



Ottawa, October 9, 2008

MEMORANDUM D11-6-7

In Brief

IMPORTERS' DISPUTE RESOLUTION PROCESS FOR ORIGIN, TARIFF CLASSIFICATION, AND VALUE FOR DUTY OF IMPORTED GOODS

1. This memorandum supersedes Memorandum D11-6-7, *Importers' Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*, dated December 19, 2001.
2. This Memorandum has been revised to reflect organizational changes resulting from the implementation of the Canada Border Services Agency on December 12, 2003. The revision of this memorandum is part of an overall revision of the Memoranda D11-6 series.
3. This memorandum is revised as a result of the Paper Burden Reduction Initiative. The revisions are aimed at eliminating obsolete and duplicated requirements and modifying complex policies.
4. This memorandum has been revised to incorporate certain amendments to the *Customs Act* and its regulations. In addition, changes have been made to clarify policy or procedural issues that have arisen since the last revision to this memorandum.



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Ottawa, October 9, 2008

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IMPORTERS' DISPUTE RESOLUTION PROCESS FOR ORIGIN, TARIFF CLASSIFICATION, AND VALUE FOR DUTY OF IMPORTED GOODS

This memorandum explains the dispute resolution process for importers who disagree with the Agency's determination, re-determination, or further re-determination of the origin, tariff classification, or value for duty of goods accounted for, under section 32 of the *Customs Act*, or detained because they were, or might be, classified as goods for which importation is prohibited, on or after January 1, 1998. It also contains a copy of the sections of the *Customs Act* and related regulations that provide the legislative base for this process.

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GUIDELINES AND GENERAL INFORMATION

- This document focuses mainly on disputes presented by importers for resolution within the Agency under section 60 of the *Customs Act*. It also provides some basic information about appeals to external dispute resolution bodies, such as the Canadian International Trade Tribunal (CITT).
- Terms we use in this document and their relationship to the legislative terminology are explained under the heading "Terminology." The legislation is presented in Appendix A. All references to sections, subsections, and paragraphs in this Memorandum are from the *Customs Act*, unless otherwise stated.
- This memorandum does **not** cover the following:
 - importer disputes arising from non-commercial importations (see Memorandum D6-2-6, *Refund of Duties and Taxes on Non-Commercial Importations*);
 - exporter and/or producer disputes concerning origin (see Memorandum D11-4-17, *NAFTA Origin Re-Determination Requests Filed by the Person Who Completed and Signed the Certificate of Origin*);
 - disputes related to advance rulings regarding tariff classification, (see Memorandum D11-11-3, *Advance Rulings for Tariff Classification*); and origin (see Memorandum D11-4-16, *Advance Rulings*);
 - disputes related to marking determinations (see Memorandum D11-3-2, *Marking Determination/Re-Determination of Goods Imported From a NAFTA Country*);

(e) the administration of “subsequent goods” related to appeals before the Canadian International Trade Tribunal (CITT) or the courts (see Memorandum D11-6-3, *Administrative Policy Respecting Re-Determinations or Further Re-Determinations Made Pursuant to Paragraph 61(1)(c) of the Customs Act*);

(f) reviews of National Customs Rulings (NCRs) when goods have not yet been imported (see Memorandum D11-11-1, *National Customs Rulings (NCR)*);

(g) adjustment activity under section 32.2 or under subsection 74(1) (see Memorandum D11-6-6, *Self-Adjustments to Declarations of Origin, Tariff Classification, Value for Duty, and Diversion of Goods*);

(h) importer disputes concerning anti-dumping and countervailing duties (see Memorandum D14-1-3, *Procedures for Filing an Appeal or to Make a Request for Re-Determination of Goods Under the Special Import Measures Act*);

(i) applications under section 60.1 to extend the time to file a dispute (see Memorandum D11-6-9, *Applications to the President for an Extension of Time to File a Dispute Notice*);

(j) any matters other than disputes on imported goods concerning trade issues, namely origin, tariff classification (including prohibited goods), or value for duty.

TERMINOLOGY

4. In this memorandum, we use the following terms to simplify the legislative and other legal language:

Dispute – a disagreement an importer has with the Agency regarding a decision it made on the tariff classification, origin, or value for duty of imported goods, often as the result of verification activity. Importers file a **dispute notice** to let the Agency know that they disagree with its decision and would like a further review. The *Customs Act* refers to this as a **request for re-determination or further re-determination** of tariff classification, origin, or value for duty. The dispute will be resolved by the Agency and the decision reached is a **dispute decision**. The *Customs Act* refers to this decision as a **re-determination or further re-determination** of the origin, tariff classification, or value for duty of imported goods. Importers file a **notice of appeal** to let the CITT or a court know that they disagree with the Agency’s dispute decision, and would like a further review. (*différend*)

Dispute resolution – the processes which the Agency and external bodies use to resolve disputes about the origin,

tariff classification, or value for duty of imported goods. (*règlement des différends*)

Put on hold – Hold in abeyance. Instead of making a decision on the dispute right away, the Agency puts the dispute notice aside to be decided on later. This may occur when the Agency and the importer agree that it would be best to wait for the outcome of another dispute. (*mettre en attente*)

Self-adjustment process – method for an importer to make a change to his or her accounting record. This occurs when importers become aware of an error in the information they have provided to the Agency. The importer may make a change in the origin, tariff classification, or value for duty under section 32.2 (**correction**) or under subsection 74(1) (**application for refund**). The change is not a dispute, as no decision of the Agency has been made concerning the accounting data involved. We explain how to make a self-adjustment in Memorandum D11-6-6. (*processus d’autorajustement*)

Verification activity – the various procedures the Agency uses to check the accuracy and completeness of an importer’s accounting record (including examination, audit, and verification). The *Customs Act* refers to a decision of the Agency based on verification activity as a **determination, re-determination, or further re-determination** of origin, tariff classification, or value for duty. (*vérification*)

THE DISPUTE RESOLUTION PROCESS

5. The *Customs Act* provides **formal** ways for resolving certain types of disputes. It states the basic procedures and requirements for settling disputes. It also describes how external decision-making bodies settle disputes that are not fully resolved by the Agency.

6. The Agency may also provide **informal** methods for dispute resolution, although this Memorandum does not deal with them. These are mainly used when there is no available or required legislated way to resolve a dispute. An example is the administrative review of an NCR described in Memorandum D11-11-1.

7. The process flow chart in Appendix I outlines the types of decisions eligible for formal dispute resolution within the Agency. It also identifies external organizations which settle disputes that are not fully resolved within the Agency.

TYPES OF DECISIONS ELIGIBLE FOR DISPUTE RESOLUTION

8. Each of the following types of decisions are eligible for dispute resolution under section 60:

(a) advance rulings under section 43.1,

(b) marking determinations under subsection 57.01(1); and

(c) decisions for which the Agency has given a notice of decision under subsection 59(2) for determination, re-determination, or further re-determination of the origin, tariff classification, or value for duty arising from:

(1) verification activity under subsections 58(1) and 59(1), including decisions prohibiting importation of goods classified under tariff item Nos. 9897.00.00, 9898.00.00, and 9899.00.00;

(2) self-adjustments initiated by importers, such as:

(i) corrections under section 32.2,

(ii) refund applications under paragraphs 74(1)(c.1), (c.11), (e), (f), or (g);

9. Under section 60, importers cannot directly challenge a National Customs Ruling (NCR) or Agency policy as it applies to their imports. However, having imported in accordance with the policy, an importer may challenge it by using the special procedure explained in Appendix B.

WHO CAN FILE A DISPUTE NOTICE UNDER SECTION 60

10. A person to whom the Agency has given a notice of decision under section 43.1 or subsections 57.01(1) or 59(2), may file a dispute notice.

11. Under subsection 59(2), the Agency notifies one of the following people of its decision made under one of subsections 32.2(3), 58(1), 59(1), 74(1.1), or 74(4):

(a) the importer of the goods;

(b) the owner of the goods at the time of release;

(c) any person liable for payment of duties on the goods at the time of release; or

(d) the person who accounted for the goods under subsections 32(1), (3), or (5).

12. Any of these people may file a dispute notice under subsection 60(1). Throughout this memorandum, we use the word **importer** to refer to any of these people or their agents.

Note: In the case of a preferential tariff treatment under a free trade agreement, the Agency also gives notice of the decision under subsection 59(2) to the person who has completed and signed the certificate of origin related to the goods. This may be the exporter or the producer of the goods. This person may also file a dispute notice under subsection 60(1). See Memorandum D11-4-17 for further information about these “exporter” disputes.

13. The Agency gives notice of a section 43.1 decision to the person who applied for the advance ruling. It gives a notice of a subsection 57.01(1) marking determination to the importer, exporter, and producer of the goods. Each of these people may file a dispute notice under section 60. For information about these types of disputes, please refer to Memoranda D11-4-16, D11-11-3 and D11-3-2.

REQUIREMENTS TO FILE A DISPUTE NOTICE

14. The Agency has the authority to reject a dispute notice which does not meet any of the requirements.

15. When the Agency returns a dispute notice to an importer for a reason other than the expiry of a time limit requirement, the importer can present payment, security, or a revised notice to the Agency within the time limit.

Time Limit for Filing a Dispute Notice

16. An importer must file a dispute notice within 90 days after the date a decision notice is given. The Agency will reject dispute notices presented after this time limit. Under certain exceptional circumstances, an importer may apply for an extension of time. (For more details, please refer to Memorandum D11-6-9, *Applications to the President for an Extension of Time to File a Dispute Notice.*)

17. The Agency considers a dispute notice to be filed on the date it is:

(a) sent by registered mail;

(b) delivered to the appropriate Agency office (see paragraphs 37 and 38) in person or by regular mail; or

(c) acknowledged as received by electronic filing, when this method is authorized.

18. To calculate the 90-day time limit for filing, day one is the day following the date that the Agency gives its decision notice under section 43.1, or subsections 57.01(1) or 59(2). The date that the Agency gives a notice is the date it is mailed (usually the date appearing on the notice).

19. When the last day of the time limit falls on a day that the appropriate Agency office is not open for business, the final day for filing the dispute notice is the next business day.

20. Whether delivered by hand, sent by regular or registered mail, or electronic filing, the burden of proof that a dispute notice was filed lies on the person claiming to have made the request.

Payment of Duties or Posting of Security

21. Importers cannot file dispute notices under subsection 60(1) until they have paid all the duties, including the goods and services tax (GST), or posted security. The Agency will reject dispute notices when importers have not paid these sums, or have not posted security, for the goods at issue.

22. If importers choose to post security, the security must generally accompany the dispute notice. For information about posting security, please refer to Appendix C.

Form and Information Requirements

General

23. To challenge a decision in a notice given under subsection 59(2), an importer must complete and submit a dispute notice as indicated in the *Prescription of Form and Manner, and Information to Make a Request for Re-determination, Further Re-determination or Review under Section 60 of the Customs Act*.

24. The dispute notice generally consists of Form B2, *Adjustment Request*, and supporting material. It has to include the details of the importation, the reasons supporting the importer's position, and a reference to the decision being contested. (For instructions on the coding and completion of Form B2 for disputes involving individual or multiple transactions, see Memorandum D17-2-1, *Coding of Adjustment Request Forms*.) Exceptional cases are described under the heading "Special Cases" below.

25. To resolve an issue in dispute efficiently and effectively, the Agency requires:

- (a) persuasive, relevant arguments that support the importer's position; and
- (b) any related supporting information, documents, or articles.

26. The dispute notice and any attached submission should fully and clearly state the rationale for the importer's position, including any supporting facts and arguments. It should also explain why the importer considers the decision under dispute to be incorrect. See Appendices D through G for more information on preparing the explanation and supporting documents for disputes concerning origin, tariff classification, and value for duty.

27. The Agency may return a dispute notice, along with supporting material:

- (a) when it considers the notice to be illegible or improperly completed; or
- (b) if the dispute notice does not meet the requirements of paragraphs 23 to 26 above-mentioned.

