



Ottawa, May 27, 2010

# MEMORANDUM D11-11-3

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## **In Brief**

### **ADVANCE RULINGS FOR TARIFF CLASSIFICATION**

A revision to the Atlantic region's address in Appendix B of the English version was made to Memorandum D11-11-3, *Advance Rulings for Tariff Classification*, dated April 23, 2010.



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## ADVANCE RULINGS FOR TARIFF CLASSIFICATION

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### LEGISLATION

#### Sections 43.1 and 60 of the *Customs Act*

#### 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;

(b) in the case of goods exported from a NAFTA country, from Chile, from Costa Rica, from an EFTA state or from Peru, any matter, other than those referred to in paragraphs (a) to (c), concerning those goods that is set out in paragraph 1 of Article 509 of NAFTA, in paragraph 1 of Article E-09 of CCFTA, in paragraph 1 of Article V.9 or paragraph 10 of Article IX.2 of CCRFTA, in Article 28(2) of Annex C of CEFTA or in paragraph 1 of Article 419 of CPFTA, as the case may be; and

(c) the tariff classification of the goods.

#### Regulations

(2) The Governor in Council may make regulations respecting advance rulings, including regulations respecting

(a) the application of an advance ruling;

(b) the modification or revocation of an advance ruling, including whether the modification or revocation applies retroactively;

(c) the authority to request supplementary information in respect of an application for an advance ruling; and

(d) the circumstances in which the issuance of advance rulings may be declined or postponed.

#### Request for review

60. (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.

## REGULATIONS

### *Tariff Classification Advance Rulings Regulations*

#### INTERPRETATION

##### Definitions

1. The following definitions apply in these Regulations. "Act" means the *Customs Act*. (*Loi*)

"advance ruling" means an advance ruling on the tariff classification of goods given under paragraph 43.1(1)(c) of the Act. (*décision anticipée*)

#### APPLICATION FOR AN ADVANCE RULING

##### Who may apply

2. An application for an advance ruling in respect of goods proposed to be imported may be made by any member of the following classes of persons:

- (a) importers of goods in Canada;
- (b) persons who are authorized to account for goods under paragraph 32(6)(a) or subsection 32(7) of the Act; and
- (c) exporters or producers of those goods outside of Canada.

##### Time period

3. An application for an advance ruling shall be made not less than 120 days before the proposed date of importation of the goods.

##### Language

4. An application for an advance ruling shall be made in English or French.

##### Supplementary information

5. Where an officer determines that the information contained in the application is insufficient to make a ruling, the officer may request supplementary information from the applicant and shall specify a period of not less than 30 days within which the information shall be provided.

#### ADVANCE RULING

##### Consistency of rulings

6. An officer shall give consistent advance rulings with respect to applications for advance rulings based on facts and circumstances that are identical in all material respects.

## Other requirements for ruling

7. An officer shall give the applicant an advance ruling in writing, in the same language as the language of the application for the advance ruling, and shall provide the reasons for the advance ruling.

##### Goods affected

8. An advance ruling applies to goods that are the subject of the advance ruling and are imported on or after the effective date of the advance ruling.

##### Effective date

9. An advance ruling is effective on the date on which it is issued, or on such later date as may be specified in the advance ruling.

##### Minister bound

10. An advance ruling shall remain in effect and shall bind the Minister if:

- (a) there is no change in the material facts, circumstances or the laws of Canada on which the ruling is based;
- (b) the person to whom the advance ruling was given has acted in accordance with the ruling; and
- (c) it has not been revoked.

##### Postponing

11. (1) An officer may postpone the issuance of an advance ruling in respect of goods where goods, other than those for which an application for an advance ruling was made, are the subject of one of the following processes, the result of which is likely to affect the advance ruling:

- (a) a verification under section 42.01 of the Act;
- (b) a review, re-determination or further re-determination of tariff classification under section 59, 60 or 61 of the Act, as the case may be; or
- (c) a hearing before the Canadian International Trade Tribunal or any court.

##### Declining or postponing

(2) An officer may decline or postpone the issuance of an advance ruling where the applicant fails to provide supplementary information requested under section 5 within the period specified.

##### Declining

(3) An officer may decline the issuance of an advance ruling where it is impractical or unreasonable to provide a ruling prior to the proposed date of importation.

## MODIFICATION OR REVOCATION OF AN ADVANCE RULING

### Grounds

12. An officer may modify or revoke an advance ruling given in respect of goods

- (a) if the advance ruling is based on an error of fact or in the tariff classification of the goods;
- (b) to conform with a decision of a Canadian court or tribunal or a change in the laws of Canada;
- (c) if there is a change in the material facts or circumstances on which the advance ruling is based; or
- (d) if the Commissioner revises an advance ruling under paragraph 60(4)(b) of the Act.

