

Memorandum D11-4-17

Ottawa, November 15, 1993

SUBJECT

NAFTA ORIGIN RE-DETERMINATION REQUESTS FILED BY THE PERSON WHO COMPLETED AND SIGNED THE CERTIFICATE OF ORIGIN

This Memorandum outlines and explains the procedures under which the person who signed a Certificate of Origin may request a re-determination or further re-determination of the origin of goods imported into Canada pursuant to that certificate.

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Legislation

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).
- (3) Suspended
  - (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 .

(4) Suspended

#### 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 marking determination 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 tariff classification or re-appraise the value for duty, as the case may be, and give notice of that 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 the determination or 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,
  - (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 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 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 immediately 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 redetermination 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 under that section 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.

65.1 (1) Where a person (in this subsection referred to as the applicant ) to whom a notice of a decision under section 60, 61, 63 or 64 was given would be entitled under paragraph 62(1)(b) or 65(1)(b) to a refund of an amount



if the applicant had been the person who paid the amount, the amount may be paid to the applicant and any amount so paid to the applicant shall be deemed to have been refunded to the applicant under that paragraph.

- (2) here an amount in respect of goods has been refunded to a person under paragraph 62(1)(b) or 65(1)(b), no other person shall be entitled to a refund of an amount in respect of the goods under paragraph 62(1)(b) or 65(1)(b)
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.

## GUIDELINES AND GENERAL INFORMATION

### DEFINITIONS

1. In this Memorandum, any reference that is made to:
  - (a) Application is an application containing one or more requests for a re-determination of the origin of goods imported from a NAFTA country under either section 60 or 63 of the Customs Act filed by the person who completed and signed a Certificate of Origin for the goods imported

from a NAFTA country;

- (b) Importer means either the importer or the person who is liable to pay duties on imported goods, unless the context otherwise requires.

#### GENERAL

- 2. The Customs Act (the Act) reflects Canada's agreement, as outlined in Article 510 of the NAFTA, to provide the person who completed and signed a Certificate of Origin substantially the same rights of review and appeal of determinations of origin as provided to importers. This Memorandum outlines the simplified procedures for requesting the re-determination of the origin of goods from a NAFTA country under sections 60 and 63 of the Act that are available to the person who completed and signed a Certificate of Origin.
- 3. Appeals to the Canadian International Trade Tribunal under section 67 of the Act are covered in Memorandum D11-6-1, Determination/Re-determination and Appraisal/Re-appraisal of Goods.
- 4. Where excise tax including the goods and services tax have been overpaid, claims for refund should be filed by the importer under the relevant provisions of the Excise Tax Act.

#### ALTERNATIVES TO REQUESTING RE-DETERMINATION

- 5. The right to request a re-determination of the origin of goods is available to both the importer and any person who completed and signed a Certificate of Origin for the goods. The importer is always the person who receives any refund of duties and interest that is due. Any person who completes and signs a Certificate of Origin for the goods may request a re-determination irrespective of whether an identical request for the re-determination of the origin of those goods has been filed by the importer. The importer of the goods may file a request to redetermine the origin of those goods pursuant to the procedures outlined in Memorandum D11-6-1.
- 6. As an alternative to requesting a re-determination of the origin of goods, the person who completed and signed a Certificate of Origin for the goods may choose to submit a request for an advance ruling which will be honoured by Canada Customs with regard to importations of goods occurring after the issuance of the advance ruling. An advance ruling is not a re-determination and therefore will not result in the refund of any moneys due to importers with regard to past importations. For more information on the advance rulings program, consult Memorandum D11-4-16, Advance Rulings.

