

Ottawa, August 17, 1998

**SUBJECT**

**REFUND OF DUTIES**

This Memorandum provides the legislation and explains the policy and procedures for the refund of duties on goods imported on or after January 1, 1998. For refunds on goods imported prior to January 1, 1998, please refer to Memorandum D6-2-2, *Refund of Duties*. Instructions on the coding and processing of Form B2, *Canada Customs – Adjustment Request*, can be found in Memoranda D17-2-1, *Coding of Adjustment Request Forms*, and D17-2-2, *Processing of Adjustment Request Forms*.

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## **GUIDELINES AND GENERAL INFORMATION**

**Note: Effects of the Goods and Services Tax Legislation** – Amendments to the *Customs Act* contained in the GST legislation have the effect of excluding GST from all refunds made under customs legislation. Any reference to duties in the following guidelines should be read to exclude the GST.

1. The *Customs Act* allows for the separation of the adjustment process from the true dispute (i.e., appeal) process. This Memorandum deals with self-adjustments filed under section 74 which result in a refund. While corrections to declarations under section 32.2 are obligatory, refunds under section 74 are voluntary. Section 74 provides a four year time period for the submission of refund claims with the exception of goods claimed under NAFTA or CCFTA. Paragraph 74(1)(c.1) stipulates a one year time frame for NAFTA and CCFTA goods.
2. An application for a refund of duties must be filed on Form B2, *Canada Customs – Adjustment Request* and submitted to a customs office. The day the refund application is received in the customs office is the date of filing. It should be noted that where the requirement for filing a written notice or the requirement for filing an application for refund ends on a weekend or legal holiday, the next working day will become the final day for presentation of the documents.

### **PART 1 – Goods That Have Suffered Damage, Deterioration, or Destruction**

3. In cases where the damage, deterioration, or destruction has been discovered prior to release of the goods, the written notice requirement in section 3 of the Regulations is satisfied if at or prior to the time of release, the importer/owner submits Form K11, *Certificate of Damaged Goods*, (see Appendix A to this Memorandum) for the examining customs officer's signature.
4. The *Certificate of Damaged Goods* is divided into two sections. The first section is to be filled out by the importer/owner before presentation to customs. The second section, the "Officer's Certificate," will be filled out by the examining customs officer or an officer in the regional Trade Administration Services (TAS) office after the filing of a refund claim by the importer/owner of the goods.
5. In cases where the damage, deterioration, or destruction is discovered after release of the goods, notice of a claim is to be written or typed in a clear, concise manner and is to refer to the transaction number of the accounting document on which release of the goods was effected.

6. Immediately upon receipt, the notice is to be date-stamped by customs and filed with the relative accounting document, which will indicate that the provisions of section 3 of the Regulations have been complied with. To ensure that written notices are not being submitted on the presumption that there may be a discrepancy, such notices must include sufficient detail to satisfy customs that the intention to file a refund claim is valid.

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

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

9. For the purpose of determining the amount of refund payable with respect to section 5(a) of the Regulations, refunds for perishable or brittle goods will be equal to 85% of the duties paid on the loss in value of the goods.

10. In the case of sugar or any saccharine products that have suffered damage or deterioration from salt water, a test will be conducted by an officer of the Foodstuffs Unit of the Laboratory and Scientific Services Directorate of Revenue Canada in Ottawa, and the certificate referred to in paragraph 5(b)(ii) of the Regulations will be the certificate contained on Form Y15, *Request to Laboratory and Scientific Services Directorate*.

11. For information concerning goods damaged prior to release from customs, which are subsequently exported from or destroyed in Canada under customs supervision, refer to paragraphs 51 to 62 of this Memorandum.

## **PART 2 – Goods Deficient in Quantity**

12. Goods deficient in quantity for purposes of section 7 of the Regulations may be described as being:

(a) whole packages short, and

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

13. For purposes of section 8 of the Regulations, all notices of goods being deficient in quantity are to be written or typed in a clear, concise manner and are to refer to the transaction number of the accounting documents on which release of the goods was effected.

