

Ottawa, February 21, 1997

SUBJECT

REFUND OF DUTIES

This Memorandum outlines and explains the policy and procedures for the refund of customs duties. The coding and processing of Form B2, *Canada Customs – Adjustment Request*, can be found in Memorandum D17-2-1, *Coding of Adjustment Request Forms*, and Memorandum D17-2-2, *Processing of Adjustment Request Forms*.

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Legislation

Customs Act

The definition of “duties” in 2(1) reads:

“duties” means any duties or taxes levied on imported goods under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act* or any other law relating to customs, but, for the purposes of subsection 3(1), paragraphs 58(2)(b), 62(1)(b) and 65(1)(b), sections 69 and 73, and subsections 74(1), 75(2), 76(1) and 82(1), does not include taxes levied under Part IX of the *Excise Tax Act*;

74.(1) Subject to this section, section 75 and any regulations made under section 81, the Minister may grant to any person who paid duties on imported goods pursuant to this Act a refund of the whole or part of the duties paid thereon where

(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 imported from a NAFTA country but no claim for preferential tariff treatment under NAFTA 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 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.2) duties have been overpaid or paid in error on the goods for any reason, other than

(i) an erroneous determination as to the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed,

(ii) an erroneous determination as to the origin of goods imported from Israel or another CIFTA beneficiary for which preferential tariff treatment under CIFTA is claimed,

(iii) an erroneous determination of tariff classification,

(iv) an erroneous appraisal of value for duty; or

(v) the existence of the circumstances described in paragraph (c.1) or (c.11); or

(d) duties have been overpaid or paid in error on the goods for any reason, other than an erroneous determination of tariff classification or erroneous appraisal of value for duty or an erroneous determination as to the origin of goods imported from the United States.

(1.1) For greater certainty, where the circumstances described in paragraph (1)(c.1) or (c.11) exist, a request for a re-determination of origin may not be made under subsection 60(1) as applied by subsection 57.2(3.1) or (5).

(1.2) The operation of paragraph (1)(d) is suspended during the period in which paragraphs (1)(c.1) and (c.2) are in force.

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

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

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

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

(i) in the case of an application for a refund under paragraph (1)(a), (b), (c), (c.11), (c.2) or (d), two years after the goods are accounted for under subsection 32(1), (3) or (5), and

(ii) in the case of an application for a refund under paragraph (1)(c.1), one year after the goods are accounted for under subsection 32(1), (3) or (5).

(4) A denial of an application for a refund under paragraph (1)(c.1) on the ground that the goods on which the claimant has paid duties are not eligible for preferential tariff treatment under NAFTA because the goods are not eligible for such tariff treatment under the regulations made pursuant to section 13 of the *Customs Tariff* at the time they are accounted for under subsection 32(1), (3) or (5) of this Act shall, for the purposes of this Act, be treated as if it were a re-determination of origin under subsection 60(3) as applied by subsection 57.2(3.1).

(4.1) A denial of an application for a refund under paragraph (1)(c.11) on the ground that the goods on which the claimant has paid duties are not eligible for preferential tariff treatment under CIFTA because the goods are not eligible for such tariff treatment under the regulations made pursuant to section 13 of the *Customs Tariff* at the time they are accounted for under subsection 32(1), (3) or (5) of this Act shall, for the purposes of this Act, be treated as if it were a re-determination of origin under subsection 60(3) as applied by subsection 57.2(5).

(5) For greater certainty, a denial of an application for a refund under paragraph (1)(c.1) or (c.11) on the basis that complete or accurate documentation has not been provided or on any ground other than the ground specified in subsection (4) or (4.1), as the case may be, shall not, for the purposes of this Act, be treated as if it were a re-determination of origin under this Act.

(6) The granting of a refund under paragraph (1)(c.1) or (c.11) shall, for the purposes of this Act, other than section 66, be treated in the same manner as if it were a re-determination of origin under subsection 60(3) as applied by subsection 57.2(3.1) or (5), as the case may be.

74.1 The Minister may grant a refund of duties under paragraph 74(1)(d) in respect of imported goods on which the customs duties are reduced or removed by a retroactive order of the Governor in Council made pursuant to sections 68 and 136 or 129 and 136 of the *Customs Tariff* if, notwithstanding the limitation period described in paragraph 74(3)(b), an application for the refund is made before July 1, 1992.

75. (1) Subject to sections 78 and 79, the amount of any abatement or refund granted under section 73 or 74 shall be determined in accordance with such regulations as the Governor in Council may make prescribing the methods of determining the amount and the classes of cases to which such determinations apply.

(2) Where the quantity of imported goods released is less than the quantity in respect of which duties were paid and no refund of duties has been granted in respect of the deficient quantity, an officer may, in such circumstances as may be prescribed and at the request of the person by whom the duties were paid, apply any duties paid in respect of the deficient quantity of the goods to any duties that become due on the deficient quantity if any portion thereof is subsequently imported by the same importer or owner.

76. (1) Subject to any regulations made under section 81, the Minister may, in such circumstances as may be prescribed, grant to any person by whom duties were paid on imported goods that are defective, are of a quality inferior to that in respect of which duties were paid or are not the goods ordered, a refund of the whole or part of the duties paid thereon if the goods have, subsequently to the importation, been disposed of in a manner acceptable to the Minister at no expense to Her Majesty in right of Canada or exported.

