MEMORANDUM D11-6-1
Locator Code: 652A

In Brief

Ottawa, June 19, 1996

SUBJECT

**DETERMINATION/RE-DETERMINATION
AND APPRAISAL/RE-APPRAISAL
OF GOODS**

1. The attached pages amend Memorandum D11-6-1, dated January 13, 1995, to incorporate certain amendments to the ***Customs Act*** arising from the implementation of Bill C-102 on January 1, 1996. These pages replace those previously issued and should be inserted into your copy of the Memorandum.

2. The following changes appear in Memorandum D11-6-1:

   (a) the first page incorporates cross-references to Memoranda D11-6-3, ***Subsequent Goods*** and D8-5-1, ***Machinery Program***;

   (b) legislative references to the definition of "duties" and the waiver or cancellation of "interest or penalty payments" are amended to reflect the new versions in the ***Customs Ac***t;

   (c) reference is made to paragraph 64***(c.1)*** of the ***Customs Act*** which empowers the Deputy Minister to re-determine the tariff classification of goods covered by applications for machinery remission under section 76 of the ***Customs Tariff.***

3. Any questions concerning this matter should be directed to:

   Tariff Policy and Nomenclature Development
   Trade Administration Branch
   Revenue Canada
   Ottawa ON K1A 0L5

   Telephone: (613) 954-6926

MEMORANDUM D11-6-1
Locator Code: 652A

Ottawa, January 13, 1995

SUBJECT

DETERMINATION/RE-DETERMINATION AND APPRAISAL/RE-APPRAISAL OF GOODS

This Memorandum outlines and explains the legislation governing the determination, re-determination, appraisal, and re-appraisal of goods, and advises importers how to use appropriate sections of the legislation.

For information concerning exporter appeals, refer to Memorandum D11-4-17, ***NAFTA Origin Re-determination Requests Filed by the Person Who Completed and Signed the Certificate of Origin***.

For information concerning the North American Free Trade Agreement (NAFTA) refund procedures, refer to Memorandum D6-2-2, ***Refund of Duties***. NAFTA refund situations occur only when a NAFTA tariff treatment was not claimed at time of accounting.

For information on the administration of tariff rate quotas, refer to Memorandum D10-18-1, ***Tariff Rate Quotas***.

For information on the administration of "subsequent goods," refer to Memorandum D11-6-3, ***Administrative Policy Respecting Re-Determination/Re-Appraisal Made Pursant to Paragraph 64(e) of the Customs Act***.

For information on re-determination of tariff classification procedures involving goods covered by an applixcation for machinery remission filed under section 76 of the ***Customs Tariff***, refer to Memorandum D8-5-1 (paragraph 59), ***Machinery Program***.

TABLE OF CONTENTS

Appendix E — Criteria for Re-determination and Re-appraisal Pursuant to Paragraph 64***(a)*** of the ***Customs Act***

Legislation

Subsection 2.(1) and Sections 57.1 to 66, 69, and 74 of the *Customs Act*

2. (1) "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) and 76(1), does not include taxes imposed under Part IX of the ***Excise Tax Act***;

"prescribed" means

(a) in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister, and

(b) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;

"specified rate" means the rate of interest, expressed as a percentage per year, equal to 6% per year plus the prescribed rate;

Penalty and Interest

3.1 Interest computed at a prescribed rate or at a specified rate and any penalty computed at a rate per year under any provision of this Act (other than in respect of any amount in respect of duty levied under the ***Special Import Measures Act***) shall be compounded daily and, where interest or such a penalty is computed in respect of an amount under a provision of this Act and is unpaid on the day it would, but for this section, have ceased to be computed under that provision, interest at the specified rate shall be computed and compounded daily on that unpaid interest or penalty from that day to the day it is paid and shall be paid as that provision required the amount to be paid.

3.2 Where a person is required under a provision of this Act to pay interest on an amount at the specified rate, the person shall, where the Minister or any officer designated by the Minister for the purposes of this section so authorizes, pay interest on that amount under that provision at the prescribed rate rather than at the specified rate.

3.3 (1) Notwithstanding any other provision of this Act, the Minister or any officer designated by the Minister for the purposes of this section may at any time waive or cancel all or any portion of any penalty or interest otherwise payable by a person under this Act.

(2) Where, as a result of a waiver or cancellation under subsection (1), a person is given a refund of an amount of penalty or interest that was paid by the person, the person shall be given, in addition to the refund, interest at the prescribed rate for the period beginning on the first day after the day the amount was paid and ending on the day the refund is given, calculated on the amount of the refund.

Security

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

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

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

exceeds

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

is payable by the person immediately.

Determination and
Re-determination of Origin

57.1 For the purposes of section 57.2, the origin of imported goods shall be determined in accordance with section 13 of the ***Customs Tariff*** and the regulations thereunder.

57.2 (1) An officer may determine the origin of imported goods at any time before or within thirty days after they are accounted for under subsection 32(1), (3) or (5).

(1.1) Where an officer makes a determination under subsection (1), the officer shall give notice of the determination to any person who has completed and signed a Certificate of Origin for the goods that were the subject of the determination, in addition to the person who accounted for the goods under subsection 32(1), (3) or (5).

(2) Where an officer does not make a determination under subsection (1) in respect of imported goods, a determination of the origin of the goods shall be deemed to have been made under this section thirty days after the time the goods were accounted for under subsection 32(1), (3) or (5) in accordance with any representations made at that time in respect of the origin of goods by the person accounting for the goods.

(2.1) Subject to subsection (3.1), a determination of the origin of imported goods under this section is final unless, in the case of goods other than goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed, a re-determination of the origin of the imported goods is made by the Minister within two years after they are accounted for under subsection 32(1), (3) or (5).

(2.2) The operation of subsection (3) is suspended during the period in which subsection (2.1) is in force.

(3) Subject to subsection (4), a determination of the origin of imported goods under this section is final unless, in the case of goods other than goods imported from the United States, a re-determination of the origin of the imported goods is made by the Minister within two years after they are accounted for under subsection 32(1), (3) or (5).

(3.1) Subject to this section, sections 58 to 72 apply, with such modifications as the circumstances require, in respect of a determination of origin under this section as to the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed as if it were a determination of the tariff classification of the goods, and, for greater certainty, any matter that may be prescribed in relation to a request referred to in subsection 60(2) or 63(2) may be prescribed in relation to a request for a re-determination or further re-determination of the origin of the goods.

(3.2) In addition to the importer or any person who is liable to pay duties owing on the goods, other than a person authorized by regulations made pursuant to paragraph 32(6)***(a)*** or under subsection 32(7) to account for the goods, any person who has completed and signed a Certificate of Origin for goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed that are the subject of a determination of origin under this section is entitled to request a re-determination of the origin of those goods under subsection 60(1) as applied by subsection (3.1).

(3.3) In addition to the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods or the person who was the owner of the goods at the time of release, any person who has completed and signed a Certificate of Origin for goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed that are the subject of a determination of origin under this section is entitled to be given notice of the re-determination of the origin of those goods under section 61 or 64 as applied by subsection (3.1), as the case may be.

(3.4) In the case of a re-determination by a designated officer of the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed that are the subject of a determination of origin under this section, the reference in subsection 62(1) to "the person who was given notice of the decision thereunder" and the reference in subsection 62(2) to "the person referred to in that subsection" shall be read as a reference to

(a) in the case of a re-determination under section 60, "the importer or any person liable to pay duties owing on the goods (other than a person authorized under paragraph 32(6)***(a)*** or subsection 32(7) to account for the goods)"; and

(b) in the case of a re-determination under section 61, "the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods, or the person who was the owner of the goods at the time of release".

(3.5) In the case of a re-determination by the Deputy Minister of the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed that are the subject of a determination of origin under this section, the reference in subsection 65(1) to "the person who is given notice of the decision thereunder" and in subsection 65(2) to "the person" shall be read as a reference to

(a) in the case of a re-determination under section 63 of a re-determination by a designated officer under section 60, "the importer or any person liable to pay duties owing on the goods (other than a person authorized under paragraph 32(6)***(a)*** or subsection 32(7) to account for the goods)"; and

(b) in the case of a re-determination under section 63 of a re-determination by a designated officer under section 61 or in the case of a re-determination under section 64, "the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods, or the person who was the owner of the goods at the time of release".

(3.6) The operation of subsection (4) is suspended during the period in which subsections (3.1) to (3.5) are in force.

(4) Sections 58 to 72 apply, with such modifications as the circumstances require, in respect of a determination under this section as to the origin of goods imported from the United States, as if it were a determination of the tariff classification of the goods, and, for greater certainty, any matter that may be prescribed in relation to a request referred to in subsection 60(2) or 63(2) may be prescribed in relation to a request for a re-determination or further re-determination of the origin of goods.