28. Time limits are not protected when the Agency returns dispute notices.

29. Where importers are unable, for good reason, to complete the explanation or to obtain all the required supporting documents within the 90-day time limit, they may ask for a specific and reasonable period of time to complete the submission. However, the importer must still file the dispute notice within the time limit and make the submission as complete and accurate as that time limit

permits (e.g., all the relevant fields on Form B2 must be filled in).

30. To make this request, the importer has to ask for a specific amount of time to complete the submission in the "Explanation" field of Form B2. In that field, or in the attached submission, the importer must also:

- (a) specify what further information and/or aspect(s) of the explanation will follow; and
- (b) explain why this information or explanation could not be provided at the time of filing.

31. If the Director of the regional Recourse Division considers this request to be vague or unreasonable, the regional Recourse Division will contact the importer to establish a shorter, more reasonable time frame.

32. Where a dispute notice and another adjustment type (for example, a section 32.2 correction or a subsection 74(1) refund application) relate to a single transaction, there are two different filing requirements:

- (a) When the section 60 adjustment is for a **different line** than the other adjustment type, importers must submit separate Forms B2 for each adjustment type.
- (b) When the section 60 adjustment is for the **same line** as that of another adjustment request, only one Form B2 should be filed. This B2 should indicate the legislative authority for the dispute notice, as well as the legislative authority for the other adjustment request. For example, if a section 32.2 correction or a subsection 74(1) refund application, filed with respect to the value for duty, relates to the same line as a dispute notice filed with respect to tariff classification, a single Form B2 must be filed. By processing the valuation issue first, the Agency will ensure that the dispute gets processed using the adjusted value for duty.

Note: The above methods of filing are required to ensure that dispute notices and other adjustment requests, relating to a single transaction are processed in the correct sequence and to support the financial consequences of multiple decisions concerning the same transaction.

Special Cases

33. To **challenge an NCR or a policy** when the Agency has not given a notice of decision under subsection 59(2), see the requirements set out in Appendix B.

34. Before filing a dispute notice using a **blanket Form B2**, an importer should discuss the best way to prepare it with the regional Recourse Division. In addition to meeting the requirements described in Memorandum D17-2-1, it is important to discuss how to:

- (a) define the common issue in an acceptable manner;

(b) select a manageable number of accounting lines per blanket, especially where split lines are involved; and

(c) ensure that the worksheet and/or spreadsheet is clear and understandable.

35. An importer may use a letter rather than Form B2 to dispute the tariff classification of goods prohibited importation because they are classified as **offensive weapons** under tariff item No. 9898.00.00 or as **obscene** under tariff item No. 9899.00.00.

Note: For other requirements for goods classified as obscene, see Memorandum D9-1-1, *Canada Border Services Agency's Policy on the Classification of Obscene Material*.

36. To request a “**self-adjustment**” for a trade area (i.e., origin, tariff classification, or value for duty) that has already been self-adjusted when there does not appear to be a “real dispute” between the importer and the Agency, an importer may mark “self-adjustment type” in the “Explanation” field of Form B2 filed under section 60. He or she must also identify the relevant reference source (e.g., Customs Notice No. xxx, CITT appeal No. xxx) and provide sufficient information to link the imported goods to the policy or decision identified. (A request like this might arise, for example, when a policy change is published in a Customs Notice or other form, or there is a decision by the CITT or a court which overturned Agency policy, after the original self-adjustment.) This request must be made within the 90-day time limit. (For more information, see paragraphs 37 through 39 of Memorandum D11-6-6, *Self-Adjustments to Declarations of Origin, Tariff Classification, Value for Duty, and Diversion of Goods*.)

How and Where to File

37. In order to ensure that the office responsible for processing your dispute receives it in the shortest possible time, we encourage you to file dispute notices directly with a regional Recourse Division, as listed in Appendix H. If necessary, an importer may also present a dispute notice, addressed to the Recourse Division, at any Agency office in Canada.

38. For goods classified under tariff item 9899.00.00, please send your dispute notice directly to the Prohibited Importations Unit in the Admissibility Branch at Headquarters (address of office is on Form K27, *Notice of Detention/Determination*). This unit reviews disputes concerning goods determined to be prohibited as obscenity, hate propaganda, or child pornography.

HOW THE AGENCY REVIEWS DISPUTES AND MAKES DECISIONS

Reviewing the Dispute

39. A Recourse Officer reviews all the material, facts, and arguments submitted by the importer. The officer also reviews the reasons for the Agency decision that is being challenged, and other relevant information. The officer determines whether further information or consultation is required and evaluates all points in relation to the relevant law and policy.

40. Sometimes it may occur that a Recourse Officer will need further information. The officer may specify a reasonable time limit, generally 14-30 days, for the submission of this information. More time may be given when necessary. For example, more time may be needed to get information pertaining to origin.

41. The Agency tries to resolve a dispute within 180 days after a dispute notice is filed. However, a decision on a dispute may be delayed when, for example:

- (a) the Agency is waiting for a CITT or court decision on identical goods, or on an issue sufficiently similar which might affect the decision on the dispute under review;
- (b) the information or arguments submitted by the importer are incomplete or require follow-up (such as laboratory analysis; origin verification; industry visits; audits; consultations; or requests to the importer, manufacturer, or vendor for additional information);
- (c) the nature of the dispute is unusually complex or the amount of information that must be reviewed is exceptionally large; or
- (d) the identification or engagement of suitable external authorities or experts is unusually time-consuming.

Issuing the Decision

42. The Agency notifies the importer, and any agent acting for that person, of the decision on a dispute. When origin is verified, notice of the decision will also be sent to the person who signed the certificate of origin.

43. The Agency generally prepares a Detailed Adjustment Statement (DAS) to inform a commercial importer of the President’s decision regarding a dispute, as well as the reasons supporting that decision. The DAS also indicates the amount of any refund or demand for payment. In some circumstances, the decision is set out in a letter.

44. When the Agency issues an NCR, letter, or memorandum explaining the reasons for a decision on a dispute, the DAS itself may not contain all the reasons for the decision. In this case, the DAS will make specific reference by date and reference number to the relevant NCR, letter, or memorandum.

Obtaining Information

45. The Agency acknowledges receipt of a dispute notice. It also identifies a Recourse contact person, and how he or she may be reached.

46. An importer may inquire about the status of a dispute by contacting the Recourse Division in the appropriate regional customs office. (See Appendix H for a list of the regional Recourse Divisions.) When inquiring, it is important for the importer to indicate:

- (a) the date of filing or detention;
- (b) Form B2 or other reference number;
- (c) Form B3, *Canada Customs Coding Form*, or detention form number;
- (d) the date of accounting or detention; and
- (e) the customs office number of entry or detention.

PAYMENT OR REFUND REQUIREMENTS AFTER A DISPUTE DECISION

47. The Agency's decision may result in:

- (a) the Agency owing the importer a refund of duties and interest;
- (b) the importer owing additional duties, including GST, and interest; or
- (c) no additional duties being payable by either the importer or the Agency.

48. When the Agency owes the importer a refund of customs duties, it must pay this amount, plus any interest, within 30 days after the date the decision is mailed (generally the date on the notice). The Agency will mail the cheque to the address in the "mail to" box on Form B2. If this box has not been completed, the Agency will send both the cheque and the DAS to the importer of record. (The Canada Revenue Agency, or in certain cases a provincial authority, sends GST rebates in the form of refunds separately from the customs duties and interest. Alternatively, the rebate may be made by way of credit.)

49. When importers owe the Agency additional duties, including GST, they must pay the amount of duties owing, plus any interest, within 30 days after the date of the decision. If payment is not made within 30 days, the Agency will send the importer a notice of arrears. The Agency may take lien action for the amount demanded

against any goods imported or reported for export at any time after the arrears notice has been sent. (The Agency may also take other action.)

50. If importers intend to appeal externally and the outstanding duties have not been paid, they must advise the regional Recourse Division before the 30-day payment period expires. That Recourse Division will then request a delay in lien action. If the importer fails to file the appeal and post satisfactory security (see Appendix C) within 90 days after the section 60 decision was made, the Agency may proceed with collection action. (It is important to note that even though an importer may file an appeal and be granted a delay in lien action, interest is calculated and payable on any duties not paid by the end of the 30-day period.)

51. Memorandum D11-6-5, *Interest and Penalty Provisions: Determinations/Re-Determinations, Appraisals/Re-Appraisals, and Duty Relief*, explains how interest is applied and calculated when a refund is due or additional duties are assessed by the Agency. It also explains what happens when security has been posted.

EXTERNAL APPEALS

Who Can Appeal?

52. A person who is aggrieved by a decision made by the President under sections 60 or 61 can appeal that decision. In most cases, the appeal is made to the CITT. (In the case of prohibited goods classified under tariff item No. 9899.00.00, the appeal is made to the appropriate provincial court.)

53. Parties to a CITT appeal are:

- (a) the person who filed the appeal;
- (b) the Agency (the President); and
- (c) any person who filed a Notice of Appearance with the Secretary of the CITT before the CITT hearing and who expressed their desire to participate in the hearing (also referred to as an "intervenor").

54. Any of these parties can appeal the CITT decision to the Federal Court of Appeal on any question of law.

Time Limits

55. Notices of appeal to the CITT, the court of provincial jurisdiction, or the Federal Court of Appeal must be filed no later than 90 days after the date of the decision being appealed.

HOW TO APPEAL TO THE CITT

56. The importer must send written notices of appeal to the:

Secretary
Canadian International Trade Tribunal
Standard Life Centre

333 Laurier Avenue West, 15th Floor
 Ottawa, ON K1A 0G7
 Facsimile: (613) 990-2439

and to the:

President
 Canada Border Services Agency
 c/o Recourse Directorate
 Tribunal and Court Appeals Section
 Ottawa ON K1A 0L8
 Facsimile: (613) 960-5086

57. Importers should consult the CITT about its rules of procedure if they are not familiar with them.

Refunds Before CITT or Court Decisions

58. Under subsection 69(1), importers can post security to obtain a refund of all or part of the duties and interest paid on goods when they file an appeal. This refund excludes the GST. It also excludes any interest that was paid for duties not paid in accordance with subsection 32(5) or section 33. (Thus, the amount of security may exclude these amounts.)

Agency Decisions for External Appeals

59. The Agency issues a decision notice under section 61 after the CITT or a court issues its decision. This gives a re-determination or further re-determination of the origin, tariff classification, or value for duty of imported goods. It also indicates whether either party owes any money.

Payments and Refunds After Appeal Decisions

60. See the earlier heading "Payment or refund requirements after a dispute decision" for information on Agency refunds to appellants or payments owed by appellants to the Agency.

DISPUTES PUT ON HOLD

61. To protect time limits, an importer may need to file dispute notices which cannot or should not be processed until a decision on another dispute is resolved. The importer or the Agency may be waiting for a decision by the CITT or a court, or in some cases by the President, on an earlier dispute of the same or another importer involving the same issue. (This occurs only where the Agency previously issued a notice under subsection 59(2) with respect to the trade area being resolved externally. In other cases the importer may make a correction or apply for a refund at a later date.)

62. Importers may request, therefore, that their disputes be put on hold when waiting for that other decision. To do so, the goods covered on the dispute notice to be held must be:

- (a) identical to;
- (b) sufficiently similar to; or

(c) reflect the same issue or principle of origin, tariff classification, or value for duty as those goods which are the subject of the earlier dispute.

63. To request that a dispute notice be put on hold, an importer must submit Form B2 in the usual way and write in the "Explanation" field:

Put on hold until adjustment [or CITT/Federal Court of Appeal] No. xxx is decided. I received a 59(2) DAS with adjustment No. xxx for the tariff classification [or, origin or value for duty, as applicable] of the goods covered on this dispute notice.