#### WHO MAY APPLY

7. An application containing one or more requests under either section 60 or 63 of the Act for a re-determination of the origin of goods imported from a NAFTA country may be filed by any person who completed and signed a Certificate of Origin for the goods. An authorized agent of this person may file on the person's behalf.
8. The exporter of the goods, who may or may not also be the producer of the goods, may request a re-determination of the origin of the goods under either section 60 or 63 of the Act if the exporter has completed and signed a Certificate of Origin for the goods that were exported to Canada. If the producer and the exporter are not the same person and both have completed a Certificate of Origin for the goods that were exported to Canada, then either of them, or both of them independently, may file a request for a re-determination of the origin of those goods.
9. There is no advantage in having multiple persons (exporters, producers, or importers) filing claims for the re-determination of the origin of the same importations. When such situations occur, there will only be an increase in the time required by the Department to respond to each request, and thus to refund any moneys that may be due, because of the extra work in coordinating responses to all of the parties requesting a re-determination of those importations.
10. The person requesting the re-determination must be able to demonstrate that that person has the authority to make the request and is the same person who completed and signed a Certificate of Origin for the goods exported to Canada.
11. Information on the proper completion of a Certificate of Origin can be found in Memorandum D11-4-14, Certificate of Origin.

#### RE-DETERMINATION REQUESTS FOR MULTIPLE ENTRIES

12. A single application may contain multiple requests for the re-determination of the origin of goods imported under different transaction and line numbers if all the requests involve the origin of a single product. If this condition is satisfied, the application may contain re-determination requests filed under both sections 60 and 63 of the Act. In such a case the requests under section 63 of the Act would be processed first.
13. Applications involving re-determinations of multiple importations that involve related products that are part of a single product line, may be accepted if the origin

information submitted tends to show that a decision on one model of the product line would be representative of decisions on all models. The decision to accept this type of application will be solely at the discretion of the Customs region handling the case.

#### WHEN MAY A PERSON APPLY

14. Under section 60 of the Act, the person who signed a Certificate of Origin may request a re-determination of origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed:
  - (a) within 90 days; or
  - (b) within two years where the Minister deems it advisable after a determination of origin is made under section 57 or 58 of the Act. All duties, including goods and services tax, on the entry must have been paid or security given by the importer before requesting a re-determination under section 60 or the request will be rejected (see paragraph 35).
15. The criteria used by the Minister in deciding whether a request under 60(1)(b) of the Act is advisable are contained in Appendix B of Memorandum D11-6-1. Of particular note is criterion 1 which allows requests to be filed within one year after the time a determination of origin was made in respect of the goods under section 57 or 58 of the Act.
16. Under section 63 of the Act, the person who signed a Certificate of Origin may request a re-determination of origin of goods imported from a NAFTA country for which preferential tariff treatment under NAFTA is claimed:
  - (a) within 90 days after a re-determination of origin is made under section 60 or 61 of the Act; or
  - (b) where the Minister deems it advisable within two years after a determination of origin is made under section 57 of the Act.
17. The criteria used by the Minister in deciding whether a request under 63(1)(b) of the Act is advisable are contained in Appendix D of Memorandum D11-6-1. Of particular note is criterion 1 which allows requests to be filed within one year after the time a determination of origin was made in respect of the goods under section 57 or 58 of the Act.
18. If any of the requests on an application make use of any criterion other than criterion 1 of Appendix B or D, which allow filing of a request within one year of a determination of origin under section 57 or 58 of the Act, the request must reference the criterion used and be accompanied by a written

explanation of the reasoning used in support of the criterion. Any request under section 60(1)(b) or 63(1)(b) of the Act filed later than one year after the time a determination was made under section 57 or 58 of the Act, but before two years from the time a determination was made under section 57 or 58 of the Act, will be rejected if it does not contain a criterion and an accompanying explanation of reasoning.

19. No request may be submitted to the Department until 30 days after the goods are accounted for under subsection 32(1), (3) or (5) of the Act or until a determination or appraisal is made under section 57.2 or subsection 58 (1) of the Act.