Determination of Tariff Classification and Appraisal for Value

58. (1) An officer may determine the tariff classification and appraise the value for duty of imported goods at any time before or within thirty days after they are accounted for under subsection 32(1), (3) or (5).

(2) Where a determination or appraisal is made under subsection (1) in respect of goods, the person who accounts for the goods shall, in accordance with the determination or appraisal,

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

(b) be given a refund of any duties paid in excess of the duties owing in respect of the goods.

(3) Any amount owing by or to a person under subsection (2) or 66(3) in respect of goods, other than an amount in respect of which security is given, is payable within thirty days after the day the determination or appraisal is made, whether or not a request is made under section 60.

(4) For the purposes of paragraph (2)***(a)***, the amount owing as duties in respect of goods under subsection (2) does not include any amount owing in respect thereof pursuant to section 32 or 33.

(5) Where an officer does not make a determination or an appraisal under subsection (1) in respect of goods, a determination of the tariff classification and an appraisal of the value for duty of the goods shall, for the purposes of sections 60, 61 and 63, be deemed to have been made thirty days after the time the goods were accounted for under subsection 32(1), (3) or (5) in accordance with any representations made at that time in respect of the tariff classification or value for duty by the person accounting for the goods.

(6) A determination of tariff classification or an appraisal of value for duty is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 60 to 65.

Re-determination and Re-appraisal
by Designated Officer

59. Any officer, or any officer within a class of officers, designated by the Minister for the purposes of this section (in sections 60 and 61 referred to as a "designated officer") may make re-determinations of tariff classifications or re-appraisals of value for duty under sections 60 and 61.

60. (1) The importer or any person who is liable to pay duties owing on imported goods (other than a person authorized under paragraph 32(6)***(a)*** or subsection 32(7) to account for the goods) may, after all amounts owing in respect of the goods as duties and interest have been paid or security satisfactory to the Minister has been given in respect of the total amount owing,

(a) within ninety days, or

(b) where the Minister deems it advisable, within two years

after the time the determination or appraisal was made in respect of the goods under section 58, request a re-determination of the tariff classification or a re-appraisal of the value for duty.

(2) A request under this section shall be made to a designated officer in the prescribed manner and in the prescribed form containing the prescribed information.

(3) On receipt of a request under this section, a designated officer shall, with all due dispatch, re-determine the tariff classification or re-appraise the value for duty, as the case may be, and give notice of his decision to the person who made the request.

61. A designated officer may, after imported goods have been released,

(a) within ninety days,

(b) where it was not possible for an officer to make a determination or an appraisal under subsection 58(1) because of insufficient information, within two years,

(c) where, on the basis of an audit or examination under section 42, or a verification of origin under this Act, the designated officer deems it advisable, within two years,

(d) in the case of a verification of origin under this Act where an election to average has been made under the regulations made pursuant to section 13 of the ***Customs Tariff***, such further time as may be prescribed, or

(e) where the Minister deems it advisable, within two years

after the time a marking determination was made in respect of the goods under section 57.01 or a determination or an appraisal was made in respect of the goods under section 58, re-determine the marking determination, re-determine the tariff classification or re-appraise the value for duty of the goods and,

where the designated officer makes such a re-determination or re-appraisal, the designated officer shall immediately give notice of that decision to

(f) the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods or the person who was the owner of the goods at the time of release, and

(g) persons who are members of the prescribed class, in the case of a re-determination of a marking determination.

62. (1) Where a re-determination, other than a re-determination of a marking determination, or re-appraisal is made under section 60 or 61 in respect of goods, the person who was given notice of the decision under that section shall, in accordance with the decision,

(a) pay any additional amount owing as duties in respect of the goods or, where a request is made under section 63, give security satisfactory to the Minister in respect of that amount and any interest owing or that may become owing on that amount; or

(b) be given a refund of any duties and interest paid (other than interest that was paid by reason of duties not being paid in accordance with subsection 32(5) or section 33) in excess of the duties and interest owing in respect of the goods.

(2) Any amount owing by or to a person under subsection (1) or 66(3) in respect of goods, other than an amount in respect of which security is given, is payable within thirty days after the day the person referred to in that subsection is given notice of the decision, whether or not a request is made under section 63.

(3) A re-determination or a re-appraisal under section 60 or 61 is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 63 or 64.

Re-determination and Re-appraisal by Deputy Minister

63. (1) Any person may,

(a) within ninety days after the time the person was given an advance ruling under section 43.1, notice of a marking determination under section 57.01 or notice of a decision under section 60 or 61, or

(b) where the Minister deems it advisable, within two years after the time an advance ruling was given under section 43.1, a marking determination was made under section 57.01 or a determination or appraisal was made under section 58 request a review of the advance ruling, a re-determination of the marking determination, a further re-determination of the tariff classification or a further re-appraisal of the value for duty re-determined or re-appraised under section 60 or 61.

(2) A request under this section shall be made to the Deputy Minister in the prescribed manner and in the prescribed form containing the prescribed information.

(3) On receipt of a request under this section, the Deputy Minister shall, with all due dispatch, affirm, revise or reverse the advance ruling, re-determine the marking determination or the tariff classification or re-appraise the value for duty, as the case may be, and give notice of his decision to the person who made the request.

64. The Deputy Minister may re-determine the tariff classification or marking determination or re-appraise the value for duty of imported goods

(a) in the case of a determination of a tariff classification or an appraisal of value for duty, within two years after the time a determination or an appraisal was made under section 58, where the Minister deems it advisable,

(a.1) in the case of a marking determination, within two years after the time the determination was made under section 57.01, where the Minister deems it advisable,

(b) at any time after a re-determination or re-appraisal was made under subsection 63(3), but before an appeal under section 67 is heard, on the recommendation of the Attorney General for Canada, where the re-determination or re-appraisal would reduce duties payable on the goods,

(c) at any time, where the person who accounted for the goods under subsection 32(1), (3) or (5) or a person who was given notice of a marking determination under section 57.01 has failed to comply with any of the provisions of this Act or the regulations or has committed an offence under this Act in respect of the goods,

(c.1) at any time, where the person who accounted for the goods under subsection 32(1), (3) or (5) has made an application for remission in accordance with section 76 of the ***Customs Tariff***,

(d) at any time, where the re-determination or re-appraisal would give effect to a decision of the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada made in respect of the goods, and

(e) at any time, where the re-determination or re-appraisal would give effect in respect of the goods in this paragraph referred to as the "subsequent goods", to a decision of the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada, or of the Deputy Minister under paragraph ***(b)***, made in respect of

(i) other like goods of the same importer or owner imported on or prior to the date of importation of the subsequent goods, where the decision relates to the tariff classification of those other goods, or

(ii) other goods of the same importer or owner imported on or prior to the date of importation of the subsequent goods, where the decision relates to the manner of determining the value for duty of those other goods,

and, where the Deputy Minister makes a re-determination or re-appraisal under this section, the Deputy Minister shall forthwith give notice of that decision to the person who accounted for the goods under subsection 32(1), (3) or (5), the importer of the goods or the person who was the owner of the goods at the time of release, or in the case of a re-determination of a marking determination under paragraph ***(a.1)***, to persons who are members of the prescribed class.

65. (1) Where a re-determination, other than a re-determination of a marking determination, or re-appraisal is made under section 63 or 64 in respect of goods, the person who is given notice of the decision thereunder shall, in accordance with the decision,

(a) pay any additional amount owing as duties in respect of the goods or, where an appeal is taken under section 67, give security satisfactory to the Minister in respect of that amount and any interest owing or that may become owing on that amount; or

(b) be given a refund of any duties and interest paid (other than interest that was paid by reason of duties not being paid in accordance with subsection 32(5) or section 33) in excess of the duties and interest owing in respect of the goods.

(2) Any amount owing by or to a person under subsection (1) or 66(3) in respect of goods, other than an amount in respect of which security is given, is payable within thirty days after the day the person is given notice of the decision, whether or not an appeal is taken under section 67.

(3) A re-determination or a re-appraisal under section 63 or 64 is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 67.

66. (1) Where a person has paid an amount on account of duties expected to be owing under paragraph 58(2)***(a)***, 62(1)***(a)*** or 65(1)***(a)*** and the amount so paid exceeds the amount of duties, if any, owing under that paragraph as a result of a determination, appraisal, re-determination or re-appraisal, the person shall be paid, in addition to the excess amount, interest at the prescribed rate for the period

beginning on the first day after the day the amount was paid and ending on the day the determination, appraisal, re-determination or re-appraisal, as the case may be, was made, calculated on the excess amount.