### Goods affected

13. (1) Subject to subsection (2), a modification or revocation of an advance ruling applies to goods that are the subject of the advance ruling and are imported on or after the effective date of the modification or revocation.

### Goods affected

(2) The modification or revocation also applies to goods imported before the effective date where the modification or revocation is

- (a) to the detriment of the person to whom the advance ruling was given and that person has not acted in accordance with the advance ruling; or
- (b) to the benefit of the person to whom the advance ruling was given.

### Effective date

14. Subject to a postponement under subsection 16(1), a modification or revocation of an advance ruling is effective on the date on which the modification or revocation is issued or on such later date as may be specified in the notice given under section 15.

### Notice

15. An officer shall give notice in writing of any modification or revocation of an advance ruling and of the effective date of the modification or revocation to the person to whom the advance ruling was given.

### Postponement

16. (1) An officer shall postpone the effective date of a modification or revocation of an advance ruling for a period not exceeding 90 days where the person to whom the advance ruling was given demonstrates that the person has relied in good faith on that advance ruling to the person's detriment.

### Notice

(2) An officer shall give, in writing, to the person to whom the advance ruling was given, notice of any postponement made under subsection (1).

### CONSEQUENTIAL AMENDMENT

17. The definition "advance ruling" in section 1 of the *Free Trade Agreement Advance Rulings Regulations* is replaced by the following:

"advance ruling" means an advance ruling given under paragraph 43.1(1)(a) or (b) of the Act. (*décision anticipée*)

### COMING INTO FORCE

18. These Regulations are deemed to have come into force on April 1, 2003.

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## GUIDELINES AND GENERAL INFORMATION

### Definition

1. A tariff classification advance ruling is a written statement on the tariff classification of a product, issued to a person by the CBSA under paragraph 43.1(1)(c) of the *Customs Act* (the Act).

### Who May Request an Advance Ruling

2. Pursuant to the *Tariff Classification Advance Rulings Regulations*, an importer in Canada, a non-resident exporter or producer of the goods in question, or a person who is authorized to account for the imported goods in question pursuant to paragraph 32(6)(a) or subsection 32(7) of the Act, may apply for an advance ruling on those goods. For the purposes of this memorandum, the person who requested the ruling will be referred to as the client.

### How to Apply for an Advance Ruling

3. An advance ruling request must be in the form of a letter and should contain all the information requested in Appendix A. Failure to provide all the necessary information may result in a delay or the inability to issue an advance ruling. Misinformation will result in the cancellation of an advance ruling.

4. Each request should be restricted to an individual product. However, a tariff classification request involving a range of similar goods will be considered if it can be shown that the goods in question are so similar that a decision on goods of one kind applies to other kinds of goods. (i.e., a request on the classification of goods that are simple variations in colour, size, where such variations do not affect the classification.) The decision to allow this type of advance ruling request will be at the discretion of the CBSA.

5. The advance ruling request should be delivered or sent by mail to the Trade Compliance Division office in the appropriate region. If the client has an office in Canada, the request should be sent to the regional office in which the client's office is located. If the client does not have an office in Canada, the request should be sent to the regional office that serves the area where the importations will occur, or that serves the area where most of the importers or potential importers of the product are located. The CBSA will redirect the request if required and will inform the client of the office that will be handling the request. The addresses of the regional offices are listed in Appendix B. The letter should be marked "Attention: Tariff Classification Advance Ruling Request."

6. All requests for an advance ruling must be submitted in English or French and must be signed by the client or a person authorized by the client to make the request. The person who signs the request must have knowledge of the issues raised in the request. The CBSA retains the right to reject the request if these conditions are not fulfilled.

7. If the client is aware of any request for re-determination (dispute) or advance ruling on an identical or similar good that the CBSA has not yet ruled on, the client must specifically inform the CBSA of this request or ruling.

### **Acquiring an Advance Ruling for Goods on the Import Control List (ICL)**

8. The *World Trade Organization (WTO) Agreement Implementation Act* requires changes to previous quantitative restrictions on imports of certain agricultural goods which are subject to tariff rate quotas (TRQs).

9. The WTO Agreement creates linkages between the *Customs Tariff* and the Import Control List (ICL). Foreign Affairs and International Trade Canada (FAITC) issues permits for goods on the ICL. The TRQ products on the ICL and the interpretation of these products are related to specified agricultural tariff items in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*. The *Customs Tariff* is used to interpret the ICL and has a direct influence on goods subject to permits. As a result, clients are encouraged to obtain advance rulings for goods on the ICL. This will facilitate the acquisition of permits from FAITC and the importation of the "first-come, first-served" TRQ agricultural items.

10. Since quota status/quota counts relative to particular customs transactions of agricultural products are not known at the time the advance ruling is issued, both the "within access" and "over access" tariff items will be referred to in the ruling.