64. This dispute notice must still include a complete explanation.

Goods Imported by the Same Importer

65. An importer who is waiting for a decision by the CITT or a court on an importation may not need to file dispute notices (or other adjustment requests) for entries occurring after the entry of the goods before the CITT or the court. This applies when the origin, tariff classification, or value for duty on the later entries can be determined in the same manner as the goods under appeal. Paragraph 61(1)(c) allows the Agency to issue decisions, at its own initiative, for goods of these later entries. For further information, see Memorandum D11-6-3.

66. If the importer is uncertain about whether the Agency considers the goods, issues, or business practices to be sufficiently similar, it is the responsibility of the importer to file a dispute notice within the time limit.

67. Paragraph 61(1)(c) applies only to later entries related to goods before the CITT or a court. It does not apply to later entries related to a dispute before the President. Therefore, an importer waiting for a decision on a subsection 60(1) request must continue to file timely dispute notices for all importations which are covered by subsection 59(2) decision notices. (Where applicable, corrections or refund applications may generally be filed later for importations which have not been verified.)

Goods Imported by Another Importer

68. Importers may ask that their dispute notices be put on hold until a dispute of another importer is decided. When the Agency agrees to put disputes on hold, importers must still continue to file timely dispute notices for all importations covered by subsection 59(2) decision notices. Also, interest continues to accumulate on unpaid duties during the period dispute notices are on hold. (Importers must use the self-adjustment provisions described in Memorandum D11-6-6 for importations which do not have subsection 59(2) decision notices for the trade area they seek to have adjusted.)

69. To avoid filing numerous dispute notices while waiting for the final resolution of another importer's CITT or Federal Court of Appeal, an importer may ask the Agency to issue a decision on the dispute notice covering the earliest importation. This would allow the importer to appeal that (adverse) decision to the CITT and have later importations covered by paragraph 61(1)(c). Importers need not file dispute notices for transactions covered by that paragraph (see Memorandum D11-6-3).

70. Importers who have filed appeals against adverse decisions could then ask the CITT to put their appeals on hold until the appeal of the other importer is decided.

Alternatively, importers could ask the CITT to join their appeals with the earlier appeal. Once the first appeal is decided, importers and the Agency could decide how best to deal with the outstanding appeals before the CITT and subsequent importations.

Goods, Issues, or Business Practices Not Sufficiently Similar

71. When the Agency considers goods, issues, or business practices not to be sufficiently similar to put a dispute on hold, it issues its decision in the usual way.

APPENDIX A**LEGISLATION***Customs Act*

DEFINITIONS

2. (1) In this Act,

“duties” means any duties or taxes levied or imposed on imported goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament, but, for the purposes of subsection 3(1), paragraphs 59(3)(b) and 65(1)(b), sections 69 and 73 and subsections 74(1), 75(2) and 76(1), does not include taxes imposed under Part IX of the *Excise Tax Act*;

“prescribed” means

- (a) in respect of a form or the manner of filing a form, authorized by the Minister,
- (b) in respect of the information to be provided on or with a form, specified by the Minister, and
- (c) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;

Security

ADDITIONAL SECURITY

3.4 (1) Where security has been given to the Minister by a person under a provision of this Act and the Minister or any officer (in this section referred to as a “designated officer”) designated by the Minister for the purposes of this section determines that the security that has been given is no longer adequate, the Minister or a designated officer may, by notice served personally or by registered or certified mail, require additional security to be given by or on behalf of the person within such reasonable time as may be stipulated in the notice.

PAYMENT WHERE ADDITIONAL SECURITY NOT GIVEN

(2) Where the additional security required to be given by or on behalf of a person under subsection (1) is not given within the time it is so required to be given, the amount by which

(a) the amount owing in respect of which security that has been given to the Minister by the person is no longer adequate exceeds

(b) the value of the security that has been given to the Minister by the person, as determined by the Minister or a designated officer,

is payable by the person immediately.

Forms

FORMS

8. The Minister may include on any form a declaration, to be signed by the person completing the form, declaring that the information given by that person on the form is true, accurate and complete.

Accounting and Payment of Duties

ACCOUNTING AND PAYMENT OF DUTIES

32. (1) Subject to subsections (2) and (4) and any regulations made under subsection (6), and to section 33, no goods shall be released until

(a) they have been accounted for by the importer or owner thereof in the prescribed manner and, where they are to be accounted for in writing, in the prescribed form containing the prescribed information; and

(b) all duties thereon have been paid.

RELEASE PRIOR TO ACCOUNTING

(2) In prescribed circumstances and under prescribed conditions, goods may be released prior to the accounting required under subsection (1) if

- (a) the importer or owner of the goods makes an interim accounting in the prescribed manner and form and containing the prescribed information, or in the form and containing the information that is satisfactory to the Minister; or
- (b) the goods have been authorized by an officer or by any prescribed means for delivery to, and have been received at, the place of business of the importer, owner or consignee of the goods.

ACCOUNTING AFTER RELEASE

(3) If goods are released under subsection (2), they shall be accounted for within the prescribed time and in the manner described in paragraph (1)(a) by, in the case of goods to which paragraph (2)(a) applies, the person who made the interim accounting under that paragraph in respect of the goods and, in the case of goods to which paragraph (2)(b) applies, by the importer or owner of the goods.

RELEASE OF GOODS

(4) In such circumstances, and under such conditions, as may be prescribed, goods imported by courier or as mail may be released prior to the accounting required under subsection (1) and prior to the payment of duties thereon.

ACCOUNTING AND PAYMENT OF DUTIES

(5) Where goods are released under subsection (4),

- (a) the person who is authorized under paragraph (6)(a) or subsection (7) to account for the goods shall, within the prescribed time, account for the goods in the manner described in paragraph (1)(a) and that person or the importer or owner of the goods shall, within the prescribed time, pay duties on the goods, or
- (b) where there is no person authorized under paragraph (6)(a) or subsection (7) to account for the goods, the importer or owner of the goods shall, within the prescribed time, account for the goods in the manner described in paragraph (1)(a) and shall, within the prescribed time, pay duties on the goods.

DEEMED ACCOUNTING

(5.1) Except in prescribed circumstances, where the importer or owner of mail that has been released as mail under subsection (4) takes delivery of the mail, the mail shall be deemed to have been accounted for under subsection (5) at the time of its release.

REGULATIONS

(6) The Governor in Council may make regulations

- (a) specifying persons or classes of persons who are authorized to account for goods under this section in lieu of the importer or owner thereof and prescribing the circumstances in which and the conditions under which such persons or classes of persons are so authorized; and
- (b) prescribing the circumstances in which goods may be released without any requirement of accounting.

AUTHORIZATION TO ACCOUNT

(7) The Minister or an officer designated by the Minister for the purposes of this subsection may authorize any person not resident in Canada to account for goods under this section, in such circumstances and under such conditions as may be prescribed, in lieu of the importer or owner thereof.

CORRECTION TREATED AS RE-DETERMINATION

32.2 (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).

Advance Rulings

ADVANCE RULINGS

43.1 (1) Any officer, or any officer within a class of officers, designated by the Minister for the purposes of this section shall, before goods are imported, on application by any member of a prescribed class that is made within the prescribed time,

in the prescribed manner and in the prescribed form containing the prescribed information, give an advance ruling with respect to

- (a) whether the goods qualify as originating goods and are entitled to the benefit of preferential tariff treatment under a free trade agreement; and
- (b) in the case of goods exported from a NAFTA country or from Chile, any other matter concerning those goods that is set out in paragraph 1 of Article 509 of NAFTA or in paragraph 1 of Article E-09 of CCFTA, as the case may be.
- (c) the tariff classification of the goods.

*Determination, Re-determination and Further Re-determination of Origin,
Tariff Classification and Value for Duty of Imported Goods*

APPLICATION OF SECTIONS 58 TO 70

57.1 For the purposes of sections 58 to 70,

- (a) the origin of imported goods is to be determined in accordance with section 16 of the *Customs Tariff* and the regulations under that section;
- (b) the tariff classification of imported goods is to be determined in accordance with sections 10 and 11 of the *Customs Tariff*, unless otherwise provided in that Act; and
- (c) the value for duty of imported goods is to be determined in accordance with sections 47 to 55 of this Act and section 87 of the *Customs Tariff*.

DETERMINATION BY OFFICER

58. (1) Any officer, or any officer within a class of officers, designated by the Minister 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).

DEEMED DETERMINATION

(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).

REVIEW OF DETERMINATION

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

RE-DETERMINATION OR FURTHER RE-DETERMINATION

59. (1) An officer, or any officer within a class of officers, designated by the Minister 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, value for duty or marking determination of any imported goods at any time 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, 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).

NOTICE REQUIREMENT

(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.

ACTIONS REQUIRED

(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.

WHEN AMOUNTS PAYABLE

(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.

EXCEPTION FOR PAR. (3)(A)

(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.

REVIEW OF RE-DETERMINATION OR FURTHER RE-DETERMINATION

(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.

Re-determination and Further Re-determination by the President

REQUEST FOR RE-DETERMINATION OR FURTHER RE-DETERMINATION

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

REQUEST FOR REVIEW

(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.

HOW REQUEST TO BE MADE

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

PRESIDENT'S DUTY ON RECEIPT OF REQUEST

- (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.

NOTICE REQUIREMENT

(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.

WHAT PRESIDENT MAY DO

61. (1) The President may

- (a) re-determine or further re-determine the origin, tariff classification or value for duty of imported goods
 - (i) at any time after a re-determination or further re-determination is made under paragraph 60(4)(a), but before an appeal is heard under section 67, on the recommendation of the Attorney General for Canada, if the re-determination or further re-determination would reduce duties payable on the goods,
 - (ii) at any time, if the person who accounted for the goods under subsection 32(1), (3) or (5) fails to comply with any provision of this Act or the regulations or commits an offence under this Act in respect of the goods, and
 - (iii) at any time, if the re-determination or further re-determination would give effect to a decision of the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada made in respect of the goods;
- (b) re-determine or further re-determine the marking determination of imported goods
 - (i) within four years after the date the determination was made under section 57.01, if the Minister considers it advisable to make the re-determination,
 - (ii) at any time, if the person who is given notice of a marking determination under section 57.01 or of a re-determination under paragraph 59(1)(a) fails to comply with any provision of this Act or the regulations or commits an offence under this Act in respect of the goods,
 - (iii) at any time, if the re-determination or further re-determination would give effect to a decision made in respect of the goods by the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada, and
 - (iv) at any time after a re-determination is made under paragraph 60(4)(c), but before an appeal is heard under section 67, on the recommendation of the Attorney General for Canada; and
- (c) re-determine or further re-determine the origin, tariff classification or value for duty of imported goods (in this paragraph referred to as the “subsequent goods”), at any time, if the re-determination or further re-determination would give effect, in respect of the subsequent goods, to a decision of the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada, or of the President under subparagraph (a)(i),
 - (i) that relates to the origin or tariff classification of other like goods imported by the same importer or owner on or before the date of importation of the subsequent goods, or
 - (ii) that relates to the manner of determining the value for duty of other goods previously imported by the same importer or owner on or before the date of importation of the subsequent goods.

NOTICE REQUIREMENT

(2) If the President makes a re-determination or further re-determination under this section, the President shall without delay give notice of that decision, including the rationale on which the decision is made, to the prescribed persons.

NO REVIEW

62. A re-determination or further re-determination under section 60 or 61 is not subject to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 67.

PAYMENT OR REFUND

65. (1) If a re-determination or further re-determination is made under paragraph 60(4)(a) or 61(1)(a) or (c) in respect of goods, such persons who are given notice of the decision as may be prescribed shall, in accordance with the decision,

- (a) pay any additional amount owing as duties in respect of the goods or, where an appeal is taken under section 67, 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 and interest paid (other than interest that was paid by reason of duties not being paid in accordance with subsection 32(5) or section 33) in excess of the duties and interest owing in respect of the goods.

WHEN AMOUNT OWING OR REFUND PAYABLE

(2) Any amount owing by or to a person under subsection (1) or 66(3) of this Act or as a result of a determination or re-determination under the *Special Import Measures Act* in respect of goods, other than an amount in respect of which security is given, is payable immediately, whether or not an appeal is taken under section 67 of this Act or subsection 61(1) of that Act.