(2) Subsections 74(2) and (3) and 75(1) apply, with such modifications as the circumstances require, in respect of refunds under this section.

77. (1) Subject to this section, where duties have been paid on imported goods and before any use is made of the goods in Canada other than by their incorporation into other goods the goods or the other goods into which they have been incorporated are

(a) sold or otherwise disposed of to a person who would have been entitled to obtain release of the goods free of duty or at a reduced rate of duty, or

(b) diverted to a use that would have entitled a person to obtain release of the goods free of duty or at a reduced rate of duty,

the Minister may make a refund to the person by whom the duties were paid, in an amount equal to the difference between the duties paid thereon and the duties, if any, that would have been payable on the goods if at the time the goods were released they had been released to the person to whom they were sold or otherwise disposed of or released for the use to which they were diverted.

(2) For the purposes of subsection (1), “duties” does not include duties or taxes levied under the *Excise Tax Act*, the *Excise Act* or the *Special Import Measures Act*.

(3) No refund shall be granted under this section unless an application for the refund, supported by such evidence as the Minister may require, is made to an officer in the prescribed manner and in the prescribed form containing the prescribed information within two years after the goods are accounted for pursuant to subsection 32(1), (3) or (5).

78. In such circumstances as may be prescribed, where merchantable scrap, waste or by-products result from the destruction or disposal of goods or from the incorporation of goods into other goods, the amount of any abatement or refund that is granted in respect of such goods under this Act by virtue of the destruction, disposal or incorporation into other goods shall be reduced by an amount determined in the prescribed manner.

79. Where circumstances exist that render it difficult to determine the exact amount of any abatement or refund that should be granted in respect of goods under this Act, the Minister may, with the consent of the person claiming the abatement or refund, grant to that person, in lieu thereof, a specific sum, the amount of which shall be determined by the Minister.

79.1 For the purposes of sections 78 and 79, an abatement or refund does not include a rebate or refund of any amount paid in respect of tax levied under Part IX of the *Excise Tax Act*.

80. (1) Any person who is granted a refund of duties (other than amounts in respect of duty levied under the *Special Import Measures Act*) under section 74, 76, 77 or 79 shall be granted, in addition to the refund, interest on the refund at the prescribed rate for the period beginning on the ninety-first day after the day an application for the refund is received in accordance with paragraph 74(3)(b) or subsection 77(3), as the case may be, and ending on the day the refund is granted.

(2) Any person who is granted a refund under section 74, 76 or 79 of an amount in respect of duty levied under the *Special Import Measures Act* shall be granted, in addition to the refund, interest on the

refund at the prescribed rate in respect of each month or fraction of a month in the period beginning on the ninety-first day after the day an application for the refund is received in accordance with paragraph 74(3)(b) and ending on the day the refund is granted.

80.1 (1) Notwithstanding subsection 80(1), any person who, under paragraph 74(1)(d), is granted a refund of duties on imported goods on which the customs duties are reduced or removed by a retroactive order of the Governor in Council made pursuant to sections 68 and 136 or 129 and 136 of the *Customs Tariff* shall be granted, in addition to the refund, interest at the prescribed rate for the period beginning on the day after the day the duties were paid and ending on the day the refund is granted, calculated on the amount of the refund.

(2) Any person who, before the coming into force of this section, was granted a refund under paragraph 74(1)(d) of duties on imported goods on which the customs duties are reduced or removed by a retroactive order of the Governor in Council referred to in subsection (1) shall be granted interest on the refund in an amount calculated in the manner set out in that subsection, less any interest already granted on the refund.

Regulations

REGULATIONS RESPECTING THE REFUND OF DUTIES ON IMPORTED GOODS

Short Title

1. These Regulations may be cited as the *Refund of Duties Regulations*.

Interpretation

2. In these Regulations,

“Act” means the *Customs Act*; (*Loi*)

“carrier” means a person who transports imported goods; (*transitaire*)

“competent authority” means an official of the Government of Canada, an official of any municipal or provincial government, an insurance adjuster or a marine surveyor whose duties include the examination or inspection of goods that are the subject of a refund under these Regulations; (*autorité compétente*)

“qualified appraiser” means a person who is qualified by virtue of his experience, business, occupation or profession to appraise goods that are the subject of a refund under these Regulations and to estimate their loss in value; (*appréciateur qualifié*)

“region” means any of the following regions for which there is a regional office of the Department of National Revenue, namely,

- (a) Atlantic,
- (b) Quebec,
- (c) Northern Ontario,
- (d) Southern Ontario,
- (e) Prairie, and
- (f) Pacific. (*région*)

PART I

GOODS THAT HAVE SUFFERED DAMAGE, DETERIORATION OR DESTRUCTION

Application

3. This Part applies to the granting of a refund under paragraph 74(1)(a) of the Act of duties paid on goods that have suffered damage, deterioration or destruction at any time from the time of shipment to Canada to the time of release.

Notice

4. Written notice of a claim for a refund of duties and the reasons therefor shall be given to an officer within

- (a) three days after the release of perishable goods; and
- (b) two years after the release of non-perishable goods.