THE CORRECT SECTION OF THE ACT UNDER WHICH TO APPLY

20. A re-determination request under section 60 of the Act may be made when the person who completed and signed a Certificate of Origin disagrees with a determination made by the Department under section 57 or 58 of the Act. This re-determination request may be made under section 60 of the Act pursuant to the authority granted in section 57.2 (3.2) of the Act.
21. There are two situations in which a re-determination request can be filed under section 63 of the Act by the person who has completed and signed a Certificate of Origin for those goods:
  - (a) When the person who has completed and signed a Certificate of Origin for those goods disagrees with a re-determination made by Customs under section 61 of the Act;
  - (b) When the person who has completed and signed a Certificate of Origin for those goods was unsuccessful in obtaining the decision requested during a request for re-determination under section 60 of the Act (see paragraph 20 above) and is seeking a further re-determination of the origin of the goods.
22. Under section 67 of the Act, a decision may be appealed to the Canadian International Trade Tribunal (CITT) within 90 days of a re-determination under section 63 or 64 of the Act. For information on application procedures to the CITT, see Memorandum D11-6-1.
23. In summary:
  - (a) A determination under section 57 or 58 of the Act must be appealed by way of request for re-determination under section 60 of the Act. This in turn can be further appealed by way of a request for re-determination under section 63 of the Act and then by way of an appeal to the

Canadian International Trade Tribunal under section 67 of the Act.

- (b) A re-determination made by Customs under section 61 of the Act must be appealed by way of a re-determination request under section 63 of the Act. This in turn can be further appealed under section 67 of the Act to the Canadian International Trade Tribunal.
- (c) A re-determination made by Customs under section 64 of the Act can only be appealed directly to the Canadian International Trade Tribunal under section 67 of the Act.

#### OBTAINING TRANSACTION NUMBERS, ETC.

- 24. Each importation of goods into Canada has a transaction and line number associated with it. These numbers are required to be filed with the re-determination request in order that Customs can locate the documentation associated with the importation. Additionally, any relevant adjustment number or Technical Reference System (TRS) number, if known, should also be included. The Department is not responsible for determining the correct transaction, adjustment, line and TRS numbers of importations involving an exporter's or producer's goods.
- 25. The person who completes and signs a Certificate of Origin may obtain the transaction, adjustment and line number of an importation, as well as the correct section under which to file a request, in one of two ways:
  - (a) When the Department initiates a review of the tariff treatment granted to imported goods, pursuant to the authority in either section 57, 58, 61, or 64 of the Act, that results in a determination that the goods do not qualify for a preferential tariff treatment under NAFTA, any person who completes and signs a Certificate of Origin will be notified by letter of this fact. If during the review, the officer conducting the review has received more than one Certificate of Origin for the goods, then the Department will send a notification letter to each of the persons who completed and signed a Certificate of Origin for the goods. This letter will contain the transaction, adjustment and line numbers of the importation involved. Furthermore, it will contain a reference to the appropriate section under which a re-determination request should be filed.
  - (b) The person who completes and signs a Certificate of Origin may contact the person who imported the goods. The importer of the goods will have a copy of the documentation filed with the original importation and in addition will be informed by way of a Canada Customs Detailed Adjustment Statement, form B 2-1, that the

origin of goods in a particular importation has been re-determined. The importer will therefore know the line number, adjustment number, and the transaction number of the importation. The Detailed Adjustment Statement will indicate the section of the Act under which the Detailed Adjustment Statement is issued, and this section determines the proper section of the Act under which to request a re-determination (see paragraph 23 above).

#### THE APPLICATION FORM

26. The application form in Appendix C must be used in order to ascertain that all the information required by the Department to complete the re-determination is forwarded with the request. Incomplete applications will be returned to the originator.
27. Applications and all the accompanying documentation must be submitted in English or French.

#### REQUIRED ORIGIN INFORMATION

28. All requests for re-determination submitted by the person who completed and signed a Certificate of Origin must be accompanied by sufficient specific origin information for the Department to make a determination of the origin of the goods. The information required to be submitted with the request is detailed in Appendix A.

#### WHERE TO SUBMIT AN APPLICATION CONTAINING REQUESTS FOR RE-DETERMINATION

29. An application containing a single request for the re-determination of the origin of goods under either section 60 or 63 of the Act should be submitted by the person who completed and signed a Certificate of Origin to the Customs region in which the goods were imported. If the application contains requests for the re-determination of more than one importation and the importations involved have been made in more than one Customs region, then the application should be submitted to the Customs region in which the majority of the importations have occurred.
30. All requests should be submitted to the Chief, Rulings and Appeals, in the Customs region where the majority of the importations occurred. Appendix B contains a listing of the addresses of all Customs regions.