REFUND TO PERSON OTHER THAN PAYER

65.1 (1) If a person (in this subsection referred to as the “applicant”) to whom notice of a decision under subsection 59(1) or paragraph 60(4)(a) or 61(1)(a) or (c) was given would be entitled under paragraph 59(3)(b) or 65(1)(b) to a refund of an amount if the applicant had been the person who paid the amount, the amount may be paid to the applicant and any amount so paid to the applicant is deemed to have been refunded to the applicant under that paragraph.

EFFECT OF REFUND

(2) If an amount in respect of goods has been refunded to a person under paragraph 59(3)(b) or 65(1)(b), no other person is entitled to a refund of an amount in respect of the goods under either of those paragraphs.

(3) This section does not apply to a marking determination.

INTEREST ON PAYMENTS

66. (1) If the amount paid by a person on account of duties expected to be owing under paragraph 59(3)(a) or 65(1)(a) of this Act or under the *Special Import Measures Act* exceeds the amount of duties, if any, owing as a result of a determination, re-determination or further re-determination, the person shall be paid, in addition to the excess amount, interest at the prescribed rate for the period beginning on the first day after the day the amount was paid and ending on the day the determination, re-determination or further re-determination, as the case may be, was made, calculated on the excess amount.

INTEREST WHERE SECURITY GIVEN

(2) If, as a result of a determination, re-determination or further re-determination made in respect of goods, a person is required under paragraph 59(3)(a) or 65(1)(a) to pay an amount owing as duties in respect of the goods and the person gives security under that paragraph pending a subsequent re-determination or further re-determination in respect of the goods, the interest payable under subsection 33.4(1) on any amount owing as a result of the subsequent re-determination or further re-determination is to be computed at the prescribed rate for the period beginning on the first day after the day the security was given and ending on the day the subsequent re-determination or further re-determination is made.

INTEREST ON REFUNDS

(3) A person who is given a refund under paragraph 59(3)(b) or 65(1)(b) of this Act or under the *Special Import Measures Act* of an amount paid shall be given, in addition to the refund, interest at the prescribed rate for the period beginning on the first day after the day the amount was paid and ending on the day the refund is given, calculated on the amount of the refund.

Appeals and References

APPEAL TO THE CANADIAN INTERNATIONAL TRADE TRIBUNAL

67. (1) A person aggrieved by a decision of the President made under section 60 or 61 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the President and the Secretary of the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.

PUBLICATION OF NOTICE OF APPEAL

(2) Before making a decision under this section, the Canadian International Trade Tribunal shall provide for a hearing and shall publish a notice thereof in the *Canada Gazette* at least twenty-one days prior to the day of the hearing, and any person who, on or before the day of the hearing, enters an appearance with the Secretary of the Canadian International Trade Tribunal may be heard on the appeal.

JUDICIAL REVIEW

(3) On an appeal under subsection (1), the Canadian International Trade Tribunal may make such order, finding or declaration as the nature of the matter may require, and an order, finding or declaration made under this section is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 68.

APPEAL TO FEDERAL COURT

68. (1) Any of the parties to an appeal under section 67, namely,

- (a) the person who appealed,
- (b) the President, or
- (c) any person who entered an appearance in accordance with subsection 67(2),

may, within ninety days after the date a decision is made under section 67, appeal therefrom to the Federal Court of Appeal on any question of law.

68. (1) Any of the parties to an appeal under section 67, namely,

- (a) the person who appealed,
- (b) the President, or
- (c) any person who entered an appearance in accordance with subsection 67(2),

may, within ninety days after the date a decision is made under section 67, appeal therefrom to the Federal Court of Appeal on any question of law.

DISPOSITION OF APPEAL

(2) The Federal Court of Appeal may dispose of an appeal by making such order or finding as the nature of the matter may require or by referring the matter back to the Canadian International Trade Tribunal for re-hearing.

REFUND PENDING APPEAL

69. (1) Where an appeal is taken under section 67 or 68 in respect of goods and the person who appeals has paid any amount as duties and interest in respect of the goods, the person shall, on giving security satisfactory to the Minister in respect of the unpaid portion of the duties and interest owing in respect of the goods and the whole or any portion of the amount paid as duties and interest (other than interest that was paid by reason of duties not being paid in accordance with subsection 32(5) or section 33) in respect of the goods, be given a refund of the whole or any portion of the amount paid in respect of which security is given.

INTEREST

(2) Where a refund is given under subsection (1), the person who is given the refund shall,

(a) if a re-determination or further re-determination is made by the under subparagraph 61(1)(a)(iii) and a portion of the amount refunded as a result of that decision is owing as duties and interest, pay interest at the prescribed rate for the period beginning on the first day after the day the refund is given and ending on the day the amount of the refund found to be owing as duties and interest has been paid in full, calculated on the outstanding balance of that amount of the refund, except that if the amount of the refund found to be owing is paid within thirty days after the day that decision is made, interest shall not be payable on that amount from that day to the day the amount is paid; or

(b) if a re-determination or further re-determination is made by the under subparagraph 61(1)(a)(iii) and a portion of the amount refunded as a result of that decision is not owing as duties and interest, be given interest at the prescribed rate for the period beginning on the day after the amount refunded was originally paid by that person and ending on the day it was refunded, calculated on the amount of the refund found not to be owing.

(2) Where a refund is given under subsection (1), the person who is given the refund shall,

(a) if a re-determination or further re-determination is made by the President under subparagraph 61(1)(a)(iii) and a portion of the amount refunded as a result of that decision is owing as duties and interest, pay interest at the prescribed rate for the period beginning on the first day after the day the refund is given and ending on the day the amount of the refund found to be owing as duties and interest has been paid in full, calculated on the outstanding balance of that amount of the refund, except that if the amount of the refund found to be owing is paid within thirty days after the day that decision is made, interest shall not be payable on that amount from that day to the day the amount is paid; or

(b) if a re-determination or further re-determination is made by the President under subparagraph 61(1)(a)(iii) and a portion of the amount refunded as a result of that decision is not owing as duties and interest, be given interest at the prescribed rate for the period beginning on the day after the amount refunded was originally paid by that person and ending on the day it was refunded, calculated on the amount of the refund found not to be owing.

REFERENCES TO CANADIAN INTERNATIONAL TRADE TRIBUNAL

70. (1) The may refer to the Canadian International Trade Tribunal for its opinion any questions relating to the origin, tariff classification or value for duty of any goods or class of goods.

IDEM

(2) Sections 67 and 68 apply in respect of a reference made pursuant to this section as if the reference were an appeal taken pursuant to section 67.

Special Provisions

SPECIAL PROVISIONS

71. (1) If the release of goods is refused because the goods have been determined to be prohibited goods classified under tariff item No. 9899.00.00 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, re-determination or further re-determination may be requested under section 60 or made under section 61 and appeals may be taken under sections 67 and 68 in respect of the determination, subject to the following modifications:

- (a) subparagraph 61(1)(a)(iii) and paragraph 61(1)(c) are deemed to include a reference to the court; and
- (b) in sections 67 and 68, the expression “court” is deemed to be substituted for the expression “Canadian International Trade Tribunal” and the expression “clerk of the court” is deemed to be substituted for the expression “Secretary of the Canadian International Trade Tribunal.”

DEFINITIONS

(2) In this section,

CLERK OF THE COURT

“clerk of the court” means the clerk of the Supreme Court, Superior Court of Justice in and for the Province of Ontario, Superior Court, Court of Queen’s Bench or county or district court, as the case may be;

COURT

“court” means

- (a) in the Province of Ontario, the Ontario Court (General Division),
- (b) in the Province of Quebec, the Superior Court,
- (c) in the Provinces of Nova Scotia and British Columbia, the Yukon Territory and the Northwest Territories, the Supreme Court,
- (d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen’s Bench; and
- (e) [Repealed, 1992, c. 51]
- (f) in the Provinces of Prince Edward Island and Newfoundland, the Trial Division of the Supreme Court.

“court” means

- (a) in the Province of Ontario, the Superior Court of Justice,
- (b) in the Province of Quebec, the Superior Court,
- (c) in the Provinces of Nova Scotia and British Columbia, in Yukon and in the Northwest Territories, the Supreme Court,
- (d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen’s Bench,
- (e) [Repealed, 1992, c. 51, s. 44]
- (f) in the Provinces of Prince Edward Island and Newfoundland, the Trial Division of the Supreme Court, and
- (g) in Nunavut, the Nunavut Court of Justice.

LIMITATION RELATING TO SECURITY

72. No security may be given under paragraph 59(3)(a) or 65(1)(a) or subsection 69(1) in respect of any amount owing as surtaxes levied under section 53, 55, 60, 63, 68 or 78 of the *Customs Tariff* or temporary duties levied under any of sections 69 to 76 of that Act.

LIMITATION – HEADING NO. 98.26 OF LIST OF TARIFF PROVISIONS

72.1 Notwithstanding subsection 59(1) and sections 60 and 61, no re-determination or further re-determination of the tariff classification of imported goods classified under heading No. 98.26 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff* may be made unless the re-determination or further re-determination is to

- (a) change the classification of the goods to another tariff item under that heading; or
- (b) change the classification of all those goods accounted for under the same accounting document to tariff items in Chapters 1 to 97 of that List.

REFUND

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 Israel or another CIFTA beneficiary but no claim for preferential tariff treatment under CIFTA was made in respect of those goods at the time they are 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);
- (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.

REFUND TREATED AS RE-DETERMINATION

(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).

EFFECT OF DENIAL OF REFUND

(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.

EFFECT OF DENIAL OF REFUND

(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.

Collections

FEES, CHARGES AND OTHER AMOUNTS OWING

143. (1) Any duties, fee, charge or other amount owing to Her Majesty in right of Canada pursuant to this Act or the regulations, other than an amount referred to in subsection (2) or (3), constitutes a debt due to Her Majesty from and after the time such amount should have been paid, and any person from whom the amount is owing is in default unless, within thirty days after the time a notice of arrears is sent by mail addressed to him at his latest known address or delivered to that address, that person

- (a) pays the amount owing as indicated in the notice; or
- (b) where an appeal is available to him under section 144, appeals the notice thereunder.

PENALTY OR ASCERTAINED FORFEITURE

(2) Any amount of money demanded as a penalty in a notice of assessment served under section 109.3 or demanded in a notice served under section 124, from and after the time of service, constitutes a debt due to Her Majesty from the person on whom the notice is served, and that person is in default unless, within thirty days after the time of service, the person

- (a) pays that amount; or
- (b) requests a decision of the Minister under section 131.

AMOUNTS DEMANDED BY THE MINISTER

(3) Any amount of money demanded under paragraph 133(1)(c) or subsection 133(1.1), from and after the time notice is served under subsection 131(2), constitutes a debt due to Her Majesty from the person who requested the decision and that person is in default unless, within ninety days after the time of service, the person

- (a) pays the amount so demanded; or
- (b) where the person appeals the decision of the Minister under section 135, gives security satisfactory to the Minister.

APPEAL

144. A person to whom a notice of arrears is sent or delivered under subsection 143(1) may, if no appeal is or was available to that person under section 67 or 68 in respect of the same matter, within thirty days after that notice is sent, appeal the notice by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant.

CERTIFICATE OF DEFAULT

145. (1) Any debt due to Her Majesty in respect of which there is a default of payment under section 143 or such part of any such debt that has not been paid, may be certified by the Minister.

JUDGMENTS

(2) On production to the Federal Court, a certificate made under this section shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court for a debt of the amount specified in the certificate.

COSTS

(3) All reasonable costs and charges attendant on the registration of the certificate are recoverable in like manner as if they had been certified and the certificate had been registered under this section.

DETENTION OF AND LIEN ON IMPORTED OR EXPORTED GOODS

146. (1) Any goods imported or reported for exportation under section 95 on his own behalf by a person to whom a notice referred to in subsection 143(1), (2) or (3) has been sent, delivered or served, or any goods imported or reported for exportation on behalf of any such person, at any time after such notice is sent, delivered or served are subject to a lien for the amount demanded in the notice and may be detained by an officer at the expense of that person until such amount is paid.

