appeal decision (e.g., CITT or Federal Court Appeal No.). For information relating to the dispute resolution process, please refer to Memorandum D11-6-7, *Importer's Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*.

46. No subsequent adjustment under subsection 60(1) of the Act may be filed beyond the 90-day period from the date of notice issued under subsection 59(2), unless provided for under 60.1 of the Act.

WHAT TO DO IF THE CORRECTION RESULTS IN MONEY OWING TO THE CBSA?

47. Any money owing to the CBSA should accompany correction requests to the declaration made pursuant to section 32.2 of the Act. Such requests will be reviewed by a designated officer and a decision including a statement of any refund due (not including the goods and services tax paid) or amount owing will be sent to the importer of the goods on a Form B2-1, *Canada Customs – Detailed Adjustment Statement.*

HOW IS INTEREST CALCULATED?

48. When a correction to a declaration of origin, tariff classification, value for duty or diversion of goods is made within the prescribed time limit and results in an amount owing to the CBSA, interest will be calculated at the prescribed rate. The prescribed rate of interest is determined by the average yield of Government of Canada Treasury Bills sold in the first month of the preceding fiscal quarter. The interest is calculated on the outstanding balance of the amount that would have otherwise been payable. It will be calculated from the first day after the day the person became liable to pay the amount, and ending on the day the amount has been paid in full.

49. Interest on a refund relating to origin, tariff classification, or value for duty will be paid at the prescribed rate from the 91st day after the refund was filed and ending on the day the refund was paid.

50. In the case of a refund granted under paragraph 74(1)(*g*) of the Act to give effect of a retroactive order or regulation, interest will be paid at the prescribed rate beginning on the day after the duties were paid, and ending on the day the refund was granted. It is calculated on the amount of the refund.

51. If an assessment is issued by the CBSA in cases where the importer is found to have had reason to believe that the importer's declaration was incorrect and the importer did not make the required correction in accordance with section 32.2 of the Act, interest will be calculated at the specified rate (the prescribed rate plus 6%) beginning on the first day after the day the person became liable to pay the amount (i.e., the date of accounting).

52. More information on interest provisions is available in Memorandum D11-6-5, *Interest and Penalty Provisions: Determinations and Re-determinations, Appraisals and Re-appraisals, and Duty Relief.*

DO PENALTIES APPLY?

53. Importers who do not file corrections to declarations according to section 32.2 of the Act may be liable to a penalty or penalties under the Administrative Monetary Penalty System (AMPS).

54. For more information on AMPS penalties and appeal rights, visit the CBSA Web site at **www.cbsa.gc.ca**.

VOLUNTARY DISCLOSURES PROGRAM

55. The Voluntary Disclosures Program (VDP) promotes compliance with the accounting and payment of duty and tax provisions under the *Customs Act*, *Customs Tariff* and *Excise Tax Act*, by encouraging clients to come forward and correct deficiencies in order to comply with their legal obligations.

56. The VDP may apply when the time limits for the existing corrective mechanisms have expired for the particular situation. The VDP is not intended to be used as a substitute for existing corrective mechanisms, and the corrective mechanisms should not be confused with the Voluntary Disclosures Program.

57. Under section 32.2 of the *Customs Act*, for example, importers must correct their declaration of origin, tariff classification, value for duty or diversion of goods within 90 days of having reason to believe that their declaration is incorrect. However, once the 90-day time limit has expired, corrective measures can be taken under the VDP for importers who have not made their corrections pursuant to section 32.2.

58. A voluntary disclosure is considered to be valid if it is determined to be complete and involves a monetary penalty. A disclosure must also be initiated by the client and must be considered voluntary, that is, it was made without the knowledge of an audit, verification, investigation, or other enforcement action that has been initiated by the CBSA or a related administration such as other federal and provincial departments.

59. More information on the VDP is available on the CBSA Web site at **www.cbsa.gc.ca**.

ADDITIONAL INFORMATION

60. For more information or assistance with the correction, refund, or dispute resolution process, contact your regional CBSA office.

APPENDIX

EVIDENT AND TRANSPARENT LEGISLATIVE PROVISIONS

1. The examples described in the following paragraphs explain how importers will have reason to believe that a declaration of origin, tariff classification, or value for duty is incorrect on the basis of evident (obvious, apparent) and transparent (clear, self-explanatory) legislative provisions.

2. In some instances, the circumstances surrounding the declaration may be considered in determining whether a legislative provision for an importation was evident and transparent. Therefore, it may be necessary to consider the context of a valuation legislative provision, for example, in relation to a specific importation.

3. All evident and transparent legislative provisions listed are not exhaustive and are not limited to the examples provided in this appendix.

4. The following example includes an evident and transparent legislative origin provision:

A. Section 35.1 of the *Customs Act*:

(1) "Subject to any regulations made under subsection (4), proof of origin, in the prescribed form containing the prescribed information and containing or accompanied by the information, statements or proof required by any regulations made under subsection (4), shall be furnished in respect of all goods that are imported."