#### PRECEDENCE

31. If re-determination requests on the origin of goods involving the same issue are submitted by the person who completed and signed a Certificate of Origin and by an importer, the department will pick one application to process first and then will process the other based on the results of the first. If one of the re-determination requests is made under section 63 of the Act, then that request will be processed first. Any information supplied in either re-determination request may be used to make a decision on both re-determination requests.
32. A decision under section 60 or 63 of the Act issued to the importer is considered a separate decision from any decision issued to the person who completed and signed a Certificate of Origin. Therefore, if a request for the re-determination of origin is made pursuant to this Memorandum, and a decision contrary to the request has already been issued to the importer under the same section, a decision favourable to the person requesting the re-determination can nevertheless be issued if entitlement to the tariff treatment is proved. Likewise, the importer can be issued a decision under section 60 or 63 of the Act, even if a person who has completed and signed a Certificate of Origin for the goods has already been issued a decision under one of those sections.

#### PROCESSING OF RE-DETERMINATION REQUESTS

33. Applications that are found to be illegible or that do not contain the basic information required by the form in Appendix C will be rejected and returned, along with any samples provided, to the person who filed the application. Where an application is rejected, no further consideration will be given unless a new or amended application is filed within the time limits for filing of requests specified in the Act. When an application is rejected, the person who submitted the application will be so notified in writing, and the requirements that have not been met will be identified.
34. The Department may, at any time during the course of an evaluation of an application containing one or more requests for the re-determination of the origin of goods, request supplemental information from the person who filed the application. Such person will be given 30 calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or to otherwise conform the application to the requirements referred to in the notice. The notice will indicate that should the information not be received within the allotted time, a decision in respect of the application will be issued based on the information available.
35. Requests made under section 60 of the Act may be presented only after the importer has paid, or given security for, all



duties, including goods and services tax (GST). If duties and taxes have not been paid or security posted by the importer with respect to importations covered by one or more requests on an application, the Department will notify the person who filed the application that those requests have been rejected. The remaining requests, if any, on the application will be processed. Where a request is rejected, no further consideration will be given to the request unless a new or amended application is filed within the time limits for filing of requests specified in the Act and payment of the applicable duties and taxes or posting of adequate security is made by the importer with regard to those requests.

36. Any application pursuant to this Memorandum may be withdrawn by the person submitting it at any time before issuance of the decision on the matter. However, the Department may inform its officers of its views in regard to the issue involved in the application.
37. All applications will be processed by first determining the origin of the goods for which the application is filed and the entitlement of the goods to a preferential tariff treatment under NAFTA. If the goods do not qualify for a preferential tariff treatment under NAFTA, or if they are not entitled to a more favourable tariff treatment under NAFTA than they have already been accorded, then the request will be denied and the person who filed the request will be informed of the decision by letter. If the goods do qualify for a preferential tariff treatment under NAFTA or a more favourable tariff treatment under NAFTA than they have already been accorded, then each request filed with the application will be reviewed to determine that the transaction, adjustment and line number or numbers involved are for the same goods for which the information was filed. If so, the transactions will be adjusted, refunds forwarded to the importer of record, and a notice of the decision made, and the refunds granted will be forwarded to the person who filed the application. If any of the requests on the application are for importations of goods which are not covered by the decision that has been made, then those requests will be rejected and the person who filed the application will be so informed.
38. When dealing with requests filed under paragraph 60(1)(b) or 63(1)(b) of the Act, an officer authorized to perform the duties of the Minister must decide whether the Minister has approved the circumstances for acceptance of the request, before starting the process detailed in paragraph 37 above. Only when it has been established that one of the criteria applies, shall an officer make a re-determination of the origin of the goods.
39. Where the decision on the requests for the re-determination

of the origin of goods pursuant to this Memorandum is unfavourable to the person requesting it, the Department will provide that person with a full explanation of the reasons for the decision.