SALE OF DETAINED GOODS

(2) Where a person is in default of payment of a debt due to Her Majesty under section 143, the Minister, on giving thirty days notice by registered mail addressed to the person at his latest known address, may direct that any goods imported or reported for exportation by or on behalf of the person that have been detained under subsection (1), or any portion thereof, be sold by public auction or public tender or by the Minister of Supply and Services pursuant to the *Surplus Crown Assets Act*, subject to such regulations as may be prescribed.

IDEM

(3) The proceeds of any sale under subsection (2) shall be applied to the payment of the debt referred to in that subsection, any expenses incurred by Her Majesty in right of Canada in respect of the goods sold and any duties thereon, and the surplus, if any, shall be paid to the person referred to in subsection (2).

Evidence

DATE OF NOTICE BY MAIL

149. For the purposes of this Act, the date on which a notice is given pursuant to this Act or the regulations shall, where it is given by mail, be deemed to be the date of mailing of the notice, and the date of mailing shall, in the absence of any evidence to the contrary, be deemed to be the day appearing from such notice to be the date thereof unless called into question by the Minister or by some person acting for him or Her Majesty.

Regulations

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

Notice

Determination, Re-determination and Further Re-determination of Origin, Tariff Classification, and Value for Duty by a Designated Officer under Sections 58 and 59 of the Act

3. (1) Where an officer makes a determination of origin of imported goods pursuant to subsection 58(1) of the Act, or a re-determination or further re-determination of origin of imported goods pursuant to subsection 59(1) of the Act, the officer shall give notice of the determination, re-determination or further re-determination, as the case may be,

(a) to

- (i) the importer of the goods,
- (ii) the owner of the goods at the time of release,
- (iii) any person liable for payment of duties on the goods at the time of release, or
- (iv) the person who accounted for the goods under subsection 32(1), (3) or (5) of the Act; and

(b) where preferential tariff treatment under a free trade agreement was claimed in respect of those goods, to the person who has completed and signed a Certificate of Origin for the goods.

(2) Where an officer makes a determination of tariff classification or value for duty of imported goods pursuant to subsection 58(1) of the Act, or a re-determination or further re-determination pursuant to subsection 59(1) of the Act, the officer shall give notice of the determination, re-determination or further re-determination, as the case may be, to

- (a) the importer of the goods;
- (b) the owner of the goods at the time of release;
- (c) any person liable for payment of duties on the goods at the time of release; or
- (d) the person who accounted for the goods under subsection 32(1), (3) or (5) of the Act.

Re-determination and Further Re-determination of Origin, Tariff Classification and Value for Duty by the Deputy Minister under Section 61 of the Act

4. (1) Where the Deputy Minister makes a re-determination or further re-determination of origin of imported goods pursuant to subsection 61(1) of the Act, the Deputy Minister shall give notice of the re-determination or further re-determination, as the case may be,

(a) to

- (i) the importer of the goods,
- (ii) the owner of the goods at the time of release,
- (iii) any person liable for payment of duties on the goods at the time of release, or
- (iv) the person who accounted for the goods under subsection 32(1), (3) or (5) of the Act; and

(b) where preferential tariff treatment under a free trade agreement was claimed in respect of those goods, to the person who has completed and signed a Certificate of Origin for the goods.

(2) Where the Deputy Minister makes a re-determination or further re-determination of tariff classification or value for duty of imported goods pursuant to subsection 61(1) of the Act, the Deputy Minister shall give notice of the re-determination or further re-determination, as the case may be, to

- (a) the importer of the goods;
- (b) the owner of the goods at the time of release;
- (c) any person liable for payment of duties on the goods at the time of release; or
- (d) the person who accounted for the goods under subsection 32(1), (3) or (5) of the Act.

Payment of Duties

5. The persons to whom paragraphs 59(3)(a) and 65(1)(a) of the Act apply are those persons who were given notice of the determination, re-determination or further re-determination, as the case may be, under section 3 or 4, other than a person referred to in paragraph 3(1)(b) or 4(1)(b).

Refund of Duties

6. The persons to whom paragraphs 59(3)(b) and 65(1)(a) of the Act apply are those persons who were given notice of the determination, re-determination or further re-determination, as the case may be, under section 3 or 4, other than a person referred to in paragraph 3(1)(b) or 4(1)(b) or a person authorized under paragraph 32(6)(a) or subsection 32(7) of the Act to account for goods.

**PRESCRIPTION OF FORM, MANNER AND INFORMATION TO MAKE A REQUEST
FOR RE-DETERMINATION, FURTHER RE-DETERMINATION OR REVIEW
UNDER SECTION 60 OF THE CUSTOMS ACT**

Authority

Pursuant to the Authorization¹ signed by the President of the Canada Border Services Agency on May 30th, 2008, under subsection 2(4) of the *Customs Act*² and subsections 12(1) and (2) of the *Canada Border Services Agency Act*³, as amended, and for the purpose of section 8 and subsection 60(3) of the *Customs Act*, I hereby authorize the following forms and manners of filing the forms and specify the following information to be provided on or with the forms for submitting the following requests under section 60 of the *Customs Act*:

- A review of an advance ruling issued on or after January 1, 1998; or,
- A re-determination or further re-determination of origin, tariff classification, value for duty, or marking for goods accounted for on or after January 1, 1998.

Prescribed Form and Manner

1. Form B226, *Request for Re-determination of Origin of Goods Imported from the Territory of a Trading Partner*, is the prescribed form to request a re-determination or further re-determination of origin by exporters and producers under subsection 60(1) of the *Customs Act*.
2. Form B227, *Request for Advance Ruling or for a Review of an Advance Ruling*, is the prescribed form to request a review of an advance ruling for origin under subsection 60(2) of the *Customs Act*.
3. A letter is the prescribed form to request a review of an advance ruling for tariff classification under subsection 60(2) of the *Customs Act*.
4. Form B236, *Request(s) for a Marking Re-determination of Goods Imported from a NAFTA Country*, is the prescribed form to request a re-determination or further re-determination of marking under subsection 60(1) of the *Customs Act*.
5. Form B2G, *CBSA Informal Adjustment Request*, or a letter is the prescribed form to request a re-determination or further re-determination under subsection 60(1) of the *Customs Act* for goods imported into Canada other than goods imported for sale or for any commercial, industrial, occupational, institutional or other like use.
6. Form B2, *Canada Customs – Adjustment Request*, is the prescribed form for all other requests for a re-determination or further re-determination of origin, tariff classification, or value for duty under subsection 60(1) of the *Customs Act*.
7. Notwithstanding paragraph 6, a “Blanket Form B2” that pertains to multiple accounting documents may be used if all requests:
 - (a) cover exactly the same issue;
 - (b) pertain to shipments of goods from the same exporter to the same importer; and,
 - (c) have dates of final accounting that fall with the same calendar quarter.
8. Notwithstanding paragraphs 5 and 6, a letter is the prescribed form to request a re-determination or further re-determination of the tariff classification of goods under subsection 60(1) of the *Customs Act* that have been determined to be classified under tariff items 9897.00.00, 9898.00.00 or 9899.00.00 to the Schedule of the *Customs Tariff*⁴.
9. Subject to exceptions under the *Proof of Origin of Imported Goods Regulations*⁵, all information must be submitted in English or French.

1 Authorization to Exercise Powers or Perform Duties and Functions of the Minister of Public Safety and Emergency Preparedness under the *Customs Act*, May 30, 2008.

2 1985, c. 1 (2nd Supp.) C-52.6.

3 2005, c. 38.

4 1997, c. 36.

10. One copy of Forms B226, B227 and B2G and of supporting documentation is required. Additional documentation to a form must be attached to it.
11. Two copies of Forms B2 and B236 and one copy of all supporting documentation are required. Any supporting documentation must be attached to one of the copies of the submitted forms. A third copy of the form is requested where security is given in lieu of the full payment of duty and interest owed.
12. An exporter or producer may file one copy of Form B226 pertaining to multiple accounting documents filed by different importers if the request involves identical goods or sufficiently similar goods, provided that one decision is applicable to all the goods for which the request is made.
13. Requests may be delivered in person or sent by regular or registered mail. The burden of proof that a request was made under section 60 of the *Customs Act* lies on the person claiming to have made the request.
14. Where an application for an extension of time to file a request under section 60 of the *Customs Act* is granted under sections 60.1 or 60.2 of the *Customs Act*, the request must be made in the above prescribed form and filed in the manner prescribed in this document and within ninety days from the date of the decision or order granting the application.

Prescribed Information

15. All requests made on Forms B226, B227, B236 and B2G must contain the information required by the form, including additional information such as letters.
16. The coding and content of requests made on Form B2 must be in accordance with the instructions set out in Memorandum D17-2-1, *Coding of Adjustment Request Forms*.
17. The expression “section 60 of the Customs Act” must be stated in the explanation field of Form B2 or clearly identified in the letter as its object.
18. Each request must include the following information:
- (a) A copy of the notice containing the contested decision issued under sections 43.1, 57.01, 58 or 59 of the *Customs Act*, and where applicable, a copy of:
 - (i) Forms K-26 (entitled “*Notice of Detention*”), K-27 or any other detention form;
 - (ii) The notice of the decision issued under subsection 60.1(4) or the order rendered under subsection 60.2(3) of the *Customs Act*.
 - (b) If not otherwise provided on the prescribed forms:
 - (i) The name, address and contact information of the importer, exporter or producer, including the name, title and telephone number of the contact person;
 - (ii) The description of the goods and for goods of tariff item 9899.00.00, include their title, if any.
 - (c) The justification to make the request for a re-determination, further re-determination or review of advance ruling that contains a rationale supported by facts and evidence.
19. When a “Blanket Form B2” of paragraph 7 is used, a detailed worksheet must be attached to it. The worksheet must list and identify:
- (a) The original transaction numbers in chronological order by date of final accounting, and
 - (b) The line(s) of the adjusted accounting document for which the request is being made.
20. If the explanation field of Form B2 or Form B2G is insufficient to provide the prescribed information, the field must indicate: “see attachments”.
21. When the prescribed information has been submitted and remains available with another request in the same region by the same importer for identical goods or issue(s), the explanation field of Form B2 must contain a statement indicating “see information filed with request # [insert transaction number]”.

22. When the person making a request under section 60 of the *Customs Act* requests to hold the re-determination or further re-determination pending a decision on an earlier request filed by that person for an identical or sufficiently similar good or the same issue, the explanation field of the form must indicate: "Put on hold until [adjustment number, CITT appeal number, or other identifiable reference] is decided", and provide sufficient information to link the request to the referenced matter.

Dated at Ottawa, Province of Ontario, this....26th....day of....June....., 2008.

Cathy Munroe
Vice-President
Admissibility Branch
Canada Border Services Agency

**PRESCRIPTION OF FORM AND MANNER, AND INFORMATION TO FILE AN APPLICATION
FOR AN EXTENSION OF TIME UNDER SECTION 60.1 OF THE *CUSTOMS ACT***

Authority

Pursuant to the Authorization⁶ signed by the President of the Canada Border Services Agency on May 30th, 2008, under subsection 2(4) of the *Customs Act*⁷ and subsections 12(1) and (2) of the *Canada Border Services Agency Act*⁸, as amended, and for the purpose of section 8 and subsection 60.1(3) of the *Customs Act*, I hereby authorize the following forms and manners of filing the forms and specify the following information to be provided on or with the forms for submitting an application under section 60.1 of the *Customs Act*.