5. Revoked

Evidence in Support of Application

6. An application for a refund of duties shall be supported by

(a) a written statement by any carrier, any operator of a sufferance warehouse, bonded warehouse or duty free shop or any competent authority having knowledge of the circumstances, time and place of the damage, deterioration or destruction suffered by the goods, giving the particulars thereof or, where such a statement cannot be obtained, a written statement by a competent authority certifying that the goods suffered damage, deterioration or destruction before they were released; and

(b) documentation in the form of

- (i) an appraisal by a qualified appraiser verifying the loss in value of the goods as a result of the damage, deterioration or destruction of the goods,
- (ii) a copy of any document, including a credit note from the vendor, indicating the amount granted to compensate for the damage, deterioration or destruction of the goods, or
- (iii) a commitment of payment from the carrier or the carrier's insurers given to the importer or owner of the goods and showing the amount of compensation given for the loss in value of the goods.

Amount of Refund

7. The amount of a refund of duties shall be

(a) in the case of perishable goods or brittle goods such as crockery, china, glass and glassware, an amount equal to that proportion of the duties paid on the goods that 85 per cent of the loss in value of the goods is of the value for duty of the goods;

(b) in the case of sugar or any saccharine product on which duty is determined according to the polarimetric test and that has suffered damage or deterioration from salt water, an amount equal to the difference between

- (i) the duties paid on the goods, and
 - (ii) the duties that would be payable if, after the percentage of polarization of the goods is determined, there is deducted from that percentage an amount equal to five times the percentage of salt present in that portion of the water found in the damaged goods that is in excess of the water found in samples of undamaged goods, as certified in writing by an officer authorized to test such samples; and
- (c) in the case of any other goods, an amount equal to that proportion of the duties paid on the goods that the loss in value of the goods is of the value for duty of the goods.

Classes of Goods in Respect of Which and Circumstances Where No Refunds Shall Be Granted

8. No refund of duties shall be granted in respect of
- (a) goods for which there is a manufacturer's or producer's recommended shelf life period or allowable storage-before-use period if the goods have suffered damage or deterioration by reason of the expiration of that period; or
 - (b) iron or steel or any manufacture thereof that has suffered damage or deterioration by reason of rust.

PART II

GOODS DEFICIENT IN QUANTITY

Application

9. This Part applies to the granting of a refund under paragraph 74(1)(b) of the Act of duties paid on goods where the quantity of goods released is less than the quantity in respect of which duties were paid.

Notice

10. Written notice of a claim for a refund of duties and the reasons therefor shall be given to an officer within two years after the release of the goods.
11. Revoked

Evidence in Support of Application

12. An application for a refund of duties shall be supported by
- (a) a copy of any document providing evidence of the actual quantity of the goods shipped to Canada together with a copy of any document, including a credit note from the vendor, indicating the amount granted to compensate for the value of the goods short-shipped;
 - (b) a written statement by the carrier of the goods verifying the deficiency in quantity of the goods, where the deficiency occurred because the goods were lost or went astray while in the course of transit outside Canada, and explaining the circumstances under which the goods were lost or went astray; or
 - (c) a written statement by the carrier or operator of a sufferance warehouse, bonded warehouse or duty free shop verifying the deficiency in quantity of the goods, where the goods were lost or stolen after the goods were reported to an officer under section 12 of the Act and while the goods were in the custody of the carrier or operator, as the case may be.

Amount of Refund

13. The amount of a refund of duties shall be an amount equal to the difference between
- (a) the duties paid; and
 - (b) the duties payable on the quantity of goods actually released.

Classes of Goods in Respect of Which and Circumstances Where No Refunds Shall Be Granted

14. No refund of duties shall be granted in respect of goods that were lost or stolen after they were reported under section 12 of the Act in circumstances where the carrier thereof is liable under section 20 of the Act to pay the duties thereon or an operator of a sufferance warehouse, bonded warehouse or duty free shop is liable under section 28 of the Act to pay the duties thereon.

*Circumstances Where Unpaid
Refund May Be Applied to
Duties That Become Due*

15. In accordance with subsection 75(2) of the Act, where the quantity of imported goods released is less than the quantity in respect of which duties were paid and no refund of duties has been granted in respect of the deficient quantity, an officer may, where the goods were deficient in quantity before their arrival in Canada, at the request of the person by whom the duties were paid, apply any duties paid in respect of the deficient quantity of the goods to any duties that become due on the deficient quantity if any portion thereof is subsequently imported by the same importer or owner, on condition that the person submits to the officer a written statement as described in paragraph 12(a) or (b).

PART III

GOODS OF INFERIOR QUALITY

Application

16. This Part applies to the granting of a refund under paragraph 74(1)(c) of the Act of duties paid on goods that are of a quality inferior to that in respect of which the duties were paid.

Notice

17. Written notice of a claim for a refund of duties and the reasons therefor shall be given to an officer within

- (a) three days after the release of perishable goods; and
- (b) two years after the release of non-perishable goods.