### **Acquiring a Ruling for the Textile Reference**

11. On July 14, 1994, the Canadian International Trade Tribunal (CITT) received terms of reference from the Minister of Finance to investigate requests from domestic

producers for tariff relief on imported textile manufacturing inputs and to make recommendations in respect of those requests. The CITT will commence an investigation only after the samples (textile inputs) have been analyzed and classified by the CBSA.

12. Clients requesting textile tariff relief may obtain a ruling for their textile inputs prior to filing their request to the CITT. The application for this type of ruling must be forwarded to:

Director  
Tariff Division  
Post-Border Programs Directorate  
Canada Border Services Agency  
Ottawa ON K1A 0L8

13. In addition to the information required for an advance ruling listed in Appendix A, clients must:

(a) indicate that they plan to request textile tariff relief from the CITT for the subject fabrics;

(b) provide all the product information that is currently requested in question 5 of the Requester's Questionnaire in the CITT's Textile Reference Guide (October 1996) which is available from the CITT or at [www.citt.gc.ca/](http://www.citt.gc.ca/); and

(c) provide and submit the same quantity of samples as currently required by the Textile Reference Guide. The samples will be retained until such time as a valid request has been submitted to the CITT up to a maximum period of one year.

### **Prohibited Goods**

14. Advance rulings will be issued for goods that may be classified under tariff items 9897.00.00 and 9898.00.00. The client will be advised that such goods are prohibited from importation into Canada. The complete text of these tariff items can be obtained from the Departmental Consolidation of the *Customs Tariff*, which is available on the CBSA Web site at [www.cbsa.gc.ca](http://www.cbsa.gc.ca).

15. A separate program is offered for goods that may be classified as obscenity under tariff item 9899.00.00. Importers or exporters of goods that may be classified under tariff item 9899.00.00 may obtain an advance opinion prior to the importation of such material into Canada. In the case of an advance opinion, CBSA officials simply provide an opinion as to whether or not the goods that have been submitted to them as a sample may be classified under tariff item 9899.00.00 at the time of actual importation. For more information on advance opinions for goods that may be classified under tariff item 9899.00.00, please refer to Memorandum D9-1-1, *Canada Border Services Agency's Policy on the Classification of Obscene Material*.

## Exclusions/Situations in Which Advance Rulings Will Not be Issued

16. There are circumstances where it is not appropriate to issue an advance ruling. These include situations:

- (a) where the issue involves a matter that is before the Canadian International Trade Tribunal (CITT), the courts, or any group or sub-group established thereunder;
- (b) where any person makes a request for re-determination of the tariff classification on identical goods, a request for an advance ruling on the same issue will not be accepted until after the re-determination has been made;
- (c) where the product in question is the subject of a verification;
- (d) where it is not possible to determine all the material facts;
- (e) when the request is hypothetical in nature;
- (f) where the request pertains to multiple goods such as the contents of commercial catalogues (see paragraph 4);
- (g) where the request involves proposed or draft legislation; or
- (h) where the request relates only to importations that have already occurred and will not be on-going.

17. Any written requests that do not meet the requirements of the advance rulings program will be returned to the client with an explanation as to why a ruling cannot be issued.

## Precedence

18. Effective April 1, 2003, a request for a tariff classification ruling, as covered by the *Tariff Classification Advance Rulings Regulations*, will be considered to be a request for an advance ruling rather than a request for a National Customs Ruling (NCR). Valid NCRs for tariff classification will continue to be honoured by the CBSA. However, they are not eligible for review under subsection 60(2) of the Act.

19. A tariff classification advance ruling will take precedence over any conflicting NCR, advice, opinion, etc., issued either before or after the advance ruling.

20. Every care will be taken to ensure that a ruling issued to a client does not conflict with previous unrevoked rulings issued to that client. In the unlikely circumstance that a client has been issued conflicting unrevoked advance rulings, the one bearing the earliest date will take precedence. In instances where conflicting advance rulings, NCRs, decisions, or advice come to the attention of the CBSA, headquarters or regional officers will immediately undertake a review of the issue and will, upon conclusion of that review, issue, modify, or revoke an advance ruling or

NCR to resolve the matter, as appropriate, as outlined in paragraph 31.

## Application of an Advance Ruling

21. An advance ruling will be honoured by the CBSA with regard to a particular importation of goods:

- (a) as long as the material facts and circumstances surrounding the importation of goods in question are the same as the material facts and circumstances presented in the application for the advance ruling;
- (b) if all conditions in the ruling have been met and if the ruling has not been modified, revoked, revised, or cancelled; and
- (c) if the importation of the goods is made by the client or a person importing the goods from the client.

22. If, after an advance ruling is issued, there is a change in the material facts and circumstances on which the advance ruling was based, then the CBSA is not required to honour the advance ruling with respect to goods imported after that change (see paragraph 21). In these circumstances, the CBSA may retroactively revoke or modify the advance ruling, as outlined in paragraph 32, to reflect the change in material facts and circumstances.