Prescribed Form and Manner

1. Form B2, *Canada Customs - Adjustment Request*, is the prescribed form to apply for an extension of time under section 60.1 of the *Customs Act*.
2. Notwithstanding paragraph 1, a letter may be submitted as an alternative to Form B2 to apply for an extension of time under section 60.1 of the *Customs Act* in the case of:
 - (a) A request for review of an advance ruling;
 - (b) A request for re-determination or further re-determination of origin by an exporter or producer;
 - (c) A request for re-determination or further re-determination of marking; or,
 - (d) A request for re-determination or further re-determination of tariff classification, value for duty or origin pertaining to goods imported into Canada other than for sale or for any commercial, industrial, occupational, institutional or other like use; or
 - (e) A request for re-determination or further re-determination of tariff classification of goods determined to be classified under tariff items 9897.00.00, 9898.00.00 or 9899.00.00 of the Schedule to the *Customs Tariff*⁹.
3. Subject to exceptions under the *Proof of Origin of Imported Goods Regulations*¹⁰, all information must be submitted in English or French.
4. Supporting submission and documentation must be attached to Form B2 or letter and the explanation field of Form B2 or the letter must indicate: "see attached submission and documentation".
5. Applications may be delivered in person or sent by regular or registered mail. The burden of proof that an application was made under section 60.1 of the *Customs Act* lies on the person claiming to have made it.

Prescribed Information

6. The coding and content of applications filed on Form B2 must be in accordance with instructions set out in Memorandum D17-2-1, *Coding of Adjustment Request Forms*.
7. The expression "section 60.1 of the *Customs Act*" must be stated in the explanation field of Form B2 or clearly identified in the letter as its object.

6 Authorization to Exercise Powers or Perform Duties and Functions of the Minister of Public Safety and Emergency Preparedness under the *Customs Act*, May 30, 2008.

7 1985, c. 1 (2nd Supp.) C-52.6.

8 2005, c. 38.

9 1997, c. 36.

10 SOR/98-52.

8. Each application for an extension of time must include the following information:
- (a) A copy of the notice containing the contested decision issued under sections 43.1, 57.01, 58 or 59 of the *Customs Act*, and where applicable a copy of:
 - (i) Forms K-26 (entitled “*Notice of Detention*”), K27 or any other detention forms;
 - (ii) The rejection notice in respect of the submitted request for re-determination, further re-determination or review made under section 60 of the *Customs Act*.
 - (b) If not otherwise provided on the prescribed forms:
 - (i) The name, address and contact information of the importer, exporter or producer, including the name, title and telephone number of the contact person;
 - (ii) The description of the goods and for goods of tariff item 9899.00.00, include their title, if any.
 - (c) A submission to support the application for an extension of time which must:
 - (i) set out the reasons for which the request for re-determination, further re-determination or review had not been filed within the time provided for under section 60 of the *Customs Act*;
 - (ii) demonstrate how each of the conditions in paragraph 60.1(6)(b) of the *Customs Act* have been met; and,
 - (iii) provide evidence in support of the facts referred to in paragraph b).

Dated at Ottawa, Province of Ontario, this....26th....day of....June....., 2008.

Cathy Munroe
 Vice-President
 Admissibility Branch
 Canada Border Services Agency

APPENDIX B

SPECIAL PROCEDURE TO CHALLENGE NATIONAL CUSTOMS RULINGS AND OTHER FORMS OF AGENCY POLICY USING THE *CUSTOMS ACT*

1. The special procedure described in the following paragraphs explains how an importer who does not agree with a policy for accounting for imported goods can challenge a National Customs Ruling (NCR) or other Agency policy regarding origin, tariff classification, or value for duty after the goods have been imported.
2. This procedure applies only to imported goods which have not been verified or otherwise adjusted for the trade area under review (i.e., origin, tariff classification, or value for duty). It also applies only to situations that involve a real dispute between the importer and the Agency at the time of filing.

General

3. The Agency expects an importer to account for his or her goods in accordance with Agency advice, even when disagreeing with these policies or when having already initiated a process to have an NCR or policy reviewed. Agency advice may be found in sources such as NCRs, customs memoranda, or customs notices.
4. The Agency encourages importers to use informal dispute resolution processes for the review of NCRs and policy. See the latest version of Memorandum D11-11-1 for instructions on asking for a review of an NCR.
5. The following procedure refers to NCRs. However, any reference to NCRs may also be read as applying to other policies about the origin, tariff classification, or value for duty of imported goods.
6. When an importer has imported goods before he or she has an opportunity to resolve any disagreement about the NCR, the importer may challenge the NCR through the formal dispute resolution process using the following procedure:
 - (a) The importer accounts for the goods in accordance with the NCR;
 - (b) If the importation has not been verified under subsections 58(1) or 59(1), or otherwise adjusted under section 32.2 or paragraph 74(1)(e), the importer submits Form B2 with a **dual legislative authority**. Form B2 will show both paragraph 74(1)(e) (or section 32.2 for a non-revenue or payable adjustment) and subsection 60(1). The importer states that, if the paragraph 74(1)(e) refund application is denied, he or she wishes to file a dispute of the decision under subsection 60(1); and
 - (c) The importer clearly indicates that the goods were imported in accordance with the NCR (and provides the number), and that he or she believes that the NCR is wrong. The importer must also complete the dispute notice in the usual way, explaining why the requested classification is correct and why the one in the NCR is not correct.
7. If the Agency denies the paragraph 74(1)(e) refund, it will issue a DAS denying the application. When the importer has specified on the correction or refund application that he or she wants to pursue a dispute under subsection 60(1), the Agency's notice related to the section 32.2 correction or section 74 denial will indicate that it has transferred the file to the appropriate regional Recourse Division for review. The notice will include the reference (adjustment) number for the subsection 60(1) request.
8. Once the regional Recourse Division completes its review, it will issue a decision under subsection 60(5). If the decision is contrary to the NCR the importer was challenging, the decision notice will state that the NCR has been revoked. The importer may use this decision notice to support future entries.
9. If the importer does not agree with the subsection 60(1) decision, no further Agency dispute is available and the importer may file an appeal to the CITT under section 67 in the usual way.

Procedures for Completing the Dispute Notice

10. The importer must provide a full explanation and all relevant or supporting information to support a dispute, as specified in paragraphs 24 through 37 of the heading "Form and Information Requirements," when filing Form B2 with **dual legislative authority** to ensure that the Agency's review is accurate and complete. The legislative reference on Form B2 must show either "74/60" or "32.2/60," as applicable.

11. The "Explanation" field on Form B2 should state:

If my 74(1)(e) refund application [or my correction under 32.2(1) or (2), as applicable] is denied, please use this Form B2 and attachments to support a request under subsection 60(1). My original declaration (Form B3) was made in accordance with NCR No. xx [or, paragraph no. xx of D-Memo No. xx, or paragraph no. xx of Customs Notice No. xx, etc., as applicable] which I believe to be incorrect [or, which I believe does not cover these goods] for the reasons set out in the attached submission.

Note: If the Agency has already verified the importation under subsections 58(1) or 59(1), or if the importer has already made a section 32.2 correction or received or been denied a paragraph 74(1)(e) refund, with respect to the same trade area, the Agency will have issued a subsection 59(2) decision to the importer. This decision may be disputed under subsection 60(1) in the usual way. (The importation is not eligible for a further correction under section 32.2 or refund application under paragraph 74(1)(e). Therefore, there is no need to use this special procedure in such cases.)

APPENDIX C

SECURITY REQUIREMENTS

1. For the purposes of sections 59 and 65, an importer who chooses to present security for any additional duties and accrued interest, including GST owing, must present it along with Form B2. **Additional duties** mean the amount of duties owing, other than an amount owing according to sections 32 or 33.
2. Security must be in the amount of the additional duties owing plus interest, if any, on that amount. Memorandum D11-6-5 gives more information on calculating interest on amounts owing when security is posted.
3. Examples of security include cash, certified cheques, and transferable bonds issued by the Government of Canada. An importer may obtain further information about other types of acceptable security by contacting the local regional Recourse Division.
4. An importer who chooses to post a bond as security should do so several days before the end of the 30-day payment period to allow the bond to be validated. Bonds must be formulated in accordance with the bond sample found on the next page; if they are not, the Agency can refuse them.
5. The Agency will reject any dispute notice filed under section 60 if payment of duties has not been made or security satisfactory to the Minister does not accompany the notice or has not been presented before the notice is filed. If security was posted with a previous dispute notice, the importer must write "on file" after the security number in Field 11 of his or her Form B2.

Bond Sample

Bond to Secure the Payment of Duties Owing on Goods and Any Interest Owing Thereon in Respect of Which the Tariff Classification, the Value for Duty or in the Case of Goods Imported From a NAFTA Country Other Than Canada the Origin of Those Goods is Appealed Under the *Customs Act*

No. _____

Amount \$ _____

KNOW ALL PERSONS BY THESE PRESENTS: that we, _____ of _____ in the Province of _____ hereinafter called the "Principal," and _____ hereinafter called the "Surety," are jointly and severally bound unto Her Majesty in right of Canada, her heirs and successors, as represented by the Minister of National Revenue of Canada, hereinafter called the "Obligee," in the penal sum of _____ dollars (\$ _____), to be paid to the said Obligee, for which payments well and faithfully to be made, we jointly and severally bind ourselves and our respective heirs, executors, administrators, successors, and assigns firmly by these presents, sealed with our respective seals this _____ day of _____ one thousand nine hundred and _____.

WHEREAS the Principal is appealing the determination/re-determination/further re-determination of origin respecting goods imported from a NAFTA country other than Canada, or the determination/re-determination/further re-determination of the determination/re-determination/further re-determination tariff classification, or the appraisal/re-appraisal of the value for duty of imported goods, or any combination thereof, of the following goods:

Description of Goods	Transaction Number on Prescribed Form for Accounting	Page of Prescribed Form for Accounting	Line on Page of Prescribed Form for Accounting
e.g., pencils, etc.	A12345	3	4

and whereas the Principal is required to give security in respect of the amount owing as duties on the said goods and any interest owing or that may become owing on that amount.

NOW the condition of the above-written obligation is such that, if the Principal shall pay all the duties and interest owing under the *Customs Act* on the said goods, in accordance with the final decision made in respect of their tariff classification, origin, and value for duty, then this obligation shall be void and of no effect, but otherwise shall be and remain in full force and effect.

PROVIDED THAT, if the Surety at any time gives 30 days' prior written notice of its intention to terminate the obligation hereby undertaken, by registered mail addressed to, or by personal service made on, the Regional Collector for the customs office of _____, if the Principal, before the proposed termination date, either pays the amount owing as duties and any interest thereon, as determined pursuant to the most recent decision made in respect of the tariff classification, origin, and value for duty of the said goods, or gives other security satisfactory to the Minister, then this obligation and all liability of the Surety hereunder shall cease in respect of any amount owing as duties and interest on the said goods subsequent to the termination of the obligation hereby undertaken, but otherwise shall remain in full force and effect in accordance with the obligation hereby undertaken.

NOTICE of any claim hereunder shall be given to the Surety by registered mail or by personal service within 90 days of the date of the decision notice issued by the Agency pursuant to which the amount of duties owing and any interest owing on that amount has been fully determined.

IN WITNESS WHEREOF the principal has hereunto set his hand and seal, if the Principal is an individual, or has caused these presents to be sealed with its corporate seal, attested to by the signatures of its duly authorized officials, if the Principal is a corporation, and the Surety has caused these presents to be sealed with its corporate seal, attested to by the signature of its duly authorized official(s), the day and year first above written.

Signed and sealed in the presence of:

1. _____
Witness to individual's signature

1. _____ Seal
Principal (individual)

OR

Principal's corporate seal company)

Principal (Duly Authorized Official(s) and Title(s))

2. Surety's corporate seal

Duly Authorized Official(s) (title)

APPENDIX D**EXPLANATION AND SUPPORTING DOCUMENTATION FOR IMPORTER
ORIGIN DISPUTES INVOLVING A FREE TRADE AGREEMENT****Part I. Explanation**

1. The explanation may be drafted in the manner the importer feels best supports the tariff treatment requested.
2. The importer's explanation should:
 - (A) provide the name of the goods and sufficient information about them (see Part II below) to:
 - (i) confirm the tariff classification and component materials; and
 - (ii) identify the production processes, inventory controls, etc., which are relevant to the origin of the goods;
 - (B) identify the specific rule of origin applicable to the goods (see the Memoranda D11-5 series);
 - (C) explain how the goods meet the origin requirements, linking the explanation to the supporting documentation (see Part II below); and
 - (D) using points (B) and (C) above, explain what is wrong with the information or rationale supporting the Agency decision being disputed.