18. Revoked

Evidence in Support of Application

19.(1) Subject to subsection (2), an application for a refund of duties shall be supported by a copy of any document, including a credit note from the vendor, indicating the amount granted to compensate for

the difference between the value of the goods in respect of which duties were paid and the value of the goods of inferior quality.

(2) Where a person who paid duties is unable to provide the document referred to in subsection (1) because of circumstances beyond the person's control and evidence of those circumstances is supplied, the application for a refund of duties shall be supported by

- (a) a written statement of the importer indicating that the goods are of a quality inferior to that in respect of which duties were paid and identifying the respect in which the quality is inferior; and
- (b) an appraisal by a qualified appraiser showing the difference between the value of the goods in respect of which duties were paid and the value of the goods of inferior quality.

Amount of Refund

20. The amount of a refund of duties shall be an amount equal to the difference between

- (a) the duties paid, and
- (b) the duties payable on the value of the goods of inferior quality.

Classes of Goods in Respect of Which the Circumstances Where No Refund Shall be Granted

21. No refund of duties shall be granted in respect of

- (a) goods for which there is a manufacturer's or producer's recommended shelf-life period or allowable storage-before-use period if the goods have suffered damage or deterioration by reason of the expiration of that period;
- (b) iron or steel or any manufacture thereof that has suffered damage or deterioration by reason of rust.

PART III.1

GOODS IMPORTED FROM A NAFTA COUNTRY WHERE NO CLAIM FOR PREFERENTIAL TARIFF TREATMENT UNDER NAFTA WAS MADE AT THE TIME OF ACCOUNTING

Application

21.1 This part applies to the granting of a refund under paragraph 74(1)(c.1) of the Act of duties paid on goods that were imported on or after January 1, 1994 from a NAFTA country but no claim for preferential tariff treatment under NAFTA was made in respect of those goods at the time that they were accounted for under subsection 32(1), (3) or (5) of the Act.

Evidence in Support of Application

21.2 An application for a refund of duties shall be supported by a copy of the Certificate of Origin for the goods in respect of which the application is made.

Amount of Refund

21.3 The amount of a refund of duties shall be an amount equal to the difference between

- (a) the duties paid, and
- (b) the duties payable on the goods as a result of the goods being eligible for preferential tariff treatment under NAFTA.

PART III.2

GOODS IMPORTED FROM ISRAEL OR ANOTHER CIFTA BENEFICIARY WHERE NO CLAIM FOR PREFERENTIAL TARIFF TREATMENT UNDER CIFTA WAS MADE AT THE TIME OF ACCOUNTING

Application

21.4 This Part applies to the granting of a refund under paragraph 74(1)(c.11) of the Act of duties paid on goods that were imported on or after January 1, 1997 from Israel or another CIFTA beneficiary in respect of which no claim for preferential tariff treatment under CIFTA was made at the time the goods were accounted for under subsection 32(1), (3) or (5) of the Act.

Evidence in Support of Application

21.5 An application for a refund of duties shall be supported by a copy of the Certificate of Origin for the goods in respect of which the application is made.

Amount of Refund

21.6 The amount of a refund of duties shall be an amount equal to the difference between

- (a) the duties paid, and
- (b) the duties payable on the goods as a result of the goods being eligible for preferential tariff treatment under CIFTA.

PART IV

DUTIES OVERPAID OR PAID IN ERROR

Application

22. This Part applies to the granting of a refund under paragraph 74(1)(c.2) of the Act of duties that have been overpaid or paid in error for any reason, other than

- (a) an erroneous determination as to the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed;
- (b) an erroneous determination as to the origin of goods imported from Israel or another CIFTA beneficiary for which preferential tariff treatment under CIFTA is claimed;
- (c) an erroneous determination of tariff classification;
- (d) an erroneous appraisal of value for duty; or

(e) the existence of the circumstances described in paragraph 74(1)(c.1) or (c.11) of the Act.

23. Revoked

Amount of Refund

24. The amount of a refund of duties shall be an amount equal to the duties overpaid or paid in error.

PART V

GOODS THAT ARE DEFECTIVE, ARE OF INFERIOR QUALITY OR ARE NOT THE GOODS ORDERED AND THAT HAVE BEEN DISPOSED OF OR EXPORTED

Application

25. This Part applies to the granting of a refund under subsection 76(1) of the Act of duties paid on goods that are defective, are of a quality inferior to that in respect of which duties were paid or are not the goods ordered and that have, subsequent to their importation, been disposed of in a manner acceptable to the Minister at no expense to Her Majesty in right of Canada or exported.

Notice

26. Written notice of a claim for a refund of duties and the reasons therefor shall be given to an officer within

- (a) three days after the release of perishable goods; and
- (b) two years after the release of non-perishable goods.

27. Revoked

Evidence in Support of Application

28. An application for a refund of duties shall be supported by

- (a) a written statement by the exporter, vendor or manufacturer of the goods confirming that the goods are defective, are of a quality inferior to that in respect of which duties were paid or are not the goods ordered and identifying the nature of the defect or inferior quality or the goods that were actually ordered, as the case may be;
- (b) a copy of any document relating to a refund or credit given by the vendor of the goods to the importer or owner, showing the amount of any refund of the purchase price or of any credit given in respect of the goods;
- (c) in the case of goods of inferior quality or that are not the goods ordered, a copy of the invoice, purchase order, contract or other document that shows the goods that were actually ordered; and
- (d) a copy of the prescribed form verifying the exportation or disposal of the goods.