23. The CBSA will honour an advance ruling when making a decision on any importation of goods covered by the advance ruling (see paragraph 21) that occurs while the advance ruling is in effect. If the CBSA determines that an applicable advance ruling favourable to the person importing the goods is incorrect, and none of the circumstances in paragraph 32 allowing retroactive issuance of a revocation or modification are applicable, then the CBSA must assess the goods, or otherwise deal with the goods, in accordance with the advance ruling. The CBSA will then issue a modification or revocation of the advance ruling, as outlined in paragraph 29, which will be effective with regard to goods imported after the date the modification or revocation is issued.

24. The CBSA may retroactively modify or revoke an advance ruling that is determined by the CBSA to be incorrect, as outlined in paragraph 32(b), if the retroactive modification or revocation would benefit the client. Such action can be taken by the CBSA as an alternative to having the client request a review of the advance ruling, in those situations where the CBSA is satisfied the advance ruling would be modified or revoked on review. In such a case, the retroactive modification or revocation would be issued, and then the goods would be dealt with according to the modification or revocation. The initial advance ruling would be considered modified or revoked, as appropriate, from the date of the importation of the goods being dealt with, or such earlier or later date as the modification or revocation may specify.

25. If an advance ruling is issued to an exporter or producer, then any goods covered by that advance ruling, imported by any importer from that exporter or producer, will be considered covered by the advance ruling. However, in these circumstances, the importer is not considered to have been issued an advance ruling and is therefore not entitled to appeal the advance ruling or to be given notice of a modification or revocation of the advance ruling, etc.

26. Advance rulings are in effect from the date of issue until such time as the CBSA issues a modification or revocation of the advance ruling to the client, or until the ruling is revised or reversed as a result of a dispute or an appeal. Some advance rulings, due to the nature of the request, may be qualified with a time limit. If so, this will be stated in the advance ruling. The date of issue of an advance ruling, or modification or revocation of an advance ruling, will be indicated in the letter containing the advance ruling, or modification or revocation of the advance ruling. The date the advance ruling is issued will be the date the ruling is given for the purposes of filing a request for a review of an advance ruling under subsection 60(2) of the Act. The effective date of the advance ruling or modification or revocation of the advance ruling will be the date of issue unless otherwise noted.

27. Advance rulings are binding on the client subsequent to the effective date of the ruling. If the ruling is not applied, retroactive reassessment will be considered for these goods. It is the responsibility of the client to advise the CBSA of any changes to the particulars with respect to an advance ruling.

28. While not mandatory, to ensure receipt of the benefits of an advance ruling at the time of importation, importers may indicate the advance ruling number on the *Canada Customs Invoice*, Form CI1, the commercial invoice, in the "description" field of Form B3-3, *Canada Customs Coding Form* or in the "input ruling reference number" field (KI60) for CADEX participants.

### **Modification or Revocation of an Advance Ruling**

29. The CBSA may review an advance ruling at any time to establish its continued validity. An advance ruling may be revoked or modified if any of the circumstances listed in the *Tariff Classification Advance Rulings Regulations* occur.

30. The advance ruling may be revoked or modified by CBSA headquarters or by the CBSA region that issued the advance ruling or by any other region, with the concurrence of the region that issued the advance ruling. The notice of the modification or revocation of an advance ruling, required by the *Tariff Classification Advance Rulings Regulations*, will take the form of a further advance ruling. It will be issued to the person who requested the original ruling and will have an advance ruling number issued with it. On the date of issue of the modification or revocation, the advance ruling that is replaced ceases to be valid.

31. From time to time, the *Customs Tariff* is amended by the Department of Finance. Where the tariff item upon which an advance ruling was based is amended, the advance ruling ceases to be valid from the effective date of the amendment. In the event that legislative amendments render an advance ruling invalid, clients may request a new advance ruling from the CBSA office that issued the original ruling.

### **Effect of Modification or Revocation of an Advance Ruling**

32. A modification or revocation of an advance ruling issued with respect to paragraph 29 may be retroactively applied to goods imported before the modification or revocation is issued in the following circumstances:

(a) there was a failure to act in accordance with the terms and conditions of the ruling, which might include, inter alia:

(i) the request for an advance ruling contains a misstatement or omission of material facts;

(ii) the ruling, although correct when issued, ceases to be correct at a later date because there was a change at that later date, of which the CBSA was not notified, in the material facts or circumstances upon which the ruling was based. In such a case, the advance ruling may be retroactively revoked or modified to the date of the change in the material facts or circumstances;

(b) the modification or revocation is to the benefit of the client.