14. Immediately upon receipt at a customs office, the notice is to be date-stamped by customs and filed with the relative accounting document which will indicate that the provisions of section 8 of the Regulations have been complied with. To ensure that written notices are not being submitted on the presumption that there may be a discrepancy, such notices must include sufficient detail to satisfy customs that the intention to file a refund claim is valid.

15. Section 12 of the Regulations provides that where a shortage of goods has occurred, the consignment may be handled as goods “entered to arrive.”

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

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

18. The “entered to arrive” notation made on the original accounting document at the time of release satisfies the requirements of section 8 of the Regulations insofar as reporting the shortage to customs within the stipulated four years period.

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

20. Shortages in the contents of packages may be handled either as “value included” transactions or as claims for refund. The procedures for obtaining release of goods short shipped as “value included” importations are set out in Memorandum D17-1-5, *Release of Commercial Goods*.

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

### **PART 3 – Goods of Inferior Quality**

22. For purposes of section 14 of the Regulations, all notices of alleged inferiority in quality are to be typed or written in a clear, concise manner and are to refer to the transaction number of the accounting document on which release of the goods was effected.

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

24. Notices of alleged inferiority in quality must be presented to a customs office within the prescribed time limits, i.e., three days for perishable goods, four years in all other instances. The receiving customs office will date stamp the notice and forward it if necessary, to the appropriate customs office concerned.

25. The goods may be subject to examination by customs to permit verification of the alleged inferiority in quality, to establish the proper rate or amount of reduction, and to permit identification of the goods in question are those named in the invoice and accounting document in question. Where the goods are disposed of by the importer or owner, prior to approval of the refund claim by customs, the importer or owner will be responsible for establishing the eligibility for the refund.

### **PART 4 – Goods Exported From a NAFTA Country or Chile Where No Claim for Preferential Tariff Treatment Under NAFTA or CCFTA Was Made at the Time of Accounting**

26. An application for a refund under paragraph 74(1)(c.1) shall be made on Form B2, within one year of the date of accounting of the goods under subsection 32(1), (3), or (5) of the *Customs Act*.

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

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

- (a) the goods were accounted for under any tariff treatment other than a NAFTA or CCFTA tariff treatment;
- (b) a non-NAFTA or non-CCFTA tariff treatment, such as General Preferential Tariff (GPT), was deemed under section 58 of the *Customs Act*; or
- (c) a non-NAFTA or non-CCFTA tariff treatment was denied in favour of another non-NAFTA or non-CCFTA tariff treatment.

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

30. Complete and accurately supported refund requests will be reviewed by customs and a decision will be made to either:

- (a) grant a refund under subsection 74(1.1); or
- (b) deny a refund on the basis that the goods are not eligible for NAFTA or CCFTA tariff treatment.

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

**PART 5 – Goods Imported From Israel or Another CIFTA Beneficiary Where No Claim for Preferential Tariff Treatment Under CIFTA Was Made at the Time of Accounting**

32. An application for a refund under paragraph 74(1)(c.11) shall be made on Form B2, within four year of the date of accounting of the goods under subsection 32(1), (3), or (5) of the *Customs Act* for goods that were imported on or after January 1, 1998.

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

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

- (a) the goods were accounted for under any tariff treatment other than a CIFTA tariff treatment;
- (b) non-CIFTA tariff treatment, such as General Preferential Tariff (GPT), was accepted under section 58 of the *Customs Act*; or
- (c) a non-CIFTA tariff treatment was denied in favour of another non-CIFTA tariff treatment.

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

36. Complete and accurately supported refund requests will be reviewed by a designated officer in the region where the goods were released. The designated officer will do one of the following:

- (a) grant a refund; or
- (b) deny a refund under subsection 74(1.1) of the *Customs Act* on the basis that the goods are not eligible for CIFTA tariff treatment.

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

#### **PART 6 – Clerical, Typographical, or Similar Error**

38. Paragraph 74(1)(d) is a new separate provision for refunds based on a clerical, typographical, or similar error. Previously, these types of errors were handled under the general provision for duties overpaid or paid in error.