Amount of Refund

29. The amount of a refund of duties shall be an amount equal to that proportion of the duties paid on the goods that the amount of the refund or credit given by the vendor is of the value for duty of the goods.

- 30. Revoked
- 31. Revoked
- 32. Revoked

PART VII

REDUCTION OF AMOUNT OF REFUND

33.(1) Where merchantable scrap, waste or by-products result from the destruction or disposal of goods or the incorporation of goods into other goods in respect of which a refund of duties is to be granted under the Act, the amount of the refund shall be reduced by an amount determined by applying to the value of the merchantable scrap, waste or by-products produced the rate of duty under the *Customs Tariff* that applies on the date of production to the merchantable scrap, waste or by-products.

(2) In this section, “value” means, in respect of merchantable scrap, waste or by products,

(a) where the manufacturer or producer sold the merchantable scrap, waste or by-products in an arm’s length transaction, the price thereof; or

(b) in any other case, the price at which the manufacturer or producer would ordinarily have sold the merchantable scrap, waste or by-products in an arm’s length transaction on the date the application for a refund is made to an officer at a customs office.

Effects of the Goods and Services Tax Legislation

Amendments to the *Customs Act* contained in the GST legislation have the effect of excluding GST from all refunds made under customs legislation. Any reference to duties in the following guidelines should be read to exclude the GST.

GUIDELINES AND GENERAL INFORMATION

1. An application for a refund of duties must be filed at any customs office in the region where the goods were accounted for under the Act. A refund application for goods imported by mail may be filed at any customs office in Canada.

PART I – Goods That Have Suffered Damage, Deterioration, or Destruction

2. In cases where the damage, deterioration, or destruction has been discovered prior to release of the goods, the written notice requirement in section 4 of the Regulations is satisfied if at or prior to the time of release, the importer/owner submits Form K11, *Certificate of Damaged Goods*, (see Appendix A to this Memorandum) for the examining customs officer’s signature.

3. Form K11 is divided into two sections. The first section is to be filled out by the importer/owner before presentation to customs. The second section, the “Officer’s Certificate,” will be filled out by the examining customs officer or an officer in the regional Trade Administration Services (TAS) office after the filing of a refund claim by the importer/owner of the goods.

4. In cases where the damage, deterioration, or destruction is discovered after release of the goods, notice of a claim is to be written or typed in a clear, concise manner and is to refer to the transaction number of the accounting document on which release of the goods was effected.

5. Immediately upon receipt, the notice is to be date-stamped by customs and filed with the relative accounting document which will indicate that the provisions of section 4 of the Regulations have been complied with. To ensure that written notices are not being submitted merely on the presumption that there may be a discrepancy, such notices must include sufficient detail to satisfy Revenue Canada that the intention to file a refund claim is valid.

6. Written notices pertaining to goods that have suffered damage, deterioration, or destruction may be presented to any customs office within the prescribed time limits, i.e., three days for perishable goods, two years in all other instances. For the purposes of these Regulations, perishable goods are goods which are subject to speedy decay and spoilage (live animals, fresh meat, fish, poultry, fruit and vegetables, flowers, and human plasma, etc.). The receiving customs office will date-stamp the notice and forward it to the regional customs office concerned.

7. Where the damage, deterioration, or destruction is discovered after the goods are released, notwithstanding the provisions of section 6 of the Regulations, the goods may be subject to examination by customs to permit verification of the alleged damage, deterioration, or destruction in order to establish the proper rate or amount of reduction, and to permit identification of the goods in question with those named in the invoice and accounting document. Therefore should the goods be disposed of by the importer/owner prior to approval of the refund claim by customs, the importer would be responsible for establishing the bona fides of the claim.

8. An application for refund shall be made on Form B2, *Canada Customs – Adjustment Request*, within two years of the date of accounting of the goods under subsection 32(1), (3), or (5) of the *Customs Act*.

9. For the purpose of determining the amount of refund payable with respect to section 7(a) of the Regulations, refunds for perishable or brittle goods will be equal to 85% of the duties paid on the loss in value of the goods.

10. In the case of sugar or any saccharine products that have suffered damage or deterioration from salt water, a test will be conducted by an officer of the Foodstuffs Unit, of the Laboratory and Scientific Services Directorate of Revenue Canada in Ottawa, and the certificate referred to in paragraph 7(b)(ii) of the Regulations will be the certificate contained on Form Y15, *Request to Laboratory and Scientific Services Directorate*.

11. For information concerning goods damaged prior to release from customs, which are subsequently exported from or destroyed in Canada under customs supervision, refer to paragraphs 45 to 58 of this Memorandum.

PART II – Goods Deficient in Quantity

12. Goods deficient in quantity for purposes of section 9 of the Regulations may be described as being:

(a) whole packages short, and

(b) a shortage in contents of a package or a container whereby the importer/owner has paid the applicable customs duties on a complete shipment and obtained release of the goods from customs.