(2) Where, as a result of a determination, appraisal, re-determination or re-appraisal made in respect of goods, a person is required under paragraph 58(2)***(a)***, 62(1)***(a)*** or 65(1)***(a)*** to pay an amount owing as duties in respect of the goods and the person gives security under that paragraph pending a subsequent re-determination or re-appraisal in respect of the goods, the interest payable under subsection 33.4(1) on any amount owing as a result of the subsequent re-determination or re-appraisal shall be computed at the prescribed rate rather than at the specified rate for the period beginning on the first day after the day the security was given and ending on the day the subsequent re-determination or re-appraisal is made.

(3) Any person who is given a refund under paragraph 58(2)***(b)***, 62(1)***(b)*** or 65(1)***(b)*** of an amount paid shall be given, in addition to the refund, interest at the prescribed rate for the period beginning on the first day after the day the amount was paid and ending on the day the refund is given, calculated on the amount of the refund.

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

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

(a) if a re-determination or a re-appraisal is made by the Deputy Minister under paragraph 64***(d)*** pursuant to which any portion of the amount refunded is owing as duties and interest, pay interest at the prescribed rate for the period beginning on the first day after the day the refund is given and ending on the day the amount of the refund found to be owing as duties and interest has been paid in full calculated on the outstanding balance of that amount of the refund, except that where the amount of the refund found to be owing is paid within thirty days after the day the re-determination or re-appraisal is made, interest shall not be payable on that amount from that day to the day the amount is paid; or

(b) if a re-determination or re-appraisal is made by the Deputy Minister under paragraph 64***(d)*** pursuant to which all or any portion of the amount refunded is not owing as duties and interest, be given interest at the prescribed rate for the period beginning on the day after the amount refunded was originally paid by that person and ending on the day it was refunded, calculated on the amount of the refund found not to be owing.

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) notwithstanding paragraph ***(c.2)***, 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.2) duties have been overpaid or paid in error on the goods for any reason, other than an erroneous determination as to the origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed, an erroneous determination of tariff classification or an erroneous appraisal of value for duty; 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***)*** 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).

(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 refund, including such evidence of the application in support 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.***2***)*** or ***(d)***, two years after the goods are accounted for under subsection 32(1), (3) or (5).

(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).

(5) For greater certainty, a denial of an application for a refund under paragraph (1)***(c***.1***)*** on the basis that complete or accurate documentation has not been provided or on any ground other than the ground specified in subsection (4) 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***)*** shall, for the purposes of this Act, 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).

GUIDELINES AND GENERAL INFORMATION

DEFINITIONS

1. In this Memorandum, any reference that is made to:

(a) Form B 3, "***Canada Customs Coding Form***," will also include other accounting documents such as Form B 15, ***Casual Goods Accounting Document***, Form E 14-1, ***Request for Payment — Postal Declaration***, and Form E 14-2, ***Advice Notice/Postal Declaration*** (notices for private and commercial postal parcels);

(b) "date of accounting," in respect to subsections 32(1), (3) and (5) of the ***Customs Act***, is the date that the duty was paid on the goods as evidenced by the duty-paid stamp appearing on accounting

documents (e.g., Forms B 3, E 14-1, and E 14-2) presented at non-terminal offices and on Forms B 3-1, ***Canada Customs Detailed Coding Statement***, E 14-1 and E 14-2 (where applicable) at terminal offices for cash transactions. For importers/owners or brokers who are extended release prior to payment privileges at automated locations, the "date of accounting" is that shown in the Accounting Date field on Form K 84, ***Importer/Broker Account Statement***;

(c) "designated officer" includes the Tariff and Values Administrator (TVA) in the regions, the Chief Commodity Specialist or the Commodity Specialist Unit Head, as the case may be, and officers in Assessment Programs at Headquarters;

(d) "importer" includes any person who accounts for the imported goods; and

(e) "NAFTA country" means the countries of Canada, Mexico, and the United States; and

(f) "TVA", for the purpose of sections 60 and 61 of the ***Customs Act***, includes officers of Assessment Programs at Headquarters.

ORIGIN OF IMPORTED GOODS

2. The origin of imported goods shall be determined in accordance with section 13 of the ***Customs Tariff*** and its Regulations.

3. Subsection 57.2(2.1) of the ***Customs Act*** states that the determination of origin of goods, **other than those imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed**, is final unless a re-determination of origin is made by the Minister within two years after they are accounted for under subsection 32(1), (3) or (5) of the Act. Such re-determinations are dealt with under paragraph 74(1)***(c.2)*** of the ***Customs Act***.

4. Subsection 57.2(3.1) of the ***Customs Act*** provides that a determination of origin made under section 57.2 in respect of goods imported from a NAFTA country other than Canada is to be treated as if it were a determination of tariff classification. Accordingly, any reference within sections 58 to 72 of the Act to determination or re-determination of tariff classification shall be taken to include determination or re-determination of origin of goods imported from a NAFTA country other than Canada.

5. Any matter that may be prescribed, such as form and manner for a request for a re-determination of tariff classification may be prescribed for a request for determination or further re-determination of the origin of goods. Likewise, any policies, systems or procedures outlined in this Memorandum relating to determinations or re-determinations of tariff classification apply with respect to determinations or re-determinations of origin of goods imported from a NAFTA country other than Canada.

DETERMINATION AND APPRAISAL BY A COMMODITY SPECIALIST

6. Pursuant to subsections 57.2(1) and 58(1) of the ***Customs Act***, a commodity specialist may determine the origin or the tariff classification or appraise the value of imported goods before or within 30 calendar days after a final accounting is made under subsection 32(1), (3) or (5) of the Act.

7. When a determination or an appraisal cannot be made for lack of information, the commodity specialist will advise the importer or his agent that the imported goods are under review and that further information is required before a final decision can be given. If the additional data is not received within the 30-day statutory time limit of subsection 58(1) of the ***Customs Act***, the case will be referred to a Tariff and Values Administrator (TVA) and a reassessment may be made pursuant to paragraph 61***(b)*** of the Act based on the information available. Please refer to Customs Memorandum D11-4-20, ***Origin Verification Procedures***, for NAFTA origin verification procedures.

8. The importer or person who accounted for the goods will be notified of the commodity specialist's decision on Form B 2-1, ***Canada Customs — Detailed Adjustment Statement*** (DAS), when additional duties are assessed or when a refund of duties is given. In any instance where a NAFTA tariff treatment is denied, the person who completed and signed the Certificate of Origin shall also be notified.

9. Where an interim accounting has been made pursuant to subsection 32(2) or 32(4) of the Act, a commodity specialist may determine the origin or tariff classification or appraise the value of the imported goods:

(a) up to 30 days after a final accounting is made for the goods covered by the interim accounting document; or

(b) at any time after a final accounting should have been made for the goods covered by the interim accounting document.

10. Should an interim accounting document not be perfected within 90 days, the importer could not initiate a request pursuant to section 60 since he has not completed the final accounting required under subsection 32(3) or (5) of the ***Customs Act***. In this instance, the importer may only request re-determination or re-appraisal if and when the commodity specialist makes an assessment pursuant to subsection 57.2(1) or 58(1) of the Act.

11. Goods documented on Form B 3 (type 10, 11, 12, 13, 14 or 15) and delivered to a warehouse are not subject to review under section 57.2 or 58 of the ***Customs Act***. However, when the goods are ex-warehoused on Form B 3 (type 20 or 23), a determination of origin will be made in accordance with section 13 of the ***Customs Tariff*** and the Regulations made thereunder. A determination of the tariff classification and an appraisal of the value for duty will also be made in accordance with subsection 58(1) or (5) of the Act. Duties, including the goods and services tax (GST), owing on the imported goods are to be calculated based on the tariff rate that is in effect on the date the goods are ex-warehoused.

DEEMED DETERMINATION OR APPRAISAL

12. Under subsections 58(2) and (3) of the Act, it is the responsibility of the importer to pay the duties and any interest owing on the duties, including the goods and services tax (GST), which have been assessed as a result of the commodity specialist's determination or appraisal within 30 days of the date of the decision. For further information respecting the calculation and payment of interest, refer to Customs Memorandum D11-6-5, ***Interest and Penalty Provisions: Determinations/Re-determinations, Appraisals/Re-appraisals, and Duty Relief***.

13. Paragraph 58(2)***(a)*** of the ***Customs Act*** provides the importer with the option of presenting security satisfactory to the Minister in respect of the amount owing, where a request for re-determination or re-appraisal is made under section 60. Details concerning the posting of security are contained in paragraphs 50 to 55 of this Memorandum.

14. "Amount owing" in respect of a commodity specialist's decision under paragraph 58(2)***(a)*** of the ***Customs Act*** shall not include any duties, interest, or penalties payable in respect of the goods under section 32 (accounting and payment of duties) or section 33 of the Act (release prior to payment of duties).