Note: The Agency recommends that, before filing a dispute, an importer should discuss the reasons for the Agency decision with the exporter or producer and satisfy himself or herself that the exporter or producer has information to support the importer's dispute of that decision. If the importer cannot obtain the supporting documentation from the exporter or producer, he or she:

- (i) should advise the exporter or producer that the Agency may request that the exporter or producer provide that information to the Agency, in confidence; and
- (ii) must give an explanation as to why it was not obtained (e.g., the exporter or producer did not want to release confidential information to the importer but is willing to make it available to the Agency).

Note: The terms of CIFTA prohibit the Agency from dealing directly with Israeli exporters. Requests for additional information are made through Israeli customs.

3. Where the requested tariff treatment has been denied because the Agency was not successful in obtaining the necessary information during a verification, the importer should provide some documentation to indicate that the exporter or producer is now in a position to respond to requests for information to support the dispute. In particular, the information in paragraph 7 of this Appendix must be provided.

Part II. Supporting Information and Documentation

4. The required documentation to support the dispute is proof of origin for a period of time covering the date the goods were imported, in the form of:
 - (A) a *Certificate of Origin* completed by the exporter or producer; or
 - (B) a *Statement of Origin for Commercial Importations of Less Than CAN\$1600* for goods with a value for duty of less than CAN\$1600.
5. In addition to the proof of origin documentation, the lists of documentation in paragraph 6 of this Appendix outline some of the evidence that will be necessary to support disputes related to some common origin criteria. These lists are not exhaustive and the documentation required will vary from case to case. As well, the lists are not intended to limit the extent of any additional information to be provided by the importer in support of his or her dispute. The recourse officer may request additional information which he or she believes is required to support a decision on tariff treatment, including a review of books and records, if required.

Note 1: Some of the information listed in paragraph 6 of this Appendix is available only from the exporter or producer. When such information has not been previously supplied and cannot be obtained, the importer is encouraged to provide a copy of the list to the exporter or producer, explaining that the Canada Border Services Agency will be requesting relevant documentation to process the importer's dispute.

Note 2: The Agency will attempt to obtain in confidence information from the exporter, producer, or their suppliers, as applicable, which the importer has not been able to obtain. In the case of the origin of goods covered by CIFTA or CCRFTA, the Agency will make its request through Israeli customs or appropriate customs organization of the foreign country respectively.

6. Some common origin criteria and the information required to determine origin under them are the following:

(A) Goods wholly obtained or produced in territories of one or more trading partners to a free trade agreement (i.e., NAFTA, CIFTA, or CCFTA):

- (a) a list of materials incorporated into the product;
- (b) the names and addresses of the suppliers of those materials; and
- (c) a general description of the manufacturing process performed in the order performed and the location where each process occurs.

(B) Goods qualifying pursuant to a tariff classification change rule:

- (a) a description of all materials imported from outside the territories of a trading partner used to produce the goods;
- (b) the tariff classification of any materials imported from outside the territories of a trading partner used to produce the goods, along with explanations and information to support those classifications (see Appendix F);
- (c) a description of originating materials used to make the goods;
- (d) supplier confirmation letters to prove origin of any materials from the territory of a trading partner that would, if they were not from such a territory, cause the goods to fail the tariff classification change requirement;
- (e) a general description of the manufacturing process performed, in the order performed and the location where each process occurs; and
- (f) an explanation of the argument as to why the goods qualify pursuant to the tariff change rule.

(C) Goods qualifying pursuant to a regional content requirement (does not apply to CIFTA):

- (a) if the rule for the product requires the application of both a tariff classification change requirement and a regional value content requirement, all of the information under (B) above as well as the following information;
- (b) a summary of all calculations and an explanation of how the figures were arrived at;
- (c) the period of time covered by the calculations;
- (d) a statement as to whether the net cost method or the transaction value method has been used;
- (e) proof of the transaction value adjusted to an FOB basis;
- (f) a detailed calculation and explanation of how the net cost was arrived at, including the total cost of all goods produced by the producer, as well as the adjustments to that figure specified in paragraph 8, Article 402 of the NAFTA, or in Article D-02 of the CCFTA;
- (g) a description of any materials that are claimed as intermediate materials under paragraph 10 of Article 402 of the NAFTA and proof of the value of those intermediate materials (see (aa) below);
- (h) a list of the materials used in the production of the goods;
- (i) the tariff classification of each non-territorial material;
- (j) the supplier name and address for each material;
- (k) whether each material is produced inside or outside the territory of a trading partner or is of uncertain origin;
- (l) if the material is produced in a territory of a trading partner, state whether this is because it is “wholly produced” in a territory or territories of one or more trading partners, or whether it meets a rule of origin, and if so, which one;
- (m) copies of supplier confirmation letters for all major originating materials;
- (n) the value of the material and the basis for the valuation;
- (o) a description of the process by which the materials are assembled into the final form;

- (p) a description of the location where each step of the process occurs;
- (q) the value added at each stage of the process;
- (r) the portion of value added at each stage which is originating and the reason why it is considered originating;
- (s) a copy of the most recent audited financial statements as well as any subsequent quarterly statements;
- (t) a list of all transactions with affiliated, associated, subordinate, or parent companies regarding either purchase of material or the sale of goods and services and the functions or activities performed by these persons;
- (u) a list of any goods, services, warranties, guarantees, or any other form of benefit being provided without charge or at a reduced cost either to the producer or by the producer;
- (v) a description of the method used in costing materials, i.e., standard cost, average cost, weighted average costs;
- (w) the date standard costs were calculated and the date they will be next updated;
- (x) major materials for which there were any price fluctuations exceeding 10%;
- (y) when total unit cost is an average cost, the time period the average cost covers;
- (z) an explanation of why any material claimed as an intermediate material under paragraph 10 of Article 402 of the NAFTA, or under Article D-02 of the CCFTA is considered to be originating. The amount of information required for an intermediate material is identical to what would be provided if the request was for the re-determination of the origin of that intermediate material. The rule of origin for the intermediate material must be determined and the origin information detailed above that is required for goods falling under that type of rule must be provided; and
- (aa) the following valuation information:
 - (i) commercial invoices,
 - (ii) credit notes,
 - (iii) purchase order confirmations,
 - (iv) agreements, bills or contracts of sale,
 - (v) some form of evidence of proof of payment,
 - (vi) quota or licensing agreements,
 - (vii) warranty agreements,
 - (viii) conditions of sale, for example information relating to trade-ins,
 - (ix) agreements or written contracts,
 - (x) copies of letters of credit,
 - (xi) agreements to provide assists and agreements between third parties, together with information supporting the value and/or apportionment of the assist,
 - (xii) royalty agreements,
 - (xiii) trade mark agreements,
 - (xiv) licence fee agreements,
 - (xv) copyright agreements,
 - (xvi) evidence of freight costs,
 - (xvii) details of rebates,
 - (xviii) information relating to the proposed point of direct shipment,
 - (xix) information which substantiates the value of identical/similar goods,
 - (xx) if applicable, detailed calculations on how you propose to employ the deductive, computed, or residual value, and
 - (xxi) value of any intermediate materials used in the production of goods and the basis for such calculation.

Note: For other origin criteria, other information may be required. In such cases, please contact the nearest regional Recourse Division.

7. The Agency may require further information to resolve the dispute. Please provide the name, position, and telephone and fax numbers of the officer or employee of the

(A) importer,

(B) importer's broker or agent,

(C) exporter, and

(D) producer when the exporter is not the producer

who is knowledgeable about the matters referred to in this Appendix.

APPENDIX E**EXPLANATION AND SUPPORTING DOCUMENTATION FOR IMPORTER ORIGIN
DISPUTES NOT INVOLVING A FREE TRADE AGREEMENT****Part I. Explanation**

1. No explanation is required to support origin disputes not involving Free Trade Agreements.

Part II. Supporting Information and Documentation

2. Where the dispute involves the General Preferential Tariff (GPT), the Least Developed Country Tariff (LDCT), or the Commonwealth Caribbean Countries Tariff (CCCT), the importer must provide:

- (A) a through bill of lading (and any other relevant transit documents); and

- (B) either a properly completed *Form A Certificate of Origin*, and any other relevant document, such as a Form B255. For details please refer to D11-4-4 and D11-4-5 or an Exporter's Statement of Origin.

3. Where the dispute involves the Most-Favored-Nation Tariff (MFNT), the Australia Tariff (AUT), or the New Zealand Tariff (NZT), the importer must provide documentation which indicates that the goods meet the requirements of the particular tariff treatment claimed, as outlined in D11-4-3 and D11-4-6.

4. The Agency may require further information to resolve the dispute. Please provide the name, position, and telephone and fax numbers of the officer or employee of the:

- (A) importer, and

- (B) importer's broker or agent

who is knowledgeable about the matters referred to in this Appendix.

APPENDIX F

**EXPLANATION AND SUPPORTING DOCUMENTATION
FOR TARIFF CLASSIFICATION DISPUTES**

Part I. Explanation

1. The explanation may be drafted in the manner the importer or agent feels will best support the importer's position. However, it needs to cover the following points:

- (A) Name the goods.
- (B) Provide a useful product description, including the purpose or function of the goods. For composite goods, be sure to list the various components or materials and their function, purpose, or role.
- (C) Identify the characteristics or attributes of the goods relevant to their tariff classification with respect to the aspects in point (D), below. Make appropriate references to accompanying supporting information, documentation or articles listed in Part II, below.
- (D) Provide a clear and complete explanation of the arguments in support of the tariff classification requested. Indicate how the following are relevant to the tariff classification requested:
 - (a) the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the *Customs Tariff*;
 - (b) the wording of the heading, subheading, and tariff item requested;
 - (c) any relevant legal (section, chapter, subheading, and supplementary) notes;
 - (d) any relevant Harmonized Commodity Description and Coding System (HS) Explanatory Notes or Compendium of Classification Opinions;
 - (e) any "ordinary" or "trade" definitions related to the goods, the terms of the headings, subheadings, or tariff items which the importer relies upon or disputes;
 - (f) any relevant court or CITT decisions;
 - (g) any and all previously obtained Agency advice concerning the tariff classification of like goods, such as NCRs, previous decisions on the same or related goods, Agency opinion letters;
 - (h) any relevant references in Agency policy, such as Memoranda, Customs Notices or Canadian Explanatory Notes; and
 - (i) in the case of goods prohibited importation on the grounds that they are classified as obscene, see paragraphs 6 to 11 of the Appendix to Memorandum D9-1-1.
- (E) Using points (C) and (D) above, explain clearly and completely why the importer disagrees with the information or rationale supporting the Agency decision under dispute.

Part II. Supporting Information, Documentation, Articles, and Material

2. Include whatever supporting information, documentation or articles would aid the person resolving the dispute to understand the nature of the goods and to complete a full and proper review of the explanation provided. The following list is not exhaustive and will vary from case to case. It is not intended to limit the extent of the additional information which may be provided. The Agency may also request information in addition to the following:

- (A) specifications, illustrations, trade literature, samples (see Note, below, for hazardous or corrosive samples), drawings, catalogues, brochures, any other information specific to the goods under review;
- (B) information on the product into which the commodity in question is to be incorporated when use is a factor;
- (C) nature and/or condition of the goods, when a factor; and
- (D) other documents such as end-use certificates, special authority applications or valid permits issued by the Department of Foreign Affairs for importations of agricultural goods classified under a tariff item subject to a tariff rate quota. (Tariff rate quotas are explained in Memorandum D10-18-1, *Tariff Rate Quotas*.)