33. Generally, a revocation or modification of an advance ruling will be effective on the date it is issued. However, the CBSA may, upon application or on its own initiative, delay the effective date of such a modification or revocation for a period of up to 90 calendar days from the date of issue pursuant to the proposed *Tariff Classification Advance Rulings Regulations*. Such a delay will be granted to clients, upon application, provided they can demonstrate to the satisfaction of the CBSA that relying on the advance ruling was to their detriment. The delay will apply with respect to goods covered by the advance ruling that are imported by the client or any other person importing those goods from the client.

34. Evidence of reliance includes contracts, purchase orders, past importations, or other documentation tending to establish that contracts for, and production of goods to be imported after the modification or revocation, were arranged prior to the modification or revocation, with reliance on the prior ruling. It will specifically identify the advance ruling on which reliance is claimed.

35. All clients applying for a delay of the effective date of an advance ruling, as outlined in paragraphs 33 and 34, will be issued a separate ruling setting forth the period, if any, of

the delay to be provided. In appropriate circumstances, the CBSA may decide to make its decision, with respect to a delay, applicable to all persons, irrespective of demonstrated reliance. In such a case, the CBSA will not reassess any importations of the goods in question that are imported during the period of the delay.

36. An application for postponement of the effective date of the modification or revocation should be made in writing, to the office that issued the modification or revocation, within 90 days from the issuance of the modification or revocation, or within 90 days of receipt of a reassessment of goods imported in the 90-day period after the issuance of a modification or revocation. This application should be directed to the attention of the client services manager.

### **“Reason to believe”**

37. As indicated in D11-6-6, *Self-Adjustment to Declarations of Origin, Tariff Classification, Value for Duty, and Diversion of Goods*, an advance ruling is considered to be a type of specific information that gives the importer “reason to believe” a declaration may be incorrect.

38. Importers should not rely on the validity of advance rulings issued to another party for the reasons outlined in paragraphs 56 and 57.

### **Disputes of Advance Rulings – General**

39. Disputing an advance ruling may involve any of the following scenarios:

(a) The client received an advance ruling for tariff classification and wishes to dispute that decision under subsection 60(2) of the Act before importing the goods.

(b) The client imported goods before receiving an unfavourable advance ruling and has subsequently received a decision notice under subsection 59(2) of the Act due to a related adjustment of the accounting document. The client may wish to request a review of the advance ruling under subsection 60(2) of the Act and dispute the adjustment under subsection 60(1).

(c) The client has imported goods in accordance with an advance ruling that is in dispute under subsection 60(2) of the Act and has had no subsequent subsection 59(2) notice resulting from adjustment activity. Clients may file a refund application under section 74 of the Act either to obtain a refund after receiving a favourable advance ruling decision or for the CBSA to hold in abeyance pending the dispute outcome.

An explanation for each of these situations follows.

### **Disputing an Advance Ruling Under Subsection 60(2) of the *Customs Act***

40. A client who wishes to dispute an advance ruling for tariff classification made under paragraph 43.1(1)(c) of the Act may request a review of that ruling under

subsection 60(2) within 90 days after it is given. When exceptional circumstances beyond the client’s control prevented the filing of the dispute within that time, the client may apply for an extension of time to file the dispute, as provided for in section 60.1 of the Act. See Interim Memorandum D11-6-9, *Applications to the Commissioner for an Extension of Time to File a Dispute Notice*, for details.

41. To dispute an advance ruling, the client must file a dispute notice (request for review) under subsection 60(2) of the Act by letter. The client should attach a copy of the advance ruling being disputed and provide written arguments to support the dispute. The client should include any relevant information listed in Appendix A that was not provided in the original application, and any additional information to support the dispute.

42. Disputes must be sent by mail or delivered in person. We encourage clients to file disputes of advance rulings directly to the recourse office handling disputes for the Client Services office that issued the advance ruling (see Appendix B for addresses of recourse offices).

Alternatively, clients may submit disputes to the Client Services office that issued the advance ruling by addressing it to the attention of the **“Recourse Division.”** Applications are to be submitted in English or French and signed by a person authorized by the requesting party to make the request and who has knowledge of the issues in dispute.

43. A recourse officer will provide the dispute decision by letter on behalf of the President under subsection 60(5) of the Act in accordance with paragraph 60(4)(b). This decision will replace the advance ruling issued under paragraph 43.1(1)(c) of the Act and can be used as supporting documentation when filing refund applications or dispute notices.

44. Disputing an advance ruling does not override the requirements or otherwise protect the time limits for filing a refund application or a dispute notice for related imported goods. When there is potential for re-determination of tariff classification on imported goods, the client will need to file the relevant adjustment under sections 74 or 60 of the Act within the legislated time limits. A pending dispute does not negate the client’s obligation to self-adjust under the provisions of section 32.2 of the Act.

### **Disputing Both an Advance Ruling and a Re-determination**

45. Sometimes the CBSA initiates verification activity and adjusts accounting documents of imported goods based on an advance ruling. Alternately, clients may have self-adjusted their importations to comply with an advance ruling.