15. Failure by the importer to pay any amount owing, other than the amount in respect of which security is given, will result in the assessment of interest at the specified rate calculated on the amount outstanding, and may result in the Department detaining subsequent importations as provided under subsection 146(1) of the Act.

16. Where a commodity specialist's decision results in a refund of duties under subsection 58(2) of the Act, the refund, not including the goods and services tax (GST), is to be paid by the Department within 30 days after the time the determination or appraisal is made. Where the refund is not paid within the time required, interest will be paid at the prescribed rate on the refund amount calculated from the day the amount was paid to the Department to the day the refund is made.

17. The importer will not, by accepting the refund pursuant to subsection 58(2) of the ***Customs Act***, lose his right to request a re-determination or re-appraisal under section 60 of the Act.

18. Pursuant to subsection 58(6) of the ***Customs Act***, a determination of the tariff classification or an appraisal of the value for duty of imported goods is final unless a request is filed or a re-determination or re-appraisal is made under sections 60 to 65 of the Act.

19. Subsections 57.2(2) and 58(5) of the Act provide that in those cases where a determination of origin or tariff classification or an appraisal of the value for duty of imported goods is not made within 30 days after the date of final accounting, then a determination shall be deemed to have been made at the end of the 30-day period.

REQUEST FOR RE-DETERMINATION/RE-APPRAISAL BY A DESIGNATED OFFICER (TVA)

20. Under section 60 of the Act, an importer may request a re-determination of origin of goods imported from a NAFTA country other than Canada, or a re-determination of the tariff classification or a re-appraisal of the value for duty of any imported goods, by a Tariff and Values Administrator:

(a) within 90 days; or

(b) within two years where the Minister deems it advisable

after a determination or an appraisal is made under section 57.2 or 58 of the Act.

21. Requests made pursuant to subsection 60(1) of the ***Customs Act*** must be presented on a properly completed Form B 2, ***Canada Customs — Adjustment Request***, stating the reasons for the claim and the legislative authority under which the request is presented. (Refer to paragraphs 57 to 62 of this Memorandum and to Customs Memorandum D17-2-1, ***Coding of Adjustment Request Forms***, for instructions on the coding and completion of Form B 2.) Requests that are found to be illegible or improperly completed will be rejected and returned, along with any samples provided, to the person who filed Form B 2. Where a B 2 adjustment request is rejected, no further consideration will be given unless a new or amended Form B 2 is filed within the time limit set out in the Act.

22. Requests under section 60 of the Act may be presented only **after** the duties, including the goods and services tax (GST), have been paid or security is given equal to the amount owing. If security is to be given, it must accompany the request when Form B 2 is filed at the required customs location.

23. When security or cash in respect of duties owing is not presented with the B 2 adjustment request, proof of payment of the duties assessed (e.g. a duty-paid DAS) must be submitted, or if security was posted with a previous request, "on file" must be shown after the security number in Field 10 on Form B 2.

24. Under paragraph 60(1)***(b)*** of the ***Customs Act***, an importer may, within two years after the time a determination or an appraisal was made in respect of the goods under section 57.2 or 58 of the Act, request a re-determination of origin if the goods were imported from a NAFTA country other than Canada or may request a re-determination of the tariff classification or a re-appraisal of the value for duty of the imported goods in circumstances where it is deemed advisable by the Minister.

25. There are two stages to processing requests filed under paragraph 60(1)***(b)*** of the Act. First, it must be determined whether the Minister has approved the circumstances for acceptance of the request, and second, the re-determination or re-appraisal must be made in respect of the imported goods.

26. Requests submitted under paragraph 60(1)***(b)*** of the Act will be accepted when the Minister deems it advisable. The Minister's criteria for accepting claims submitted under this provision are contained in Appendix B to this Memorandum. Importers must indicate in the "justification" field on Form B 2 the request type, the relevant legislative authority and the criterion number which supports the claim, for example, "request for re-determination of tariff classification under 60(1)***(b) Customs Act*** — criterion no. 1"; or "request for re-appraisal of value for duty under 60(1)***(b)*** C.A. — no. 1." Where criterion no. 3 is claimed, a satisfactory explanation of the exceptional circumstance(s) which prevented the importer from filing the request within 12 months after the section 58 decision must be provided in the "explanation" field or as an attachment to the request. Failure to provide this information constitutes an incomplete request which shall result in rejection of the claim and loss of opportunity for further consideration should the filing period expire before an amended Form B 2 is presented to the Department.

27. The officials authorized to perform the duties of the Minister (pursuant to the ***Officers Authorized to Exercise Powers or Perform Duties of the Minister of National Revenue Regulations***), be it a Tariff and Values Administrator (TVA), a Trade Administration Services (TAS) Supervisor, a TAS Manager or a

senior official in Headquarters, must decide whether a request meets one of the criteria approved by the Minister. Only when it has been established that one of the criteria applies, shall a TVA make a re-determination or re-appraisal of the imported goods.

28. If regional authorities are of the opinion that a request filed under paragraph 60(1)***(b)*** of the Act does not fall under any of the criteria approved by the Minister, Form B 2 will be immediately returned to the importer or agent without a re-determination or a re-appraisal being made of the imported goods.

REQUEST FOR RE-DETERMINATION OR RE-APPRAISAL TO PAY ADDITIONAL DUTIES

29. Requests for re-determination of origin of goods imported from a NAFTA country other than Canada, re-determination of tariff classification or for a re-appraisal of the value for duty on any imported goods made subsequent to a deemed determination or deemed appraisal under section 57.2 or 58 of the Act that will result in the payment of additional duties, including goods and services tax, are to be filed on Form B 2 pursuant to section 60 of the ***Customs Act*** for review by a Tariff and Values Administrator.

30. Requests for a correction to a declaration of origin resulting in payment of additional duties when a tariff treatment under NAFTA has previously been claimed must be filed under subsection 32.2(1). Refer to Customs Memorandum D11-4-21, ***Correction to the Declaration of Origin***, for further details.

31. Requests for re-determination or re-appraisal should not be submitted to the Department until 30 days after the goods are accounted for under subsection 32(1), (3) or (5) of the ***Customs Act*** or until a determination or an appraisal is made under section 57.2 or subsection 58(1) of the Act.

32. Monies that are owing to the Department should accompany requests for re-determination or re-appraisal made pursuant to subsection 60(1) or 63(1) of the ***Customs Act***. Such requests will be reviewed by a Tariff and Values Administrator or by a person authorized to act on behalf of the Deputy Minister, as the case may be, and a decision including a statement of any additional amount owing or refund due, not including the goods and services tax paid, will be sent to the importer and/or agent on Form B 2-1.

33. It must be emphasized, however, that acceptance of payment from the importer does not mean that:

(a) the Department agrees that the importer is entitled to a re-determination/re-appraisal or that there is an amount owing;

(b) if there is found to be an amount owing, that the monies represent full payment thereof; and

(c) if any money is to be returned to the importer, that interest will be paid.

REVIEW BY A DESIGNATED OFFICER (TVA)

34. When a TVA establishes that additional information other than that shown on Form B 2 request is required before issuing a decision, the officer will send a notice to the importer, with a copy to the broker/consultant, requesting the necessary information. The notice will indicate that, should the information not be received within 30 days of the date of the notice, a decision in respect of the request will be issued based on the information available. Please refer to Customs Memorandum D11-4-20 for NAFTA origin verification procedures.

35. Requests made under section 60 of the ***Customs Act*** will be reviewed respecting those issues indicated on Form B 2. For example, when the importer requests a re-determination of the tariff classification of goods shown on line 1 of the accounting document, a re-appraisal of the value of the goods will not automatically be made by the reviewing officer. However, where an error is discovered on the transaction line that is the subject of the request, the officer may on his own initiative re-determine the tariff classification, the origin (if the goods were imported from a NAFTA country other than Canada) or may re-appraise the value of the goods under section 61 of the Act and request that the importer pay any additional duties that may be owing.

36. Where the tariff classification of goods is determined by a Tariff and Values Administrator pursuant to subsection 60(3) of the Act, a further request may be made by the importer under section 60 of the ***Customs Act*** to obtain a re-determination of origin or a re-appraisal of the value for duty of the goods providing the request is filed within the time limit specified and a decision on the issue respecting the importation had not been issued previously under section 61 or 64 of the Act.

37. Where excise tax, including the goods and services tax, has been overpaid, claims for refund should be filed under the relevant provisions of the ***Excise Tax Act***. Sections 60 to 67 of the ***Customs Act*** are only applicable when the overpayment results from an erroneous determination of origin or tariff classification of the goods or an erroneous appraisal of the value for duty or when the importer is requesting a re-determination of the value for tax.