**39. The refund application must identify where the error occurred such as an extension error on a customs invoice, a transposition error, a mathematical error, or other error which caused the duties to be paid or overpaid. If the error is not obvious, documentation may be required to substantiate that the error is of a clerical or typographical nature.**

40. Paragraph 74(1)(d) is used to refund duties where a duplicate payment situation arises. In that case, the accounting document on which the goods were actually received will stand as the accounting document upon which the goods are properly accounted for. The refund claim is to be filed against the second accounting document. A copy of the accounting document which properly accounts for the goods should accompany the refund claim as supporting documentation.

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

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

- (a) clerical error on a customs accounting document;
- (b) an apparent clerical error on an invoice, for example, the quantity and unit price on the invoice were incorrectly extended;
- (c) error in the rate of exchange;
- (d) duplicate payment on two customs accounting documents;
- (e) prohibited goods.

#### **PART 7 – Duties Paid or Overpaid Due to an Error in Determination**

43. Paragraph 74(1)(e) provides for a refund of duties paid or overpaid as a result of an error in the determination of origin (other than for NAFTA or CCFTA goods covered in (c.1) and CIFTA goods covered in (c.11)), tariff classification, or value for duty.

44. This is a new paragraph that only applies in respect of goods which have **not** been subject to a re-determination under sections 59 to 61.

## **PART 8 – Goods Sold or Otherwise Disposed Of or Used, Before Any Other Use Is Made of the Goods in Canada**

45. Paragraph 74(1)(f) of the Act is a further refund provision. It authorizes Revenue Canada to grant a refund of the customs duties paid on imported goods where the goods are accounted for under a tariff item and subsequently diverted to a use or user specified in another tariff item, subject to the following conditions:

- (a) no use was made of the imported goods in Canada, except that they may be incorporated into other goods;
- (b) the goods must be excluded from consideration under the refund provisions of paragraph 74(1)(e) because there is no error in the original declaration of tariff classification; and
- (c) the goods must have been sold or otherwise disposed of to a person, or used in accordance with a condition or regulations imposed under a tariff item in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*.

46. Requests for refund under paragraph 74(1)(f) of the Act must be supported by:

- (a) documentary evidence in the form of end-use certificates required by the end-user of the goods; and
- (b) a copy of the sales invoice, contract agreement, or other document to verify the sale or disposition of the goods after the time of accounting under subsections 32(1), (3), or (5) of the Act.

47. To qualify, the goods must not be used for any purpose other than by their incorporation into other goods and must have been sold or otherwise disposed of to a qualified person (end-user), or been diverted to a qualifying end-use or end-user.

## **PART 9 – Duties Overpaid or Paid in Error for Other Reasons**

48. Paragraph 74(1)(g) of the *Customs Act* is the authority to grant a refund where the duties have been reduced or removed by a retroactive order made under section 82 or 138 of the *Customs Tariff*. It is also the authority to refund the duty when the goods are prohibited for use or sale by a provincial law.

49. Therefore, when duties are refundable because of an order under section 82 or 138, Form B2 should be filed to recover any duty paid or overpaid, as stipulated in the order. It will be up to the person claiming the refund to substantiate that the goods claimed are eligible for the retroactive order.

50. Where a claim is filed for goods which are prohibited for use or sale by a provincial law, the goods must either be exported or destroyed under customs supervision. Where the goods are exported, satisfactory proof of exportation must be supplied with your claim. Examples of satisfactory proof of exportation would include a signed bill of lading from the transportation company and a foreign customs entry document. Where goods are destroyed under customs supervision, a certified copy of Form E15, *Certificate of Destruction/Exportation*, should accompany the claim.

## **PART 10 – Goods That Are Defective, Are of Inferior Quality, or Are Not the Goods Ordered, and That Have Been Disposed Of or Exported**

51. Subsection 76(1) authorizes the granting of a refund where the imported goods are found, by their importer or owner to be defective, of an inferior quality to that in respect of which duties were paid, or are not the goods ordered, and that are either exported or disposed of.