40. For further information on this program, please call the Customs Assessment Division in the nearest Customs regional office.

## APPENDIX A

### CONTENT OF RE-DETERMINATION REQUESTS

Applications must be submitted in writing and must contain a complete statement of all relevant information related to the application.

The form (form B 226), which can be found in Appendix C (photocopy permissible) must accompany each application. It will help Customs ensure that the request is directed to the appropriate area. Applications must normally be limited to a request for the re-determination of the origin of a single product imported from a NAFTA country. However, the Department will consider an application containing multiple requests if all of the requests relate to products from a single product line containing different models of the same generic product, if the sourcing of materials and the manufacturing methods used are so similar that a ruling on one model will clearly apply to all other models. The Department shall decide in its discretion whether to allow such an application and reserves the right to split such requests into separate re-determination requests.

Each application form must be accompanied by a letter setting forth specific information to support the tariff treatment claimed as well as an argument as to why the goods are entitled to the tariff treatment claimed.

The information requirements detailed below are set out so that a person requesting a re-determination is aware of the full range of specific information required. In any particular case, the Department may be able to issue a ruling with less than all the indicated information. However, the Department retains the right to request any of the information detailed below or any other additional information before issuing a decision.

### TARIFF CLASSIFICATION

The tariff classification number of the goods which were exported to Canada must be submitted. In addition, the tariff classification numbers of all major sub-assemblies and any material sourced in a non-NAFTA country or any material for which the origin is unknown must be submitted.

If proof of the proper tariff classification in the form of a ruling from the Department does not exist, the applicant must submit sufficient information to allow the Department to classify the goods and the materials, including, whenever relevant:

- (a) a full description of the goods including trade names, where applicable;
- (b) the composition of the goods;
- (c) a brief description of the process by which the goods were manufactured;
- (d) the packaging of the goods;
- (e) the anticipated use of the goods;
- (f) manufacturer's literature, drawings, photographs, schematics for the goods;
- (g) a sample sufficient to permit proper testing, chemical analysis, etc. Note that products considered hazardous should be sent directly to the Customs Laboratory. For further information, see Customs Notice No. 266, December, 1988.

Descriptions consisting only of part numbers, trade names and the like would not be satisfactory and could result in the request being rejected.

In order to determine proper classification, laboratory analysis or a visit to the producer's premises may be required.

The request should also include, where possible, the tariff classification the applicant believes to be correct and the reasons for this belief.

#### ORIGIN

In order to make a re-determination of the origin of goods imported from a NAFTA country, the following types of information are required.

The applicant should submit, or arrange to have directly submitted to Customs by the manufacturer, the appropriate origin determination questionnaire completed by the manufacturer of the goods. The questionnaires are helpful in detailing the information necessary in order to make a re-determination of the origin of goods imported from a NAFTA country. However, the Department will accept equivalent information in any other format. Failure to provide all the information requested in the questionnaires or an equivalent format, will result in the

Department requesting further information, which will delay the issuance of the decision. Copies of the different types of questionnaires can be obtained from any Customs regional office (see Appendix B). The proper questionnaire to be completed should be determined in the following manner:

(a) Wholly Obtained or Produced in One or More NAFTA Countries

If the goods contain no content from outside the US, Mexico or Canada, i.e., it is manufactured completely in the US, Mexico or Canada from components and materials which are completely produced in one of those countries, or from components and materials which are originating in their own right, then the applicant must submit a Goods Wholly Obtained or Produced in One or More NAFTA Countries questionnaire completed by the manufacturer or the same information in any other format. The purpose of this questionnaire is to elicit from the producer:

- (1) A list of materials incorporated into the product;
- (2) The names and addresses of the suppliers of those materials;
- (3) A general description of the manufacturing process performed in the order performed and the location where each process occurs.