REQUEST FOR FURTHER RE-DETERMINATION OR RE-APPRAISAL BY THE DEPUTY MINISTER

38. Any person who is given notice of a designated officer's decision under section 60 or 61 of the ***Customs*** Act may request, pursuant to section 63 of the Act, that the Deputy Minister make a further re-determination of the origin of goods imported from a NAFTA country other than Canada, or re-determination of tariff classification or re-appraisal of value for duty of the imported goods:

(a) within 90 days after the date of the decision given under section 60 or 61 of the Act; or

(b) within two years after the time a determination or appraisal was made under section 57.2 or section 58 of the Act, where the Minister deems it advisable.

39. When making a request under section 63 of the Act, it is the importer's responsibility to either pay any additional duties that were assessed as a result of the previous decision made under section 60 or 61 respecting the goods, or to post sufficient security to cover the additional duties and any interest that has accrued or that may become owing on the additional amount within 30 days following the section 60 or 61 decision. If duties are not paid nor security posted within the time required, a notice of arrears will be issued to the importer and/or agent and collection action may be initiated pursuant to section 143 of the Act. Meanwhile, interest will accrue on the amount outstanding at the higher specified rate calculated from the time the amount was initially due (that is from the date the duties were payable under subsection 32(1), (3) or (5) of the Act) to the date the full amount is paid. (For further details on the application of interest respecting subsequent payment of the duties owing, refer to Customs Memorandum D11-6-5).

40. Requests made under paragraph 63(1)***(b)*** of the Act will be accepted for review only if they meet one of the criteria that have been approved by the Minister. These criteria are listed in Appendix D to this Memorandum. Importers must indicate in the "justification" field on Form B 2 the request type, the relevant legislative authority and the criterion number which supports the claim, for example "request for re-determination of tariff classification under 63(1)***(b)*** of the ***Customs Act***, criterion no. 1"; or, "request for re-determination of tariff classification under 63(1)***(b)*** of the ***Customs Act*** — no. 1." Where criterion no. 3 is claimed, a satisfactory explanation of the exceptional circumstance(s) which prevented the importer from filing the request within 12 months after the section 58 decision must be provided in the "explanation" field or as an attachment to the request. Failure to provide this information constitutes an incomplete request which shall result in rejection of the claim and loss of opportunity for further consideration should the filing period expire before an amended Form B 2 is presented to the Department.

41. Requests made to the Deputy Minister under paragraph 63(1)***(a)*** or ***(b)*** of the Act must be presented on a properly completed Form B 2. Applications must set forth the particulars of the importation, the reason(s) for the request, as well as reference to the previous decision made under section 60 or 61 of the Act. (Refer to paragraph 58 of this Memorandum and to Customs Memorandum D17-2-1 for instructions on the coding and completion of Form B 2.) Requests that are found to be illegible or improperly completed will be rejected and returned, along with any samples provided, to the person who filed Form B 2. Where a Form B 2 adjustment request is rejected, no further consideration will be given unless a new or amended Form B 2 is filed within the time limit set out in the Act.

42. Subsection 63(3) of the ***Customs Act*** imposes an obligation upon the Deputy Minister to come to a decision with all due dispatch and to notify the person who made the request of the decision. This notification will be made on Form B 2-1.

EFFECT OF RE-DETERMINATION OR RE-APPRAISAL MADE BY A DESIGNATED OFFICER (TVA) OR BY THE DEPUTY MINISTER

43. Where a decision of a designated officer (Tariff and Values Administrator) made under section 60 or 61 or of the Deputy Minister made under section 63 or 64 of the Act amends a previous determination or appraisal respecting the goods, the person who was notified of the decision shall pay any additional duties and interest, including the goods and services tax (GST) owing or, may post security in respect of the total amount owing in lieu of payment providing a request is made to the Deputy Minister under section 63 or to the Canadian International Trade Tribunal under section 67 of the Act for a further re-determination or re-appraisal of the imported goods. Where it is determined that duties have been overpaid by the importer/agent, a refund equal to the amount of the overpayment plus interest, if any, excluding any amount paid as goods and services tax, will be made to the person who paid the duties. (For more information respecting the calculation and payment of interest, refer to Customs Memorandum D11-6-5.)

44. When additional duties or a refund is owing as a result of a re-determination or a re-appraisal made under section 60, 61, 63 or 64 of the ***Customs Act***, the amount owing must be paid within 30 days after the date the decision is issued to the importer/agent.

APPEALS TO THE CANADIAN INTERNATIONAL TRADE TRIBUNAL (CITT)

45. Subsection 67(1) of the ***Customs Act*** allows a person who deems himself aggrieved by a decision of the Deputy Minister made pursuant to section 63 or 64 of the Act, to appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the Canadian International Trade Tribunal within 90 days from the date the Deputy Minister's notice of the decision was given. Notices of appeal shall be sent to:

The Secretary
The Canadian International Trade Tribunal
15th floor
Standard Life Centre
333 Laurier Avenue West
Ottawa ON K1A 0G7

Facsimile: (613) 990-2439

and

Deputy Minister
Revenue Canada
MacDonald Building
123 Slater Street
Ottawa ON K1A 0L8

Facsimile: (613) 952-1547

REQUESTS HELD IN ABEYANCE

46. Importers awaiting a decision by the Deputy Minister, Canadian International Trade Tribunal or Federal Court respecting the origin of goods imported from a NAFTA country other than Canada, or respecting the tariff classification or value for duty of any imported goods, may request that the

Department hold in abeyance subsequent B 2 requests for re-determination or re-appraisal filed pursuant to paragraphs 60(1)***(a)*** and 63(1)***(a)*** of the Act, until such time as the initial request/appeal is resolved at the final level. Such requests shall cover identical goods or goods reflecting the same issue or principle as those goods accounted for by the same importer in the same region which are the subject of the request/appeal to the Deputy Minister, Canadian International Trade Tribunal or Federal Court.

47. Other importers in the same region may also request that their B 2 adjustment requests be held in abeyance pending a decision on the request/appeal which is before the Deputy Minister, Canadian International Trade Tribunal or Federal Court on identical goods or on the same issue or principle, provided it can be clearly demonstrated that the issue or principle pertaining to the appeal will have an impact on the forms B 2 held in abeyance.

48. Importers awaiting a decision by the Canadian International Trade Tribunal or Federal Court respecting the tariff classification, origin, or value for duty of imported goods need not continue to file requests for re-determination or re-appraisal on entries passed subsequently to the entry of the goods under appeal and which cover other like goods, or which cover other goods the value for duty or origin of which was determined in the same manner as the goods under appeal. Paragraph 64***(e)*** of the Act allows the Deputy Minister to issue decisions respecting such goods. For further information on the administrative policy respecting paragraph 64***(e)***, please refer to Customs Memorandum D11-6-3.

49. It is the responsibility of the importer/broker to satisfy regional officials that the request may be held in abeyance and furnish the information which would enable customs to issue a decision on the requests once the original request/appeal has been ruled on. Accordingly, the notation, “to be held pending the result of request/appeal No. XXX, dated XXXXXX” must appear in the “explanation” field on Form B 2.

SECURITY

50. For the purposes of sections 58, 62 and 65 of the ***Customs Act***, security in respect of any additional duties and the interest accrued thereon, including the goods and services tax (GST) owing, is to be presented with the B 2 request at the regional customs office or at any customs office in the region where the goods were released.

51. Security is to be in the amount of the duties owing other than an amount owing pursuant to section 32 or 33 of the Act, plus any interest owing or that may become owing on that amount.

52. Pursuant to subsection 69(1) of the ***Customs Act***, security may be posted by the importer to obtain a refund of the whole or any portion of the duties and interest paid on the goods, excluding the goods and services tax (GST) and any interest that was paid by reason of duties not being paid in accordance with subsection 32(5) or section 33, when an appeal is filed to the Canadian International Trade Tribunal (section 67) or to the Federal Court (section 68).

53. Refunds granted under subsection 69(1) of the Act shall be for the whole or portion of the duties and interest that have been paid and subsequently claimed by the importer, but will not include the goods and services tax (GST) paid or any amount respecting interest that may become payable following the decision given by the Tribunal or Court.

54. Examples of security with respect to duties owing include cash, certified cheques and transferable bonds issued by the Government of Canada. Further information concerning other forms of acceptable security may be obtained by contacting the Customs Regional Financial Unit. Bonds which are not formulated in accordance with Appendix A to this Memorandum may not be accepted.