13. For purposes of section 10 of the Regulations, all notices of goods being deficient in quantity are to be written or typed in a clear, concise manner and are to refer to the transaction number of the accounting documents on which release of the goods was effected.

14. Immediately upon receipt at a customs office, the notice is to be date-stamped and filed with the relative accounting document which will indicate that the provisions of section 10 of the Regulations have been complied with. To ensure that written notices are not being submitted merely on the presumption that there may be a discrepancy, such notices must include sufficient detail to satisfy Revenue Canada that the intention to file a refund claim is valid.

15. An application for refund shall be made on a Form B2, within two years of the date of accounting of the goods under subsection 32(1), (3), or (5) of the *Customs Act*.

16. A Form B2 submitted within two years of the date of accounting of the goods, when containing adequate information respecting alleged deficiency in quantity, shall be considered as meeting the written notice requirement stipulated in section 10 of the Regulations.

17. Section 15 of the Regulations provides that where a shortage of goods has occurred, the consignment may be handled as goods “entered to arrive.”

18. Since applicable duty and taxes have been paid on the goods “entered to arrive,” the importer/owner may account for the goods short shipped when they do arrive at customs without the payment of additional duties or taxes. The goods short shipped and accounted for as “entered to arrive” may be released from the customs office where the original shipment was accounted for as a “part lot importation.”

19. Should the “short” or “entered to arrive” goods never arrive or should the importer/owner decide to cancel his original purchase order in relation to the short shipped goods, he may file a claim for refund to recover the duties paid on the goods short shipped.

20. The “entered to arrive” notation made on the original accounting document at the time of release satisfies the requirements of section 10 of the Regulations which deals with reporting the shortage to customs within the stipulated two years period.

21. When determining the merits of the claim for refund, the original accounting document will be examined to ensure that the “entered to arrive” notation is still open and has not been used to allow a “part lot importation.” If the refund claim is valid, the “entered to arrive” notation on the accounting document will be cancelled by a reference to the refund claim number.

22. Shortages in the contents of packages may be handled either as “value included” transactions or as claims for refund. The procedures for obtaining release of goods short shipped as “value included” importations are set out in Memorandum D17-1-1, *Documentation Requirements for Commercial Shipments*.

23. The notation placed on customs office copies of invoices or accounting documents, in combination with the information given by the exporter in the credit memorandum supporting the claim for refund, should contain sufficient details to clearly determine the value for duty of the short goods. For example, normal shortage claims will involve goods with individual unit prices and descriptions clearly indicated on the relevant customs invoice and accounting document.

PART III – Goods of Inferior Quality

24. For purposes of section 17 of the Regulations, all notices of alleged inferiorities in quality are to be typed or written in a clear, concise manner and are to refer to the transaction number of the accounting document on which release of the goods was effected.

25. Immediately upon receipt, the notice is to be date-stamped by customs and filed with the relative accounting document which will indicate that the provisions of section 17 of the Regulations have been complied with. To ensure that written notices are not being submitted merely on the presumption that there may be a problem, such notices must include sufficient details to satisfy Revenue Canada that the intention to file a refund claim is valid.

26. The application for refund may be filed at any customs office in the region where the goods were released, but notices of alleged inferiorities in quality must be presented to any customs office within the prescribed time limits, i.e., three days for perishable goods, two years in all other instances. The receiving customs office will date stamp the notice and forward it to the regional customs office concerned.

27. An application for refund shall be made on a Form B2, within two years of the date of accounting of the goods under subsection 32(1), (3), or (5) of the *Customs Act*.

28. Notwithstanding the provisions of section 19 of the Regulations, the goods may be subject to examination by customs to permit verification of the alleged inferiority in quality, to establish the proper rate of amount of reduction, and to permit identification of the goods in question with those named in the invoice and accounting document in question. Where the goods are disposed of by the importer or owner,

prior to approval of the refund claim by customs, the importer or owner will be responsible for establishing the eligibility for the refund.

PART III.1 – Goods Imported From a NAFTA Country Where No Claim for Preferential Tariff Treatment Under NAFTA Was Made at the Time of Accounting

29. For purposes of section 21.1 of the Regulations, an application for a refund under paragraph 74(1)(c.1) shall be made on Form B2, within one year of the date of accounting of the goods that were imported on or after January 1, 1994, under subsection 32(1), (3), or (5) of the *Customs Act*.

30. Under no circumstances can an importer claim a refund under paragraph 74(1)(c.1) of the *Customs Act* if the goods were accounted for under a NAFTA tariff treatment.

31. The circumstances for which an application for a refund under paragraph 74(1)(c.1), may be submitted are where:

- (a) the goods were accounted for under any tariff treatment other than a NAFTA tariff treatment;
- (b) a non-NAFTA tariff treatment, such as the General Preferential Tariff (GPT), was accepted under section 57.2 of the *Customs Act*; or
- (c) a non-NAFTA tariff treatment was denied in favour of another non-NAFTA tariff treatment.

32. The importer may file a request for a refund under paragraph 74(1)(c.1) on a Form B2, and attach the relative Certificate of Origin or, in the case of low value shipments, a statement certifying the origin of the goods to support the request for a refund. Information concerning proof of origin requirements is contained in Memorandum D11-4-2, *Proof of Origin*.