(b) Qualifying Pursuant to a Tariff Classification Change Rule

If the goods were produced from components and materials sourced in a non-NAFTA country, the applicant should determine the tariff classification of the exported product and determine from the Rules of Origin, which are set out in Memorandum D11-5-1, whether a tariff classification change requirement is set out in the specific rule of origin applicable to goods of that tariff subheading. If a tariff classification change requirement is set out in the applicable rule, the applicant must submit a Tariff Change questionnaire completed by the manufacturer or the same information in any other format. The purpose of this questionnaire is to elicit the following information from the producer:

- (1) Description of all materials imported from non-NAFTA countries used to produce the goods;
- (2) The tariff classification of any materials imported from non-NAFTA countries used to produce the goods;
- (3) Description of originating materials used to make the goods;
- (4) Supplier confirmation letters to prove origin of any materials from a NAFTA country that would, if they were not from a NAFTA country, cause the goods to fail the tariff

classification change requirement;

- (5) A general description of the manufacturing process performed, in the order performed and the location where each process occurs;
  - (6) An explanation of the applicant's argument as to why the goods qualify pursuant to the tariff change rule.
- (c) Qualifying Pursuant to a Regional Content Requirement

If the applicable rule includes a regional content requirement, the applicant must submit a Regional Value Content questionnaire completed by the manufacturer or the same information in any other format. The purpose of this questionnaire is to elicit from the producer sufficient information to make a judgment on whether the required percentage of regional value content has been achieved. The questionnaire elicits the following information from the producer:

- (1) If the rule for the product requires the application of both a tariff classification change requirement and a regional value content requirement, then all of the information under Qualifying Pursuant to a Tariff Classification Change Rule above must be submitted with the request;
- (2) A summary of all calculations and an explanation of how the figures were arrived at;
- (3) The period covered by the calculations;
- (4) A statement as to whether the net cost method or the transaction value method has been used;
- (5) Proof of the transaction value adjusted to an F.O.B. basis;
- (6) A detailed calculation and explanation of how the net cost was arrived at including the total cost of all goods produced by the producer, as well as the adjustments to that figure specified in paragraph 8, Article 402 of the NAFTA;
- (7) A description of any materials that are claimed as intermediate materials under paragraph 10 of Article 402 of the NAFTA and proof of the value of those intermediate materials. For proof of value, consult the Valuation section below;
- (8) A list of the materials used in production of the goods;
- (9) The tariff classification of each non-NAFTA material;
- (10) The supplier name and address for each material;

- (11) For each material whether it is produced in a NAFTA or non-NAFTA country, or is of uncertain origin;
- (12) If the material is produced in a NAFTA country, state whether this is because it is wholly produced in one or more NAFTA countries, or whether it meets a rule of origin, and if so, which one;
- (13) Copies of supplier confirmation letters for all major originating materials;
- (14) The value of the material and the basis for the valuation;
- (15) A description of the process by which the materials are assembled into the final form;
- (16) A description of the location where each step of the process occurs;
- (17) The value added at each stage of the process;
- (18) The portion of value added at each stage which is originating and the reason why it is considered originating;
- (19) A copy of the most recent audited financial statements as well as any subsequent quarterly statements;
- (20) A list of all transactions with affiliated, associated, subordinate or parent companies regarding either purchase of material or the sale of goods and services and the functions or activities performed by these persons;
- (21) A list of any goods, services, warranties, guarantees or any other form of benefit being provided without charge or at a reduced cost either to the producer or by the producer;
- (22) A description of the method used in costing materials, i.e. standard cost, average cost, weighted average costs;
- (23) The date standard costs were calculated and the date they will be next updated;
- (24) Major materials for which there were any price fluctuations exceeding 10%;
  - (25) When total unit cost is an average cost, the time period the average cost covers.