55. Importers who wish to avail themselves of the provisions in the Act for the posting of a bond as security should do so several days before the end of the 30-day payment period to allow for validation by customs of the acceptability of the bond. Refer to Customs Memorandum D11-6-5 for further information respecting the calculation of interest on amounts owing when security is posted on and after the 30-day period. Requests for re-determination or re-appraisal filed pursuant to section 60 of the ***Customs Act*** will be rejected when payment of duties or security satisfactory to the Minister does not accompany the request or has not been presented in advance of the request being filed.

INTEREST ON REFUNDS AND AMOUNTS OWING

56. Refer to Customs Memorandum D11-6-5 for complete details respecting the application and calculation of interest where a refund is due, or additional duties are assessed by the Department, or where security has been posted in lieu of payment of the additional duties assessed on the imported goods.

REQUEST FOR RE-DETERMINATION OR RE-APPRAISAL

Preparation of Form B 2, Canada Customs — Adjustment Request

57. Form B 2, in two copies (three copies where security is being posted) shall be prepared by the importer to request the following:

(a) a re-determination of origin of goods imported from a NAFTA country other than Canada, or a re-determination of tariff classification or re-appraisal of value for duty of any imported goods, by a Tariff and Values Administrator under section 60 of the Act;

(b) a re-determination of origin of goods imported from a NAFTA country other than Canada, or a re-determination of tariff classification or re-appraisal of value for duty of any imported goods, by the Deputy Minister under section 63 of the Act;

(c) a re-determination of the value for tax as imposed under Part IX of the ***Excise Tax Act*** made pursuant to section 60 or 63 of the ***Customs Act***;

(d) a refund of duty paid on importations of fruit and vegetables where the importer satisfies the conditions of Chapters 7 and 8 of Schedule 1 of the ***Customs Tariff***, which entitles him to claim duty-free importation of the goods; or

(e) a refund of duties paid with respect to goods where security satisfactory to the Minister is posted and an appeal has been made to the Canadian International Trade Tribunal (section 67 of the ***Customs Act)*** or to the Federal Court (section 68 of the Act).

58. The "justification for request" and "explanation" fields must be completed on the last page of all Forms B 2. Care should be taken to provide accurate and complete information respecting the request. Refer to Customs Memorandum D11-6-4, ***Legislative Authorities and Supporting Documentation Requirements for Form B 2 Adjustment Requests***, and to Appendix A, Customs Memorandum D17-2-1, for further information regarding completion of these and other fields of Form B 2.

Documentation Required to Support Form B 2

59. Applications for re-determination or re-appraisal should provide all of the information necessary to support the importer's request. Failure to do so may result in an unfavourable decision or delay in processing the claim.

60. A request for re-determination of tariff classification or origin of goods imported from a NAFTA country other than Canada should be accompanied by the following information:

(a) descriptive illustrations, literature, samples, drawings or catalogues specifically relating to the goods that are the subject of the request;

Note: When hazardous or corrosive samples are submitted to the Department, detailed handling and disposal instructions must be either written on the outside of the shipping container or in a document attached thereto. An information sheet giving the chemical breakdown of the sample should also be provided.

(b) supporting documentation such as end-use certificates, permits for tariff rate quota, certificates of origin, special authority applications and relevant file numbers, information on the end product into which the commodity in question is to be incorporated when end use of goods is a factor; and

(c) nature and/or condition of the goods, when a factor.

61. A request for re-determination of tariff classification of importations of agricultural goods into a tariff item subject to a tariff rate quota must, where appropriate, be accompanied by a valid permit issued by Foreign Affairs and International Trade Canada.

62. A request for re-appraisal of the value for duty should be accompanied by supporting documentation. Please refer to Customs Memorandum D11-6-4, Appendix D, for types of supporting documentation.

Presentation of Form B 2

63. For the purpose of presentation of requests for re-determination of the origin of goods imported from a NAFTA country other than Canada, or for re-determination of the tariff classification or re-appraisal of the value for duty respecting goods imported other than as mail, Form B 2 must be sent by registered mail or delivered by hand to the appropriate regional customs office or to any customs office in the region where the goods were released under the Act. For goods imported as mail, requests may be presented by hand or sent by registered mail to any customs office in Canada.

64. The date the B 2 request is sent by registered mail or is delivered by hand to the appropriate customs office is deemed to be the date of filing for the purpose of meeting the time limits specified under sections 60 and 63 of the Act. Where a request is found by the Department to be illegible or improperly completed and is returned to the importer or his agent for correction, the importer's right to appeal a decision respecting the imported goods is not protected. A properly completed Form B 2 must be filed within the time limit specified in the Act for further consideration to be given.

65. When determining time limits for purposes of filing requests under subsections 60(1) or 63(1) of the ***Customs Act***, day one is the next day following:

(a) the date the commodity specialist issued a decision respecting origin of goods imported from a NAFTA country other than Canada pursuant to subsection 57.2(1) of the Act;

(b) the date the commodity specialist issued a decision regarding the tariff classification or the value of the goods under subsection 58(1) of the Act;

(c) the date of the deemed determination of origin (for goods imported from a NAFTA country other than Canada) made under subsection 57.2(2) of the Act;

(d) the date of the deemed determination of tariff classification or appraisal of value for duty made under subsection 58(5) of the Act; or

(e) the date of the Tariff and Values Administrator's (TVA's) decision, as the case may be.

66. When a time limit referred to in this Memorandum, e.g. for a determination/re-determination, appraisal/re-appraisal request for re-determination/re-appraisal, payment of duties, interest, refunds or presentation of security falls on a holiday or a non-working day, the final day for carrying out the activity shall be the day next that is not a holiday or non-working day.

67. Any enquiries respecting the status of a request should be directed to the Manager, Customs Trade Administration Division in the appropriate regional customs office. Reference is to be made to the date of filing as well as the original transaction number, date, and customs office number.

Notice of the Department's Decision

68. A Detailed Adjustment Statement (DAS) will be prepared by the Department under the following circumstances:

(a) by a commodity specialist, to refund duties other than goods and services tax, or demand payment of additional duties and interest including goods and services tax as a result of a determination or an appraisal made under section 57.2 or subsection 58(1) of the ***Customs Act***;

(b) by a Tariff and Values Administrator to refund duties and interest other than goods and services tax, or request payment of additional duties and interest including goods and services tax as a result of a re-determination or re-appraisal made under section 60 or 61 of the ***Customs Act***;

(c) by a commodity specialist or a Tariff and Values Administrator to communicate a non-revenue adjustment made to an accounting document, e.g. change in statistical suffix; and

(d) by an officer to convey a Deputy Minister's decision in respect to a re-determination of origin of goods imported from a NAFTA country other than Canada, or a re-determination of tariff classification or re-appraisal of value for duty of any goods whether resulting in a refund of duties and interest, other than the goods and services tax, demand for payment of additional duties and interest, including the goods and services tax, or a non-revenue adjustment of the accounting document.

69. When a decision is made to refund duties that were paid to the Department, Form B 2-1 will be prepared and immediately sent to the importer with the annotation therein, "Refund to Follow."

70. When a decision confirms, in whole or in part, a previous decision made by a commodity specialist or a Tariff and Values Administrator which is the subject of Form B 2, and security has been given in lieu of payment of the duties owing, the importer shall receive notice, with the Detailed Adjustment Statement, of the amount of any accrued interest in respect to the duties including the goods and services tax owing.

71. Should a decision result in an increase in duties over that indicated on the previous assessment made by the commodity specialist or Tariff and Values Administrator, the importer will be notified of the additional duties including the goods and services tax owing on the Detailed Adjustment Statement.

72. If payment of the duties owing, or posting of security in respect of the amount owing is not made within 30 days from the date a decision is rendered pursuant to section 58, 60, 61, 63 or 64 of the ***Customs Act***, a notice of arrears will be issued as provided under subsection 143(1) of the Act and lien action may be taken against goods imported or reported for export for the amount demanded in the notice. Where the importer intends to request a further re-determination or a further re-appraisal of the goods and security is to be posted, notice should be given to the Department prior to the expiry of the 30-day payment period to advise the regional office that a Form B 2 request will be forthcoming and to request that lien action be delayed. If the importer fails to present a properly completed request with security satisfactory to the Minister within 90 days after the date of the determination/re-determination or appraisal/re-appraisal, the regional customs office may proceed with collection action.

Refund Cheques

73. Refund cheques resulting from a determination, appraisal, re-determination or re-appraisal initiated by the Department shall be:

(a) made out in the name of the importer (no cheques shown "in care of" will be issued); and

(b) mailed directly to the address shown in the importer's name and address field of Form B 3.

74. In situations where a customs broker has prepared the accounting document, the Department will notify the broker, by means of a copy of the Detailed Adjustment Statement, that a refund cheque has been sent to the importer.