3. The Agency may require further information to resolve the dispute. Please provide the name, position, and telephone and fax numbers of the officer or employee of the:

- (A) importer,
- (B) importer's broker or agent, and
- (C) manufacturer or producer

who is knowledgeable about the matters referred to in this Appendix.

Note: Hazardous or corrosive samples should be sent directly to:

Canada Border Services Agency
Laboratory and Scientific Services Directorate
79 Bentley Avenue
Nepean, ON
K2E 6T7

For hazardous or corrosive samples, detailed handling and disposal instructions must be either written on the outside of the shipping container or in a document attached thereto. An information sheet giving the chemical breakdown of the sample should also be provided. However, a sample should only be sent to the laboratory if the recourse officer requests such action. Where possible, any additional data provided should also be given to the officer who requested the sample.

APPENDIX G**EXPLANATION AND SUPPORTING DOCUMENTATION
FOR VALUE FOR DUTY DISPUTES****Part I. Explanation**

1. The Explanation may be drafted in the manner the importer or agent feels best supports the value for duty requested. However, it must cover the following points:

- (A) Explain the issue or policy under dispute.
- (B) Identify the valuation method used to arrive at the requested value for duty.
- (C) Identify what documentation set out in Part II, below, and what agency policies or previous decisions support the importer's position. (Refer to the Memoranda D13 series.)
- (D) Explain how the value for duty requested is calculated.
- (E) Provide a description of the business practices and arrangements and identify the attributes or aspects related to the valuation issue or policy under review, e.g., the relevant sale for export is the sale between the purchaser and the vendor, adjustments to the price paid or payable.
- (F) Using points (B) through (E) above, explain the dispute of the Agency's calculation or approach used to calculate the value for duty under dispute.

Part II. Supporting Information and Documentation

2. The following lists of documentation outline some of the evidence that should be supplied to justify a change in the value for duty. These lists are not exhaustive and will vary from case to case. The list is not intended to limit the extent of the additional information provided by the importer/agent which supports their contention. The Canada Border Services Agency may request other additional information which it believes is required to support a decision on the value for duty, including a review of books and records if required.

(A) Section 48, "Transaction Value":

(a) Some form of written evidence must be submitted which substantiates the request for re-determination. This evidence takes many forms including:

- commercial invoices,
- credit notes,
- purchase order confirmations,
- agreements of sale,
- bills of sale,
- letters of credit,
- cancelled cheques,
- supplier statements of account,
- other forms of proof of payment,
- contracts of sale

(b) Information may relate to specific subsections of section 48 as follows:

(i) Subsection 48(1), "Price Paid or Payable/Sale for Export/Discounts":

- quota (licensing) agreements,
- warranty agreements,
- information relating to non-resident importers (for example, evidence that would establish whether or not there has been a sale for export to Canada to a purchaser in Canada),
- conditions of sale (for example, information relating to trade-ins),
- for all types of discounts, including trade and cash discounts, other specific information might consist of proof of payment and, with the exception of cash discounts, a written statement by the purchaser establishing that the discount was effected prior to importation, along with supporting evidence.

(ii) Paragraph 48(5)(a), "Buying/Selling Commissions":

- agreements or written contracts between the purchaser and the agent,
- copies of commercial invoices from the actual vendors of the goods when a buying commission has been indicated, and
- copies of letters of credit.

(iii) Paragraph 48(5)(a), "Assists":

- agreements to provide assists and agreements between third parties with information supporting the value and/or apportionment of the assist.

(iv) Paragraph 48(5)(a), "Royalty Payments":

- royalty agreements,
- trade mark agreements,
- licence fee agreements,
- copyright agreements,
- over-riding agreements between third parties,
- production agreements between the manufacturer and other parties.

(v) Paragraphs 48(5)(a) and 48(5)(b), "Transportation Charges":

- freight invoices,
- details of rebates,
- evidence of direct shipment,
- evidence of periodic billings,
- bills of lading,
- refunds or credits,
- copies of contracts,
- evidence of freight charges.

(vi) Paragraph 48(5)(b), "Duties and Taxes":

- evidence of reimbursement by the vendor,
- evidence that the vendor paid the duties.

(B) Section 49, "Transaction Value of Identical Goods" and section 50, "Transaction Value of Similar Goods":

- information that substantiates the value of the identical/similar goods.

(C) Section 51, "Deductive Value Method":

- statement requesting computed value be used before deductive value —required by subsection 48(3),
- detailed calculations used to determine the deductive value,
- background data supporting all elements of the calculation to be provided on demand.

(D) Section 52, "Computed Value Method":

- detailed calculations used to determine the computed value,
- background data supporting all elements of the calculation to be provided on demand.

(E) Section 53, "Residual Value Method":

- information to support the residual value claimed.

3. Please note that, in all cases, copies of applicable agency rulings in the importer's possession must be provided. A revised customs invoice, by itself, does not constitute supporting documentation.

4. The Agency may require further information to resolve the dispute. Please provide the name, position, and telephone and fax numbers of the officer or employee of the:

- (A) importer,
- (B) importer's broker or agent, and
- (C) manufacturer or producer

who is knowledgeable about the matters referred to in this Appendix.

APPENDIX H**WHERE TO FILE DISPUTE NOTICES OR APPLICATIONS FOR
AN EXTENSION OF TIME TO FILE A DISPUTE**

To promote efficient processing, requests for a re-determination or further re-determination under subsection 60(1) of the *Customs Act*, review of advance ruling decisions per subsection 60(2) of the same act and applications for an extension of time under section 60.1 of the same act should be addressed or delivered by hand directly to one of the following regional Recourse Divisions:

Where the notice of decision being contested was issued in the Pacific Region or Prairie Region:

Pacific Region Recourse Division
Canada Border Services Agency
403-333 Dunsmuir Street
Vancouver BC
V6B 5R4

Where the notice of decision being contested was issued in the Northern Ontario Region, Quebec Region or Atlantic Region:

Quebec Region Recourse Division
Canada Border Services Agency
400 Youville Square, 4th floor
Montreal, QC
H2Y 2C2

Where the notice of decision being contested was issued in the Toronto Area (GTA) Region:

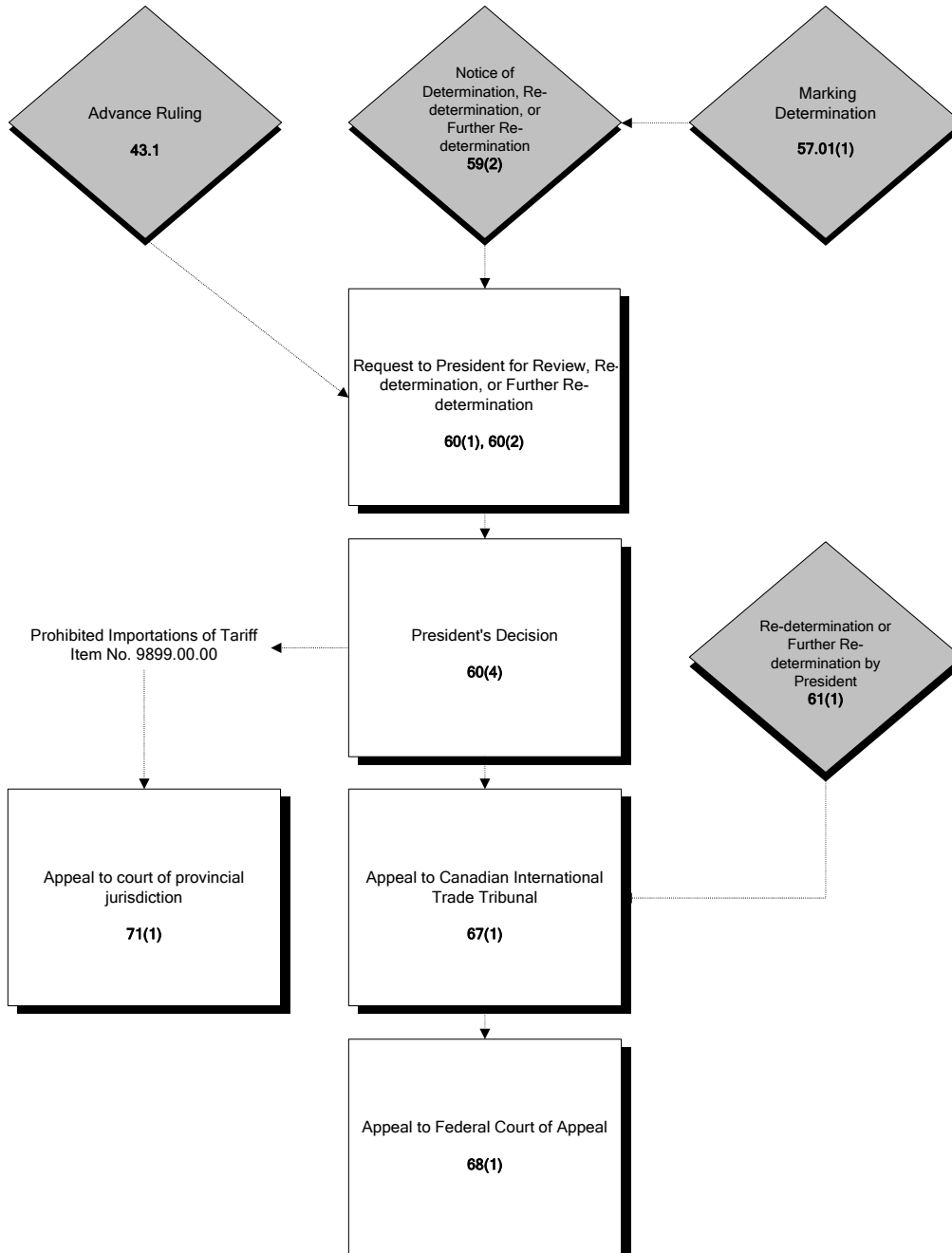
Recourse Division of the Greater Toronto Area
Region Toronto Office
Canada Border Services Agency
1 Front Street West, 3rd floor
Toronto, ON
M5J 2X6

Where the notice of decision being contested was issued in the Southern Ontario Region including Hamilton, Windsor, London, and Fort Erie:

Recourse Division of the Greater Toronto Area
Region Hamilton Office
Canada Border Services Agency
55 Bay Street North, 6th floor
Hamilton, ON
L8R 3P7

APPENDIX I

FORMAL DISPUTE RESOLUTION PROCESS



Explanation of Flow Chart

A person who has been given an advance ruling under section 43.1 of the *Customs Act* or a notice of determination, re-determination, or further re-determination under subsection 59(2), including a notice pertaining to a marking determination under subsection 57.01(1), may request a review, re-determination, or further re-determination by the President under subsection 60(1) or 60(2).

A President's decision under subsection 60(4) and a re-determination or further re-determination by the President under subsection 61(1) may be appealed to the Canadian International Trade Tribunal (CITT) under subsection 67(1). If disagreement persists, the decision of the CITT may be appealed to the Federal Court of Appeal under subsection 68(1).

A President's decision under subsection 60(4) pertaining to prohibited importations of tariff item no. 9899.00.00 may be appealed to the appropriate court of provincial jurisdiction.

REFERENCES

<p>ISSUING OFFICE –</p> <p>Policy and Planning Division Recourse Directorate Admissibility Branch</p>	<p>HEADQUARTERS FILE –</p> <p>4502-10-3</p>
<p>LEGISLATIVE REFERENCES –</p> <p><i>Customs Act Determination, Re-Determination and Further Re-Determination of Origin, Tariff Classification and Value for Duty Regulations</i></p>	<p>OTHER REFERENCES –</p> <p>D9-1-1, D10-18-1, D11-3-2, D11-4-16, D11-4-17, D11-5 series, D11-6-1, D11-6-3, D11-6-5, D11-6-6, D11-6-8, D11-6-9, D11-11-1, D13 series, D14-1-3, D17-1-22, D17-2-1</p>
<p>SUPERSEDED MEMORANDA “D” –</p> <p>D11-6-7 December 19, 2001</p>	

Services provided by the Canada Border Services Agency are available in both official languages.