46. The CBSA notifies the client when the accounting documents are adjusted either by the CBSA under

subsections 58(1) or 59(1) of the Act, or as requested by the client under sections 32.2 or 74. This is done by giving a decision notice under subsection 59(2) of the Act, generally on Form B2-1, *Canada Customs – Detailed Adjustment Statement (DAS)*.

47. The client has 90 days from the date of the subsection 59(2) notice to dispute the decision under subsection 60(1) of the Act by filing a B2 form requesting a re-determination of the tariff classification. The procedures for filing disputes under subsection 60(1) of the Act are provided in Memorandum D11-6-7, *Importers' Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*.

48. Clients filing a dispute under subsection 60(1) of the Act should note in the explanation field of the B2 form if they are waiting for the outcome of an advance ruling dispute already filed under subsection 60(2). The client should also note the file number and advance ruling number in dispute, as well as any file number and advance ruling number provided to them by the recourse officer relating to the advance ruling dispute.

49. If an advance ruling dispute has not been filed under subsection 60(2) of the Act, there is no advantage to filing such a dispute if disputes under subsection 60(1) have already been filed.

50. A recourse officer makes a decision under subsection 60(5) of the Act on behalf of the President by issuing a DAS. That decision replaces the advance ruling. If the client has filed disputes under both subsections 60(1) and 60(2) of the Act, the recourse officer generally provides the advance ruling dispute decision by letter and makes a reference to the file number in any related subsection 60(1) DAS. A favourable dispute decision may apply to previous importations when used to support refund applications filed under section 74 of the Act within the appropriate time limits.

### **Disputing an Advance Ruling and Submitting Refund Applications**

51. Clients may be in the process of disputing an advance ruling under subsection 60(2) of the Act and, while waiting for the outcome, have accounted for imported goods in accordance with an advance ruling. If no adjustments to the accounting documents were made resulting in subsection 59(2) notices, the client has up to four years after the goods are accounted for to file refund applications under section 74 of the Act. Filing refund applications allows the client to receive the benefits of a favourable decision on an advance ruling dispute for imported goods which are the same as those covered by the ruling.

52. To avoid unnecessary filing, the CBSA suggests that clients wait for the outcome of the advance ruling dispute before submitting refund applications. If the dispute is favourable, the client may submit refund applications under

section 74 of the Act, supported by the decision. In the explanation field, the client should quote the advance ruling number provided on the decision notice. It is also helpful to provide a copy of the recourse officer's decision letter.

53. If the time limit for filing refund applications is approaching and a dispute decision is pending, the client should file the refund applications before the four-year time limit expires. Sometimes clients choose to file section 74 refund applications at the earliest opportunity, while waiting for a dispute decision. In both cases, the client should ask the CBSA to hold the refund applications in abeyance pending the outcome of the dispute of the advance ruling and indicate the following in the explanation field of the refund application: "Hold pending decision on subsection 60(2) dispute notice filed against advance ruling File No. XXX, Advance Ruling No. XXX."

54. Information for filing refund applications is provided in Memorandum D11-6-6, *Self-Adjustment to Declarations of Origin, Tariff Classification, Value for Duty, and Diversion of Goods*.

### **Appeals to the Canadian International Trade Tribunal (CITT)**

55. Clients may file an appeal to the CITT under section 67 of the Act in the usual manner within 90 days if they do not agree with the CBSA's decision on the dispute. This applies to decisions resulting from disputes filed either under subsection 60(1) or subsection 60(2) of the Act.

### **Reliance on Advance Rulings by Others**

56. An advance ruling benefits only the client or persons importing the goods in question from the client (if the client is an exporter or producer). However, any importer may quote the advance ruling number on an importation, even if the advance ruling was issued to another importer, as long as it specifically covers the goods being imported. It is the responsibility of an importer who is quoting the advance ruling number to ascertain that the goods being imported are covered by the advance ruling and that the ruling is valid. Quoting an advance ruling number issued to another importer does not bind the CBSA to follow the ruling with regard to that importation, but will make the CBSA aware that there is an advance ruling on file which may be applicable to the goods in question.

57. Only the client may request a review of the advance ruling or any modification or revocation of the advance ruling, and only the client will be notified if the advance ruling is revoked or modified by the CBSA. In addition, only the client may apply for the delay of up to 90 days of the effective date of the modification or revocation of that advance ruling, as detailed in paragraph 33. For these reasons it is recommended that persons apply for their own advance ruling rather than rely on a ruling issued to another person.

## Confidentiality

58. Any confidential business information contained in a request for an advance ruling or in a request for the review of an advance ruling will remain confidential. The only specific information with respect to an advance ruling that will be released, other than to the person to whom the ruling was issued, is whether a particular advance ruling number remains in effect or has been modified or revoked. Further information on the ruling must be obtained from the person to whom the ruling was issued. Alternately, if entitled to do so, a person may request that the CBSA issue them their own ruling on the subject. However, the CBSA will issue an advance ruling that contains confidential business information obtained by the CBSA from someone other than the client, only with the permission of the owner of the confidential business information.