33. Complete and accurately supported refund requests will be reviewed by the Tariff and Value Administrator in the region where the goods were released. The Tariff and Value Administrator will do one of the following:

- (a) grant a refund under subsection 74(6); or
- (b) deny a refund under subsection 74(4) on the basis that the goods are not eligible for the NAFTA tariff treatment.

34. If the application for a refund is incomplete or is not supported by complete or accurate documentation, it will be rejected. A new request may be submitted under paragraph 74(1)(c.1), within one year of the date of accounting in accordance with subsection 32(1), (3), or (5) of the *Customs Act*.

PART III.2 – Goods Imported From Israel or Another CIFTA Beneficiary Where No Claim for Preferential Tariff Treatment Under CIFTA Was Made at the Time of Accounting

35. For purposes of section 21.4 of the Regulations, an application for a refund under paragraph 74(1)(c.11) shall be made on Form B2 within two years of the date of accounting of the goods under subsection 32(1), (3), or (5) of the *Customs Act*, on goods that were imported on or after January 1, 1997.

36. Under no circumstances can an importer claim a refund under paragraph 74(1)(c.11) of the *Customs Act* if the goods were accounted for under a CIFTA tariff treatment.

37. The circumstances for which an application for a refund under paragraph 74(1)(c.11) may be submitted are where:

- (a) the goods were accounted for under any tariff treatment other than a CIFTA tariff treatment;
- (b) a non-CIFTA tariff treatment, such as General Preferential Tariff (GPT), was accepted under section 57.2 of the *Customs Act*; or
- (c) a non-CIFTA tariff treatment was denied in favour of another non-CIFTA tariff treatment.

38. The importer may file a request for a refund under paragraph 74(1)(c.11) on Form B2, and attach the relative Certificate of Origin or, in the case of low value shipments, a statement certifying the origin of the goods to support the request for a refund. Information concerning proof of origin requirements is contained in Memorandum D11-4-2.

39. Complete and accurately supported refund requests will be reviewed by the Tariff and Value Administrator in the region where the goods were released. The Tariff and Value Administrator will do one of the following:

- (a) grant a refund under Section 74(6); or
- (b) deny a refund under subsection 74(4.1) on the basis that the goods are not eligible for the CIFTA tariff treatment.

40. If the application for a refund is incomplete or is not supported by complete or accurate documentation, it will be rejected. A new request may be submitted under paragraph 74(1)(c.11), within two years of the date of accounting in accordance with subsection 32(1), (3), or (5) of the *Customs Act*.

PART IV – Duties Overpaid or Paid in Error

41. For purposes of section 22 of the Regulations, an application for a refund shall be made on Form B2 within two years of the date of accounting of the goods under subsection 32(1), (3), or (5) of the *Customs Act*.

42. Where a duplicate payment situation arises, the accounting document on which the goods were actually received will stand as the accounting document upon which the goods are properly accounted for. The refund claim is to be filed against the second accounting document. A copy of the accounting document which properly accounts for the goods should accompany the refund claim as supporting documentation.

43. Where a duplicate payment involves the same shipment with an identical invoice and cargo control number but where the tariff classification of the goods was different, the claim should be reviewed to establish the correct classification in the regional customs office. The correct tariff classification must be determined and it must be decided if the duplicate payment constituted a valid request for redetermination under the *Customs Act*.

44. Shown hereunder are some reasons for which applications for refund may be submitted on Form B2 for duties overpaid or paid in error:

- (a) clerical error on a customs accounting document,
- (b) an apparent clerical error on an invoice (for example, the quantity and unit price on the invoice were incorrectly extended),
- (c) error in the rate of exchange,
- (d) duplicate payment on two customs accounting documents,
- (e) prohibited goods, and
- (f) machinery remission claim where a change in tariff classification is not involved.

PART V – Defective, of Inferior Quality or Are Not the Goods Ordered and That Have Been Disposed of or Exported

45. For purposes of section 26 of the Regulations, all notices regarding defective or inferior quality goods or goods that are not the goods ordered, must be typed or written in a clear and concise manner and refer to the transaction number of the accounting document on which release of the goods was effected.

46. Immediately upon receipt, the notice is to be date-stamped by customs and filed with the relative accounting document, which will indicate that the provisions of section 26 of the Regulations have been complied with. To ensure that written notices are not being submitted merely on the presumption that there

may be a discrepancy, such notices must include sufficient detail to satisfy Revenue Canada that the intention to file a refund claim is valid.

47. An application for refund shall be made on Form B2 within two years of the date of accounting of the goods, under subsection 32(1), (3), or (5) of the *Customs Act*.

48. For purposes of this part, defective goods may be defined as those which, through an error on the part of the manufacturer, exporter, or vendor, do not meet their design specifications. Some examples are listed below:

(a) an imported article that fails to function properly;

(b) a computer is imported under contract on the understanding it will process 100,000 transactions per second. However, because of a defective circuit board it will only process 50,000 transactions per second. The entire computer or the circuit board may be replaced;

(c) an imported motor vehicle which is not modified to meet Canadian safety standards as required under the Registrar of Imported Vehicles program and cannot be licensed for use in Canada.

