



Ottawa, August 27, 2008

MEMORANDUM D11-8-5

In Brief

END-USE PROGRAM

1. This memorandum has been amended to delete references to two programs related to the administration of conditional relief tariff items; end-use Stocking authorizations and end-use percentage arrangements. Legislative reform of the *Customs Act* implemented in 1998 has eliminated much of the need for these two programs and a recent review has indicated that only a very few importers are still participating in these programs. As a result, these programs are being eliminated and new applications will no longer be accepted. Current participants may continue to operate under their existing agreements until further notice.
2. CBSA is developing a new program to provide a new, more streamlined approach to allow importers periodically report conditional tariff relief diversions. In the meantime, importers wishing to avail themselves of conditional relief tariff items may do so under the regular provisions of the *Customs Act* on a transaction-by-transaction basis.





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END-USE PROGRAM

This memorandum explains the legislative provisions and outlines the administrative policy that applies to the declaration and subsequent adjustment or re-determination of the special tariff classification provisions that allow conditional duty relief for imported goods.

Regulations

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

Interpretation

1. In these Regulations, "Act" means the *Customs Act*. (Loi)

Prescribed Classes of Persons

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

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

Coming Into Force

3. These Regulations come into force on January 1, 1998.

DIVERSION OF IMPORTED GOODS EXEMPTION REGULATIONS

Interpretation

1. The definitions in this section apply to these Regulations.

"Act" means the *Customs Act*. (Loi)

"emergency" means a medical emergency, fire, flood or any disaster that threatens life, property or the environment. (urgence)

Exemptions for Emergency Use

2. Imported goods that, in response to an emergency, are temporarily diverted to a use other than that for which they were released are exempt from the operation of

subsection 32.2(6) of the Act for the period during which the goods are used in response to the emergency.

3. Imported goods that are consumed in response to an emergency are exempt from the operation of subsection 32.2(6) of the Act.

Repeal

4. The *Diversion of Imported Goods Time Limits and Exemption Regulations* are repealed.

Coming Into Force

5. These Regulations come into force on January 1, 1998.

GUIDELINES AND GENERAL INFORMATION

Declaration of Tariff Classification

1. Legal Note 3 to Chapter 99 of the *Customs Tariff* authorizes the classification of imported goods under a **dual tariff classification system**, providing they meet the conditions imposed under the tariff items enumerated in that Chapter. Accordingly, a declaration of tariff classification made on Form B3, *Canada Customs Coding Form* (or the electronic version thereof), in respect of a tariff item in Chapter 99, must take the following format:

- (a) regular-ten digit classification number applicable to the goods under Chapters 1 to 97 inclusive (field 27 of Form B3);
- (b) followed by the **first four digits** of the appropriate Chapter 99 tariff item (field 28 of Form B3).

2. End-use tariff items in Chapter 99 reduce or eliminate the regular rates of customs duties levied on imported goods. These provisions can be identified through distinctive wording that connects the imported product to the specific use or user condition it must fulfill, namely:

- (a) "for use in";
- (b) "for use in the manufacture of";
- (c) "for use by";
- (d) "for use on" (and similar variations);
- (e) "for" (when an end-use function is clearly implied);
- (f) "to be employed";
- (g) "which enter into the cost of manufacture of."

Definition of “For Use In”

3. The expression “for use in,” wherever it occurs in a tariff item, must be interpreted in accordance with the definition in subsection 2(1) of the *Customs Tariff*. It means that the imported article described in the tariff item must be wrought or incorporated into, or attached to, other goods referred to in the same item. In its administration of this expression, CBSA acknowledges that the qualification “or attached to” includes articles which, although connected to the host product by function or design, may be detached from the host when not in use.

4. The other end-use terminology referred to in paragraph 2, for example, “to be employed,” is not defined in the *Customs Tariff* and will be administered by CBSA according to the terms of the tariff item involved. In this regard, to determine the eligibility of imported goods under such provisions, CBSA will give due weight to the overall process or activity that incorporates the end-use conditions described in the tariff item.

Diversion of Goods

5. Subsection 32.2(2) of the *Customs Act* (hereafter referred to as the “Act”) places an obligation on the importer of record or owner of imported goods, or other “prescribed person,” to correct declarations of tariff classification within 90 days of the date there is reason to believe they are incorrect. Subsection 32.2(6), “Diversions,” extends this obligation to those situations where goods imported under an end-use tariff item in Chapter 99 (or any other chapter of the *Customs Tariff*) fail to comply with a condition imposed under that item.

6. Diversion transactions occur after imported goods have been accounted for in the prescribed manner on Form B3, *Canada Customs Coding Form*, and involve the sale, lease, or disposition in any manner of all or part of the goods to a use or user not specified in the tariff item declared on Form B3.

7. For the purposes of subsection 32.2(6) of the Act, a “prescribed person” means any person who purchases, acquires, sells, or otherwise disposes of imported goods after the goods were accounted for under subsection 32(1), (3), or (5) of the same Act. This interpretation is contained in the *Prescribed Classes of Persons in Respect of Diversion of Imported Goods Regulations*, which appear in the Regulations section of this memorandum.