Therefore, an importer will have reason to believe that a declaration of origin is incorrect if the importer fails to furnish proof of origin to an officer for the imported goods.

5. The following examples include evident and transparent legislative tariff provisions as listed in the Schedule to the *Customs Tariff*:

A. Classification of live fish:

Legal Note 1 to Chapter 1:

"This Chapter covers all live animals except:

(a) Fish and crustaceans, molluscs and other aquatic invertebrates, of heading 03.01, 03.06 or 03.07;…"

Therefore, if an importer imports fish, the legislative provision provided at the legal note level for the tariff classification of fish under its respective heading 03.01 is evident and transparent. Therefore, the fish is not classifiable under, for example, heading 01.06 of the *Customs Tariff*, entitled, "Other live animals."

B. Classification of printing ink:

Heading 32.15: Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid.

- Printing ink:

3215.11.00 00 --Black

3215.19.--Other

10 ---For use in the coating, colouring or printing of textiles;

90 ---Other

If the printing ink being imported is not black, the six-digit subheading 3215.11 cannot be used. Printing ink in colours other than black is classified under tariff subheading 3215.19 in accordance with the descriptions provided in the *Customs Tariff*.

C. Classification of pneumatic tires:

Heading 40.11: New pneumatic tires, of rubber

4011.10.00 - Of a kind used on motor cars (including station wagons and racing cars)

10 -----Of radial ply construction

90 -----Other

4011.20.00 -Of a kind used on buses or lorries

4011.30.00 00 -Of a kind used on aircraft

4011.40.00 00 -Of a kind used on motorcycles

4011.50.00 00 -Of a kind used on bicycles

6. The following examples include evident and transparent legislative valuation provisions:

A. Section 46 of the *Customs Act* (Determination of Value for Duty): "The value for duty of imported goods shall be determined in accordance with sections 47 to 55."

B. Order of Consideration of Methods of Valuation

Subsection 47.(1) of the *Customs Act* (Primary Basis of Appraisal):

"The value for duty of goods shall be appraised on the basis of the transaction value of the goods in accordance with the conditions set out in section 48."

Subsection 47.(2) of the *Customs Act* (Subsidiary Basis of Appraisal):
"Where the value for duty of goods is not appraised in accordance with subsection (1), it shall be appraised on the basis of the first following values, considered in the order set out herein, that can be determined in respect of the goods and that can, under sections 49 to 52, be the basis on which the value for duty of the goods is appraised:

(*a*) the transaction value of identical goods that meets the requirements set out in section 49;

(*b*) the transaction value of similar goods that meets the requirements set out in section 50;

(*c*) the deductive value of the goods; and

(*d*) the computed value of the goods."

Therefore, an importer shall not determine the value for duty using the deductive method without considering the other methods of valuation first. This legislative provision is evident and transparent in stating that the methods shall be applied in sequential order.

C. Subparagraph 48(5)(*a*)(ii) of the *Customs Act*: "The packing costs and charges incurred by the purchaser in respect of the goods, including the cost of cartons, cases and other containers and coverings that are treated for customs purposes as being part of the imported goods and all expenses of packing incident to placing the goods in the condition in which they are shipped to Canada" shall be added to the price paid or payable.

Therefore, if a purchaser receives an invoice for packing costs (boxes and wrapping), for example, the legislative provision is evident and transparent in stating that the packing costs shall be added to the price paid or payable for the imported goods.

D. Section 48(5)(*a*)(iii) of the *Customs Act*: "The value of any of the following goods and services, determined in the manner prescribed, that are supplied, directly or indirectly, by the purchaser of the goods free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles:

(A) materials, components, parts and other goods incorporated in the imported goods,…"

Therefore, if buttons are provided in connection with the production and sale for export of shirts (buttons will be sewn into the imported goods), for example, the value of the buttons must be added to the price paid or payable of the imported goods. In this situation, the legislative provision is evident and transparent in stating that the value of the "materials, components, parts and other goods incorporated in the imported goods" (buttons) shall be added to the price paid or payable of the imported goods.

E. Section 55 of the *Customs Act*: "The value for duty of imported goods shall be computed in Canadian currency in accordance with regulations made under the *Currency Act*."

Therefore, where the currency of settlement is other than Canadian dollars, the importer will have reason to believe that a declaration of value for duty that is expressed in an amount of a foreign currency is incorrect on the basis of section 55 of the *Customs Act.*

REFERENCES

ISSUING OFFICE –

Admissibility Branch
Trade Programs Directorate
Tariff Policy Division

HEADQUARTERS FILE –

LEGISLATIVE REFERENCES –

Customs Act; *Prescribed Classes of Persons in Respect of Diversion of Imported Goods Regulations*; *Determination, Re-determination and Further Re-determination of Origin, Tariff Classification, and Value for Duty Regulations*

OTHER REFERENCES –

D6-2-3, D11-4-16, D11-6-1, D11-6-5, D11-6-7, D11-6-9, D11-6-10, D11-11-1, D11-11-3, and D17-2-1

SUPERSEDED MEMORANDA "D" –

D11-6-6, October 15, 2003

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