75. Refunds resulting from a request for re-determination or re-appraisal filed by the importer or the importer's agent shall be made payable to the importer. Cheques shall be mailed to the address shown in the "mail to" box on Form B 2. Where this box has not been completed, a copy of the DAS will be sent with the refund cheque to the importer on record.

Tariff Rate Quotas

76. Tariff rate quotas are explained in Customs Memorandum D10-18-1, ***Tariff Rate Quotas***. Imports of agricultural goods which are subject to tariff rate quotas are classified in a tariff item containing the phrase "within access commitment" or "over access commitment" in accordance with subsections 10(1) and (2) of the ***Customs Tariff***. The determination/re-determination of the classification of such goods is thus governed by sections 58 to 69 of the ***Customs Act***. Where a request for re-determination of tariff classification to a "within access commitment" tariff item is made, the re-determination will reflect the availability of a permit or, in the case of "first come first served" tariff rate quotas, the status of the quota.

RE-ASSESSMENT POLICY

Legislative Authorities

77. Pursuant to paragraph 61***(a)***, Tariff and Values Administrators may on their own initiative, re-determine the origin of goods imported from a NAFTA country other than Canada or re-determine the tariff classification or re-appraise the value for duty of the imported goods within 90 days after a determination or an appraisal is made under section 57.2 or section 58 of the Act.

Note: Under this provision, a Tariff and Values Administrator, Chief Commodity Specialist, or Commodity Specialist Unit Head, as the case may be, may re-determine the origin or tariff classification or re-appraise the value of imported goods to correct a decision issued by a commodity specialist pursuant to subsection 57.2(2) or 58(1) of the ***Customs Act*** when both the officer and the importer are in agreement respecting an obvious or clerical error in the tariff classification, origin, or the value for duty of the imported goods. Should there be agreement that only part of the commodity specialist's assessment was erroneous, a DAS will be prepared to cancel the total amount of the commodity specialist's assessment and a corresponding new DAS will be issued by the reviewing officer to re-determine or re-appraise all goods determined or appraised by the commodity specialist under section 57.2 and subsection 58(1) of the ***Customs Act***. The officer's decision under paragraph 61(a) of the ***Customs Act*** shall be cross-referenced to the original DAS issued by the commodity specialist. This arrangement is contingent upon procedures developed by TAS Managers for controlling the handling of re-assessments under paragraph 61***(a)*** of the Act. Assessments pursuant to section 58 of the Act that are already paid will be handled as regular "requests" under paragraph 60(1)***(a)*** of the Act.

78. Pursuant to paragraph 61***(b)*** of the ***Customs Act*** and paragraph 7 of this Memorandum, re-determinations of origin of goods imported from a NAFTA country other than Canada or re-determinations of tariff classification and re-appraisals of value for duty of any imported goods may be made by a designated officer (TVA) within two years after the date of the deemed determination or appraisal under subsection 57.2(2) or 58(5) of the Act, where it was not possible for an officer to make a determination or appraisal under subsection 57.2(1) or 58(1) because of insufficient information. The Commodity Specialist Unit Head or Chief Commodity Specialist, as the case may be, may make a re-determination or a re-appraisal under this provision if,

(a) the re-determination or re-appraisal reflects written advice that was previously given by the Deputy Minister on identical goods;

(b) the re-determination or re-appraisal is based on current policy instructions or guidelines issued by Headquarters regarding the classification, origin or value for duty of the imported goods;

(c) the goods are specifically mentioned in a section, chapter or explanatory note to the Tariff which clearly indicates their correct classification; or

(d) the re-determination is necessary as the required permit or permit information for agricultural tariff rate quotas is not available.

79. Section 42 of the ***Customs Act*** authorizes officers to audit or examine importers' records where such records are kept pursuant to section 40. Therefore, in addition to verifications of origin, re-determinations and re-appraisals under paragraph 61***(c)*** of the Act will result from end use audits, compliance verification visits, and other audits initiated by the Department.

80. Pursuant to paragraphs 61***(e)*** and 64***(a)*** of the ***Customs Act***, re-determinations of origin of goods imported from a NAFTA country other than Canada or re-determinations of tariff classification and re-appraisals of value for duty of any imported goods may be made by a Tariff and Values Administrator and by the Deputy Minister respectively, or person authorized to act on behalf of the Deputy Minister for up to two years after the time a determination or an appraisal was made under section 57.2 or 58 of the Act, where the Minister deems it advisable. The specific criteria are outlined in Appendices C and E of this Memorandum and include infractions of tariff rate quotas or the Import Control List where it is necessary for a TVA to re-determine the tariff classification of the goods concerned.

81. For the purposes of the appendices, "departmental advice" means any written communication addressed directly to the importer or his agent representing a ruling, an advance ruling under NAFTA, or a decision of a departmental official responsible for tariff or origin administration. This also includes decisions shown on Detailed Adjustment Statements (DASs) or other formal assessment documents issued by the Department. "Departmental published directives and policies" are those that provide specific instructions or guidance to the public concerning the tariff classification, (including tariff rate quotas and import control qualifications), origin determination or value for duty of imported goods and include the Departmental Consolidation of the ***Customs Tariff*** (the "Tariff"), the Explanatory Notes to the Harmonized System and Compendium of Classification Opinions (both published by the Customs Co-operation Council), published National Customs Rulings, Customs Memoranda and Customs Notices. "Ruling" means a National Customs Ruling issued by the Department (see Customs Memorandum D11-11-1, ***National Customs Rulings***, for information) or an Advance Ruling issued under section 43.1 of the Act.

82. Pursuant to paragraph 64***(b)*** of the ***Customs Act***, the Deputy Minister or person authorized to act on behalf of the Deputy Minister under this provision, on the recommendation of the Attorney General for Canada, may re-determine or re-appraise goods previously considered under section 63 of the Act before an appeal filed under section 67 is heard by the Canadian International Trade Tribunal if the decision would have the effect of reducing the duties, including the goods and services tax, payable on the imported goods.

83. Pursuant to paragraph 64***(c)*** of the ***Customs Act***, the Deputy Minister or person authorized to act on behalf of the Deputy Minister under this provision may at any time re-determine the origin of goods imported from a NAFTA country other than Canada, or re-determine the tariff classification or re-appraise the value for duty of any imported goods at any time where the importer has failed to comply with any of the provisions of the ***Customs Act*** or Regulations, or has committed an offence in respect of the goods.

84. Pursuant to paragraph 64***(c***.1***)*** of the ***Customs Act***, the Deputy Minister or person authorized to act on behalf of the Deputy Minister under this provision may, at any time, re-determine the tariff classification of goods which are the subject of an application for machinery remission under section 76 of the ***Customs Tariff***. For full details on administrative policy respecting re-determination under paragraph 64***(c***.1***)***, refer to paragraphs 59 to 61 inclusive of Memorandum D8-5-1.

85. Pursuant to paragraph 64***(d)*** of the ***Customs Act***, the Deputy Minister or person authorized to act on behalf of the Deputy Minister under this provision may, at any time, give effect to a decision of the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada by re-determining the origin or the tariff classification or re-appraising the value for duty of the specific goods imported that were before the Tribunal or Courts.

86. Paragraph 64***(e)*** of the ***Customs Act*** allows a re-determination or a re-appraisal by the Deputy Minister, at any time, to give effect to a decision made by the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada , or to a decision made under paragraph 64***(b)*** of the Act, for:

> ***(a)*** like goods of the same importer, imported on and after the date of importation of the goods dealt with in the decision; or

(b) other goods of the same importer, imported on and after the date of importation of the goods dealt with in the decision, where the decision relates to the manner of determining the value of the other goods.

In order to take advantage of the provisions of paragraph 64***(e)***, importers must continue to account for the subsequent goods in accordance with the Deputy Minister's decision. For full details on administrative policy respecting re-determinations and re-appraisals under paragraph 64***(e)***, refer to Memorandum D11-6-3.

87. For the purposes of paragraph 64***(e)*** of the Act, and with respect to tariff classification or origin, the "subsequent goods" must be similar in material, characteristics, and function, and their classification or origin determined on the same basis as the "other like goods of the same importer or owner" before the CITT or the courts. Similarly, with respect to value for duty, the "subsequent goods" must have their value for duty determined in the same manner as the "other like goods of the same importer or owner" before the CITT or the courts.

General Principles

88. Importation documents found not to be in compliance with the law will be re-assessed.

89. The re-assessment will reflect the interpretation of the law at the time of the re-assessment.

90. A re-determination or re-appraisal initiated under section 61 or 64 of the ***Customs Act*** must be completed within the time limit specified in the legislation.

91. Application of these principles to specific situations will be determined by the law and in accordance with the interpretative policies established by the Department.