In addition to the questionnaire or the equivalent information in any other format, the applicant must submit:

- (1) All the tariff classification information described

above, under the Tariff Classification section, for the goods or a copy of a tariff classification ruling classifying the goods;

(2) Where possible, a statement of the tariff classification of the goods the applicant believes to be correct and the rule of origin the applicant believes to be applicable, and an explanation of the reasoning used to arrive at these beliefs;

(3) An explanation of why any material claimed as an intermediate material under paragraph 10 of Article 402 of the NAFTA is considered to be originating. The amount of information provided for an intermediate material should be identical to the amount that would be provided if the request was for the re-determination of the origin of that intermediate material. Determine the rule of origin the intermediate material must meet and provide the origin information detailed above that is required for goods falling under that type of rule;

(4) Where the ruling will involve the application of a regional value content requirement to specific goods, the applicant must submit the information detailed under the Valuation section below.

#### VALUATION

Where the decision will involve the application of a regional value content requirement to specific goods, valuation information must be submitted with the request. The following list of documentation outlines some of the material which may be required to issue a ruling. It is not exhaustive and Customs may request additional information:

- (a) commercial invoices,
- (b) credit notes,
- (c) purchase order confirmations,
- (d) agreements, bills or contracts of sale,
- (e) some form of evidence of proof of payment,
- (f) quota or licensing agreements,
- (g) warranty agreements,
- (h) conditions of sale, for example information relating to trade ins,
- (i) agreements or written contracts,
- (j) copies of letters of credit,
- (k) agreements to provide assists and agreements between third parties, together with information supporting the value and/or apportionment of the assist,
- (l) royalty agreements,
- (m) trade mark agreements,
- (n) license fee agreements,
- (o) copyright agreements,
- (p) evidence of freight costs,
- (q) details of rebates,
- (r) information relating to the proposed point of direct

- shipment,
- (s) information which substantiates the value of identical/similar goods,
  - (t) if applicable, detailed calculations on how you propose to employ the deductive, computed, or residual value,
  - (u) value of any intermediate materials used in the production of goods and the basis for such calculation.

#### APPENDIX B

#### ADDRESSES OF CUSTOMS REGIONS TO WHICH ALL REQUESTS MUST BE MAILED

The application should be delivered or sent by registered mail to the Chief, Rulings and Appeals, Customs Assessment Division (CAD) in the Customs region in which the bulk of the importations occurred. The letter should be marked Attention: Exporter/Producer Re-determination Request".

#### ATLANTIC REGION

P.O. Box 30801557 Hollis StreetHalifax South Postal StationHalifax, Nova ScotiaCanadaB3J 3G6

#### QUEBEC REGION

P.O. Box 2267130 Dalhousie StreetQuébec, QuebecCanadaG1K 7P6

#### MONTREAL REGION

105 McGill StreetMontréal, QuebecCanadaH2Y 2C2

#### OTTAWA REGION

2265 St. Laurent Blvd.Ottawa, OntarioCanadaK1G 4K3

#### TORONTO REGION

P.O. Box 10, Station ANo. 1 Front Street WestToronto, Ontario.CanadaM5W 1A3

#### HAMILTON REGION

P.O. Box 298926 Arrowsmith RoadHamilton, OntarioCanadaL8N 3V8

#### SOUTHWESTERN ONTARIO REGION(WINDSOR)

P.O. Box 2280Walkerville Postal StationWindsor, OntarioCanadaN8Y 4R8

#### SOUTHWESTERN ONTARIO REGION(LONDON)

P.O. Box 5940  
451 Talbot Street



London, Ontario  
Canada  
N6A 4T9

CENTRAL REGION  
Federal Building  
269 Main Street  
Winnipeg, Manitoba  
Canada  
R3C 1B3

ALBERTA REGION  
Room 720  
Harry Hays Building  
220 4th Avenue South East  
Calgary, Alberta  
Canada  
T2G 4X3

PACIFIC REGION  
333 Dunsmuir Street  
Vancouver, British Columbia  
Canada  
V6B 5R4

APPENDIX C

APPLICATION FORM

REFERENCES

ISSUING OFFICE

Origin Determination  
Tariff Programs

LEGISLATIVE REFERENCES

Customs Act, Sections 57.1 to 66

HEADQUARTERS FILE

4571-11-6

SUPERSEDED MEMORANDA D

N/A

OTHER REFERENCES

North American Free Trade  
Agreement, Article 510; D11-6-1