## Publication of Rulings

59. The policy content of advance rulings that set a precedent may be incorporated into the D Memoranda series or published in some other manner (e.g., on the Internet). Products will be clearly identified by name (including brand names) and model numbers. Clients must advise the CBSA of any confidential information contained in a request for an advance ruling or in a request for the review of an advance ruling to ensure that this information is not published. No information that would directly identify the client will be published.

## Processing of Requests for Advance Rulings

60. A person submitting a request for an advance ruling that does not comply with all of the provisions of this memorandum will be notified in writing, and the requirements that have not been met will be pointed out. Furthermore, the CBSA may, at any time during the course of an evaluation of an application for an advance ruling, request additional information from the client. The client will be given a period of 30 calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or, otherwise, to comply with the requirements referred to in the notice. If no response to the notice is received within the time allotted, the advance ruling request will be closed administratively and considered withdrawn.

61. The CBSA has set a standard for issuing advance rulings within 120 days of receipt of all necessary information, and will seek to issue rulings within a shorter period if possible. This time standard should be taken into consideration when submitting an advance ruling request. If a request with complete information is submitted less than 120 days before the importation in question, the CBSA cannot guarantee that an advance ruling will be issued before the importation date. If all necessary information is not received with the application, further information will be requested and the time standard of 120 days will commence with the receipt of the additional information.

62. Any request for an advance ruling may be withdrawn by the client at any time before an advance ruling is issued on the matter. However, the CBSA may inform its trade compliance or recourse officers of the CBSA's views in regard to the issue involved in the application.

63. The CBSA will provide a full explanation of the reasons for the ruling in the letter containing the advance ruling.

64. For further information on this program, please contact any CBSA regional office (see Appendix B). Alternatively, clients can call the Border Information Service (BIS) number, **1-800-461-9999**, available free of charge throughout Canada; from outside Canada call 204-983-3500 or 506-636-5064, long distance charges will apply. Press "0" to speak directly with an agent. TTY is also available within Canada: 1-866-335-3237.

## APPENDIX A

### CONTENT OF TARIFF CLASSIFICATION ADVANCE RULING REQUESTS AND REQUESTS FOR REVIEWS

1. Ruling requests must be submitted in writing and must contain a complete statement of all relevant information related to the request.
2. Requests must be limited to a single product. However, the CBSA will consider issuing a ruling covering a product line containing different models of the same generic goods if a ruling on one model will clearly apply to all other models. The CBSA reserves the right to allow such an application or not, and to split such requests into separate advance ruling requests.
3. The information requirements detailed below are set out so that a person requesting an advance ruling is aware of the extent of the specific information. In any specific case, the CBSA may be able to issue a ruling with less than all the indicated information. However, the CBSA retains the right to request any of the information detailed below or other additional information before issuing an advance ruling.
4. If the request is for a review of an advance ruling under subsection 60(2) of the *Customs Act*, state, "This is a request for a review of advance ruling number \_\_\_\_\_ (state the advance ruling number)." The client should attach a copy of the advance ruling being disputed and provide written arguments to support the dispute.

#### Information required in letter of application

##### General Information

5. The name and address of the applicant. If applicable, the business number assigned to the applicant must be given.
6. A statement as to whether the applicant is an importer (a Canadian person importing goods), a producer (the producer of the goods in question, and if so, whether the producer directly exports the goods to Canada) or an exporter (a person exporting goods to Canada who is not the producer of those goods).
7. Where the request is made on behalf of an importer, exporter or producer, the name and address of the person requesting the advance ruling, and a written statement from the person requesting the advance ruling that indicates that the person is duly authorized to transact business as the agent of the importer, exporter or producer. The ruling will be issued in the name of the importer, exporter or producer.
8. Name and telephone number of a contact person. This person should be someone to whom the CBSA may refer who has full knowledge of the basis and rationale for the request.
9. If the applicant is the importer, name and address of the exporter and/or producer. If the applicant is the exporter, name and address of the producer (if not the same person) and importer(s). If the applicant is the producer, name and address of the exporter (if not the same person) and importer(s).
10. Principal ports of entry through which it is anticipated the goods under the requested ruling will be imported.
11. A statement, on the basis of the applicant's knowledge, as to whether the issue that is the subject of the request for an advance ruling is, or has been, the subject of:
  - (a) a verification of tariff classification,
  - (b) an administrative review or appeal,
  - (c) a judicial or quasi-judicial review,
  - (d) a request for a NCR or other advice, or
  - (e) a request for an advance ruling, and if so, a brief statement setting forth the status or disposition of the matter.
12. A statement, on the basis of the applicant's knowledge, as to whether the good that is the subject of the request for an advance ruling has previously been imported into Canada.
13. To issue a tariff classification advance ruling, the CBSA must first be able to accurately identify the goods. Requests should provide sufficient information, including, whenever relevant:
  - (a) a full description of the goods including trade names, or its commercial, common or technical designation, where applicable;