92. In all instances where departmental advice which clearly relates to the goods in question was issued to the importer but was not followed, re-assessments will be made on importations accounted for on and after the date that the advice was given, provided that the re-assessment can be made within two years after the date of a determination or appraisal made under section 57.2 or section 58 of the Act.

93. In cases of fraud or misrepresentation, re-assessments relating to the infraction will be made as far back as possible.

94. When it has been determined that goods described on the Import Control List are misclassified or that the importer did not comply with permit requirements, re-assessments will be made retroactively against transactions of the goods for up to two years after the date of the determination under section 58 of the Act. In the case of agricultural goods subject to tariff rate quotas, if permits were not obtained from the Department of Foreign Affairs and International Trade, or if the "first come first served" quotas are no longer open, the re-assessments will be based on the rates of duty of the "over access commitment" tariff items.

95. The 90-day limitation contained in paragraph 61***(a)*** of the Act and referred to in paragraph 77 of this Memorandum will not apply if the Department has insufficient information about the goods to permit re-assessment within 90 days of the date of a determination or appraisal made under section 57.2 or section 58 of the ***Customs Act***. In such cases, the importer will be advised in writing within 90 days of the date of a determination or appraisal made under section 57.2 or section 58 that additional information is required and that a re-assessment, if needed, will be made as soon as possible. Such delayed re-assessments will, in any event, be made under the authority of paragraph 61***(e)*** within two years after the date of a determination or appraisal made under section 57.2 or section 58.

Note: This will cover situations such as when the designated officer (TVA) needs to have an analysis performed on a sample of the goods (e.g., chemicals, plastics, foodstuffs, textiles) or when technical or sales/production cost information is needed from the manufacturer or supplier in order to re-determine the origin or the tariff classification of the goods.

96. New interpretative policies occasioned by new or amended legislation will come into effect on the effective date of the legislation.

97. Changes in interpretative policies occasioned by Canadian International Trade Tribunal declarations or Court decisions will generally be made effective on the date of that declaration or decision.

98. Other changes in interpretative policies will normally come into effect on the date of publication or on such later date as is specified, and will apply to importations made on and after the effective date.

99. Whenever practicable, the Department will give notice of classification or origin reviews conducted under criterion 2 of Appendices C or E of this Memorandum, specifying the nature and scope of the review and, if possible, the date on which any resultant changes will come into effect. If an effective date is specified, the date selected will be at least 90 days after the notice of the review in order to give industry sufficient time to take into account the possible effects of an increase in duty assessments. Alternatively, written notification of a review may be sent to the specific importers involved.

100. Where a departmental review has been initiated in the manner described in paragraph 99 of this Memorandum, re-assessment to give effect to changes resulting from that review will be made on all importations accounted for on and after the effective date identified in the notice, provided that such re-assessments can be made within two years after the date of a determination or appraisal made under section 57.2 or section 58 of the Act.

101. Re-determinations and re-appraisals under paragraph 64***(d)*** of the ***Customs Act*** to give effect to a decision of the Canadian International Trade Tribunal or a Court decision will be restricted to the goods and the specific importation(s) that were the subject of the appeal.

102. For further information regarding the matters outlined in this Memorandum, contact the Manager, Trade Administration Services, at the nearest regional customs office.

APPENDIX A

BOND TO SECURE THE PAYMENT OF DUTIES OWING ON GOODS AND ANY INTEREST OWING THEREON IN RESPECT OF WHICH THE TARIFF CLASSIFICATION, THE VALUE FOR DUTY OR IN THE CASE OF GOODS IMPORTED FROM A NAFTA COUNTRY OTHER THAN CANADA THE ORIGIN OF THOSE GOODS IS APPEALED UNDER THE *CUSTOMS ACT*

No. .....

Amount $ . .....

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

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

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

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

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

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

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

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

Signed and sealed in the presence of:

1. _____ 1. _____ Seal

Witness to individual's signature Principal (individual)

OR

Principal's corporate seal (company)

_____

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

2. Surety's corporate seal

_____

Duly Authorized Official(s) (title)

APPENDIX B

CRITERIA FOR RE-DETERMINATION AND RE-APPRAISAL PURSUANT TO REQUESTS UNDER PARAGRAPH 60(1)*(b)* OF THE *CUSTOMS ACT*

(As specified by the Minister)

1. The request was filed within one year after the time a determination or appraisal was made in respect of the goods under section 57.2 or section 58.

2. The request involves a non-commercial transaction, that is, an importation for other than sale, commercial, industrial, occupational, institutional or other like use, and it is clear that the individual was not familiar with the system of redress.

3. The request could not be filed within one year after the time a determination or appraisal was made in respect of the goods under section 57.2 or section 58, due to exceptional circumstances beyond the control of the importer/owner or broker, e.g., extended mail strike.

4. It is evident to the importer or owner who accounted for the goods, and to customs, that additional duties are owing due to an error in the tariff classification, origin of goods imported from a NAFTA country other than Canada or value for duty made at the time of their release and the importer or owner has requested a re-determination or re-appraisal.

APPENDIX C

CRITERIA FOR RE-DETERMINATION AND RE-APPRAISAL PURSUANT TO PARAGRAPH 61*(e)* OF THE *CUSTOMS ACT*

(As specified by the Minister)

Re-determination

1. When departmental advice respecting the goods relating to the issue in question was issued to the importer/owner but was not followed for importations on and after the date the advice was given.

2. When an importer/owner has been notified in writing of a departmental review of the tariff classification or origin of specific goods or a category of goods prior to date of release.

3. When goods were imported under a tariff item or code different from that set out in departmental published directives and policies.

Re-appraisal

4. When departmental advice addressing the issue in question was provided to the importer/purchaser, or issued in departmental publications, but was not followed for importations on or after the date the advice was given.

5. The re-appraisal requires examination of acceptability of transaction value because of restrictions, conditions or considerations, subsequent proceeds and relationships between buyer and seller and those involving the dutiable status of assists, royalty payments or subsequent proceeds.

6. The re-appraisal involves importations of commodities and/or importers listed on the Mandatory Referral List.

APPENDIX D

CRITERIA FOR RE-DETERMINATION AND RE-APPRAISAL PURSUANT TO REQUESTS UNDER PARAGRAPH 63(1)*(b)* OF THE *CUSTOMS ACT* (OTHER THAN REQUESTS PERTAINING TO THE REVIEW OF AN ADVANCE RULING OR A RE-DETERMINATION OF A MARKING DETERMINATION)

(As specified by the Minister)

1. The request was filed within one year after the time a determination or appraisal was made in respect of the goods under section 57.2 or section 58.

2. The request involves a non-commercial transaction, that is, an importation for other than sale, commercial, industrial, occupational, institutional or other like use, and it is clear that the individual was not familiar with the system of redress.

3. The request could not be filed within one year after the time a determination or appraisal was made in respect of the goods under section 57.2 or section 58, due to exceptional circumstances beyond the control of the importer/owner or broker, e.g., extended mail strike.

4. It is evident to the importer or owner who accounted for the goods, and to Customs, that additional duties are owing due to an error in the tariff classification or origin of the goods or the value for duty made at the time of their release and the importer or owner has requested a re-determination or re-appraisal.

APPENDIX E

CRITERIA FOR RE-DETERMINATION AND RE-APPRAISAL PURSUANT TO PARAGRAPH 64*(a)* OF THE *CUSTOMS ACT*

(As specified by the Minister)

Re-determination

1. When departmental advice respecting the goods relating to the issue in question was issued to the importer/owner but was not followed for importations on and after the date the advice was given.

2. When an importer/owner has been notified in writing of a departmental review of the tariff classification or origin of specific goods or a category of goods prior to date of release.

3. When goods were imported under a tariff item or code different from that set out in departmental published directives and policies.

Re-appraisal

4. When departmental advice addressing the issue in question was provided to the importer/purchaser, or issued in departmental publications, but was not followed for importations on or after the date the advice was given.

5. The re-appraisal requires examination of acceptability of transaction value because of restrictions, conditions or considerations, subsequent proceeds and relationships between buyer and seller and those involving the dutiable status of assists, royalty payments or subsequent proceeds.

6. The re-appraisal involves importations of commodities and/or importers listed on the Mandatory Referral List.

REFERENCES

ISSUING OFFICE —

Tariff Policy and Nomenclature Development
Tariff Programs

LEGISLATIVE REFERENCES —

Customs Act, subsection 2(1), sections 57.1 to 66, 69 and 74

HEADQUARTERS FILE —

4502-1, 4560-0

SUPERSEDED MEMORANDA "D" —

D11-6-1, January 1, 1991

OTHER REFERENCES —

D6-2-2, D11-6-4, D14-4-17, D17-1-0, D17-1-19, D17-2-1, D10-18-1.