49. Refund of duties will be authorized in either case providing the requirements of section 28 of the Regulations are complied with. It should be noted that it is not always possible for the defect to be established at the time of release of the goods. The defective nature of the goods often comes to light only when the goods are put into actual use by the importer/owner or, alternatively, through a recall program authorized by the foreign supplier to deal with design or manufacturing defects.

50. Inferior quality goods are basically those which are other than prime quality goods. The goods are normally of a lesser quality or strength to that which the importer/owner ordered.

51. Goods not according to order may be defined as those goods which are not of the class or description ordered, e.g., the specification, size, colour, or quantity of the imported goods differ from those ordered.

52. Claims for refund must be accompanied by a written statement from the foreign supplier, exporter, or vendor which clearly indicates the defect and why the goods are of inferior quality or are not the goods ordered. In addition, the claim must be accompanied by a document (credit memo, invoice, or other statement) from the foreign supplier which clearly spells out the amount of refund or credit given.

53. Where the goods subject to a refund under this part have been exported, sufficient proof of exportation must be filed with the application.

54. Where it is the wish of the importer/owner that the goods be destroyed in Canada, destruction shall take place at the importer's/owner's expense under customs supervision.

55. It will be the responsibility of the claimant to describe the goods in such a manner on Form E15, *Certificate of Destruction/Exportation* (see Appendix B to this Memorandum), that they can be related to a specific customs accounting document and the relative refund claim together with supporting documentation.

56. Where the foreign supplier does not give full credit to the importer/owner for the purchase price of the defective goods, the amount of refund of customs duties allowed will be based on the percentage of credit actually given.

57. Where a full credit is given by the supplier of the defective goods but a "re-stocking," re-shelving," or "shipping" charge is deducted from the credit, this will still be considered as being a full credit. A refund of the applicable customs duties may therefore be granted.

58. The amount of credit granted by the foreign supplier will naturally relate only to the selling price of the goods and not to the value for duty. Whether the value for duty is higher or lower than the selling price of the goods, the percentage amount of refunds (as determined from the percentage relation of the credit to the selling price) will be calculated against the customs duties paid on the value for duty of the defective goods.

PART VI – Diverted Goods

59. The requests on Form B2 covering refund claims submitted to customs, under the authority of paragraph 77(1)(a) or 77(1)(b) of the *Customs Act*, will be approved for payment if they meet the conditions outlined in Memorandum D11-8-2, *Diversions – Section 77 of the Customs Act*.

60. The refund provisions of section 77 of the *Customs Act* are not applicable to goods which were imported for a specific end-user or end-use provided for in the *Customs Tariff* at a free or reduced rate of customs duty. In instances where the proper tariff code (or tariff item) number was erroneously omitted from Form B3, *Canada Customs Coding Form*, or denied by customs, paragraph 60(1)(a) or 60(1)(b) of the said Act is the appropriate authority for importers or their agents to seek redress by requesting a re-determination of the tariff classification within the prescribed time limits. Memorandum D11-6-1, *Determination/Re-Determination and Appraisal/Re-appraisal of Goods*, outlines the procedures to be followed under these circumstances.

61. Further particulars may be obtained from the Manager, Trade Administration Services, at any regional customs office.

Interest

62. Section 80 of the *Customs Act* stipulates that any person who is granted a refund of customs duties under sections 74, 76, 77, or 79 shall, in addition to the refund, be granted interest at the prescribed rate commencing on the 91st day after the application for refund is filed at customs. The Memorandum D17-1-19, *Interest Rate for Customs Purposes Regulations*, outlines the method for determining the percentage of interest payable.

63. More information on interest and penalty provisions can be found in Memorandum D11-6-5, *Interest and Penalty Provisions: Determinations/Re-Determinations, Appraisals/Re-Appraisals, and Duty Relief*.

64. Interest is only payable with respect to applications made pursuant to sections 74, 76, 77, or 79 of the *Customs Act*. Refund of customs duties paid involving issues other than those outlined in this Memorandum, such as machinery remission claims are not subject to the interest provisions as contained in section 80 of the *Customs Act*.

Penalties

65. Refund may not be claimed in respect of customs penalties imposed on imported goods.

Time Limit for Submission of Documents

66. It should be noted that where the requirement for filing a written notice or the requirement for filing an application for refund ends on a weekend or legal holiday, the next working day will become the final day for presentation of the documents.

APPENDIX A

CERTIFICATE OF DAMAGED GOODS

APPENDIX B

CERTIFICATE OF DESTRUCTION / EXPORTATION

REFERENCES

ISSUING OFFICE —

Duties Relief Programs

LEGISLATIVE REFERENCES —

Sections 74 to 80 of the *Customs Act*
P.C. 1986-2066, September 11, 1986, as amended
SOR/86-945, September 11, 1986, as amended
SOR/88-85, December 31, 1987
SOR/92-914, March 16, 1993

HEADQUARTERS FILE —

6561-5, 6561-9, 6561-16

SUPERSEDED MEMORANDA “D” —

D6-2-2, November 15, 1993

OTHER REFERENCES —

D6-2-1, D11-4-2, D11-6-1, D17-1-10, D17-1-1, D17-1-19, D11-6-5