- (b) the composition of the goods;
- (c) a description of the process by which the good is manufactured;
- (d) a description of the packaging in which the good is contained;
- (e) the anticipated use of the good;
- (f) the manufacturer's product literature, drawings, photographs, schematics for the good; or

14. If an applicant/agent has difficulty providing proprietary information, he/she can request the manufacturer/exporter send the information directly to the CBSA.
15. Descriptions consisting only of part numbers, trade names, and the like are not satisfactory and would result in the request being rejected.
16. To determine the proper classification, a laboratory analysis or a visit to the importer's premises may be required. If a sample is required, hazardous or perishable products should be sent directly to:
- Analytical and Forensic Services  
Science and Engineering  
Canada Border Services Agency  
79 Bentley Avenue  
Ottawa ON K1A 0L8
17. The request should also include, where possible, the classification the importer believes to be correct and the reasons for this belief.

**APPENDIX B****ADDRESSES OF CBSA REGIONAL OFFICES**

1. The advance ruling request should be delivered or sent by mail to the Trade Compliance Division in the region in which the bulk of the importations is expected to occur. If this cannot be determined, the request should be sent to the region where most of the importers or potential importers for the product are located. The CBSA will redirect the request if required. The letter should be marked "Attention: Tariff Classification Advance Ruling Request."
2. Requests for a review of an advance ruling under subsection 60(2) of the *Customs Act* should be delivered or sent to the corresponding Recourse Division. The letter should be marked "Attention: Tariff Classification Advance Ruling Dispute."

<b>Submit advance ruling requests to:</b> Trade Compliance Division Regional Offices	<b>Submit advance ruling disputes to:</b> Recourse Division Regional Offices
<p><b>Atlantic region</b></p> <p>Trade Compliance Division Canada Border Services Agency Purdy's Tower II, 5th floor 1969 Upper Water St., Halifax NS B3J 3R7 CANADA</p> <p><b>Quebec region</b></p> <p>Trade Services Division Canada Border Services Agency 130 Dalhousie Street Québec QC G1K 4C4 Canada</p> <p><b>Northern Ontario region</b></p> <p>Trade Compliance Division Canada Border Services Agency 1st floor, 2270 St. Laurent Boulevard Ottawa ON K1G 6C4 CANADA</p> <p><b>Southern Ontario region</b></p> <p>(Toronto, Hamilton, Windsor, London) Compliance Verification and Services Division Canada Border Services Agency P.O. Box 7850 London ON N5Y 0A7 CANADA</p> <p>For <b>courier service:</b> Suite 1005, 10th floor 451 Talbot Street London ON N6A 5C9 CANADA</p>	<p><b>Atlantic, Québec and Northern Ontario regions</b></p> <p>Recourse Division Canada Border Services Agency 4th floor 400 Place d'Youville Montreal QC H2Y 2C2 CANADA</p> <p><b>Southern Ontario region</b></p> <p>(Toronto) Recourse Division Canada Border Services Agency 1 Front Street West, 3rd floor Toronto, ON M5J 2X6 CANADA</p> <p>(Hamilton, Windsor, London) Recourse Division Canada Border Services Agency 55 Bay Street North, 6th floor Hamilton, ON L8R 3P7 CANADA</p> <p><b>Prairie and Pacific regions</b></p> <p>Recourse Division Canada Border Services Agency 403 - 333 Dunsmuir Street Vancouver BC V6B 5R4 CANADA</p>

**Prairie region**

(Winnipeg)  
Trade Compliance Division  
Canada Border Services Agency  
Victory Building  
269 Main Street  
Winnipeg MB R3C 1B3  
CANADA

(Calgary)  
Trade Compliance Division  
Canada Border Services Agency  
2588-27th St., North East  
Calgary AB T1Y 7G1  
CANADA

**Pacific region**

Trade Compliance Division  
Canada Border Services Agency  
503 - 333 Dunsmuir Street  
Vancouver BC V6B 5R4  
CANADA

## REFERENCES

<p><b>ISSUING OFFICE –</b></p> <p>Tariff Division          Post-Border Programs Directorate          Programs Branch</p>	<p><b>HEADQUARTERS FILE –</b></p> <p>N/A</p>
<p><b>LEGISLATIVE REFERENCES –</b></p> <p><i>Customs Act</i>, sections 43.1 and 60</p>	<p><b>OTHER REFERENCES –</b></p> <p>N/A</p>
<p><b>SUPERSEDED MEMORANDA “D” –</b></p> <p>D11-11-3, November 26, 2009</p>	

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