8. Subject to the conditions set forth in the *Diversion of Imported Goods Exemption Regulations*, imported goods that, in response to an emergency, are temporarily diverted to a use other than that for which they were released are exempt from the operation of subsection 32.2(6) of the Act (see the Regulations section of this memorandum).

9. For the purposes of calculating the 90-day time limit applicable to corrections made in respect of diverted goods, CBSA takes the position that this period commences on the date of the sales invoice, lease agreement, contract, work order, or other document that covers the removal of the goods to a non-qualifying use or user.

10. To correct a declaration of tariff classification involving diverted goods, a fully completed Form B2, *Canada Customs – Adjustment Request*, should be submitted to the Trade Compliance or Trade Services Division of the appropriate regional CBSA office. The B2 document must show the correct tariff classification number applicable to the goods and the customs duties payable to CBSA. In effect, it should reflect the first part of the dual tariff classification system specified in paragraph 1, i.e., the classification number entered on field 27 of the original B3 coding document. A correction made in such manner shall be treated for the purposes of the *Customs Act* as if it were a re-determination of tariff classification under paragraph 59(1)(a).

11. Multiple corrections may be required to one declaration of tariff classification on the original B3 accounting document processed by CBSA where consecutive diversions of the goods occur. A typical example would be where a number of articles are imported under an end-use tariff item and subsequently disposed of at different times to non-qualifying uses.

12. The obligation to make a correction in respect of imported goods ends four years after the date of accounting of the goods under subsection 32(1), (3), or (5) of the Act.

Maintenance of Records

13. In addition to the retention of import accounting documents, the importer or owner of imported goods must ensure that end-use certificates and other records relating to the importation and disposition of the goods are held readily available for inspection by an officer. Refer to Memorandum D17-1-21, *Maintenance of Records and Books in Canada by Importers*.

14. An end-use certificate is a written attestation affirming the use of imported goods in accordance with the provisions of the end-use tariff item declared on the relevant B3 coding document. It must specify the applicable tariff item number, provide a brief description of the manner in which the goods contained in the consignment will be used, and be signed by the end-user.

End-Use Audits, Verifications, and Penalties

15. CBSA Officers may exercise the powers granted to them under sections 42 and 42.01 of the *Customs Act* and perform periodic compliance verification audits or reviews on goods imported under end-use tariff items in Chapter 99 or in any other chapter of the *Customs Tariff*.

16. As a result of an audit or other verification exercise, goods found to have been declared under an incorrect tariff item will be subject to a re-determination or further re-determination of the tariff under paragraph 59(1)(a) or (b) of the *Customs Act*, whichever is applicable.

17. In addition to the regular amount of duties payable, every person who fails to correct a declaration of tariff classification in accordance with subsection 32.2(6) of the *Customs Act* shall be liable for the payment of a penalty according to the scale prescribed in section 109.11 of that Act.

Additional Administrative Requirements

19. Chapter 99 of the *Customs Tariff* includes tariff items converted from various Remission Orders and Regulations of a duties relief nature. The administrative requirements unique to each of the following tariff items will be provided in greater detail in other memoranda:

- 9905.00.00 Passover Products
- 9906.00.00 Scientific Expeditions
- 9928.00.00 Printed Material for Airlines
- 9929.00.00 Advertising Material
- 9932.00.00 Charitable Goods
- 9936.00.00 Designer Samples
- 9939.00.00 Uniform Dress Items
- 9990.00.00 Commercial Samples
- 9991.00.00 Samples of Negligible Value
- 9992.00.00 Repair and Return Goods
- 9993.00.00 Temporary Importations

Additional Information

20. Imported goods that qualify for a preferential rate of customs duty in terms of the North American Free Trade Agreement, or other trade agreement, may also be eligible for classification under a tariff item in Chapter 99 of the *Customs Tariff*. Unless the preferential duty rate under the regular tariff classification number in Chapters 1 to 97 is higher than the duty rate applicable to the Chapter 99 provision, there is normally no benefit to importers in declaring the goods under the Chapter 99 tariff item. However, CBSA acknowledges that classification under a tariff item in Chapter 99 may be appropriate in those instances where it provides relief from payment of the goods and services tax (GST).

21. Further information may be obtained from the Trade Compliance or Trade Services Division of any regional CBSA office.

REFERENCES

<p>ISSUING OFFICE – Trade Incentives and Refunds Tariff Policy Division Trade Programs Directorate</p>	<p>HEADQUARTERS FILE – 4522-0, 4522-1</p>
<p>LEGISLATIVE REFERENCES – <i>Customs Act</i>, sections 32.2, 40, 42, 42.01, 59, and 109.11 <i>Customs Tariff</i>, section 2 and schedule</p>	<p>OTHER REFERENCES – D11-8-1 (which covers pre-1988 import transactions) D17-1-21</p>
<p>SUPERSEDED MEMORANDA “D” – D11-8-5 dated May 6, 1998</p>	

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