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

- (a) an imported article that fails to function properly;
- (b) a computer is imported under contract on the understanding it will process 100,000 transactions per second. However, because of a defective circuit board it will only process 50,000 transactions per second. The entire computer or the circuit board may be replaced;
- (c) an imported motor vehicle which is not modified to meet Canadian safety standards as required by the Registrar of Imported Vehicles and cannot be licensed for use in Canada.

53. Refund of duties will be authorized in either case providing the requirements of section 37 of the Regulations are complied with. It should be noted that it is not always possible for the defect to be established at the time of release of the goods. The defective nature of the goods often comes to light only when the goods are put into actual use by the importer/owner or, alternatively, through a recall program authorized by the foreign supplier to deal with design or manufacturing defects.

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

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

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

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

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

59. It will be the responsibility of the claimant to describe the goods in such a manner on the Form E15, *Certificate of Destruction/Exportation*, of which a sample is presented in Appendix B, so that they can be related to a specific customs accounting document and the relative refund claim together with supporting documentation.

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

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

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



## **PART 11 – Reduction of Amount of Refund**

63. This part stipulates when a deduction to a refund claim is necessary, and how to calculate the amount of the reduction. Only in limited circumstances is a deduction required. Basically a deduction to the refund amount is only necessary when, as a result of the imported goods being destroyed (under customs supervision) or disposed of, the resultant scrap or waste is merchantable and would be subject to duty if it were imported. In that case, you must establish the amount of duty that would be applicable based on the value of the scrap sold in an arm's-length transaction and deduct this amount from the amount of the refund.

64. Where a deduction is required to be made, the person filing for the refund should supply customs with sufficient information and documentation to verify the amount of the deduction. This should include a description of the type and amount of scrap or waste derived from the disposal or destruction of the imported goods, and any sales value associated with it.

### **Interest**

65. Under subsection 80(1), interest on duties refunded (other than SIMA assessments) will be granted at the prescribed rate beginning on the 91st day after the day the refund application is received and ending on the day the refund is granted. The Memorandum D17-1-19, *Interest Rate for Customs Purposes Regulations* outlines the method for determining the percentage of interest payable.

66. Under section 80.1 any person granted a refund of duties on imported goods under subsection 74(1)(g) will be granted interest at the prescribed rate beginning the day after the duties were paid.

67. Interest is only payable with respect to applications made pursuant to section 74 or 79 of the *Customs Act*. Refund of customs duties paid involving issues other than those outlined in this Memorandum are not subject to the interest provisions contained in section 80 of the *Customs Act*.

### **Penalties**

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

### **Return of Refunds**

69. Subsection 80.2(1) now requires that a person who receives a refund or abatement they are not entitled to, must repay the amount and any interest they were granted on that amount.

70. Subsection 80.2(2) also requires the person who was granted a refund under paragraph 74(1)(f) where the goods fail to comply with a condition imposed under a tariff item, to repay the amount of the refund and any interest that was granted.

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**APPENDIX A**

**FORM K11**

**CERTIFICATE OF DAMAGED GOODS**

**APPENDIX B**

**FORM E15**

**CERTIFICATE OF DESTRUCTION**

## APPENDIX C

### *CUSTOMS ACT*

The following definitions from subsection 2(1) are relative to this Memorandum:

“duties” means any duties or taxes levied or imposed on imported goods under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act* or any other Act of Parliament, but, for the purposes of subsection 3(1), paragraphs 59(3)(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*;

“preferential tariff treatment under CCFTA” means, in respect of goods, entitlement to the Chile Tariff rates of customs duty under the *Customs Tariff*;

“preferential tariff treatment under CIFTA” means, in respect of goods, entitlement to the Canada-Israel Agreement Tariff rates of customs duty under the *Customs Tariff*;

“preferential tariff treatment under NAFTA” means, in respect of goods, entitlement to the United States Tariff, the Mexico Tariff or the Mexico-United States Tariff rates of customs duty under the *Customs Tariff*;

74.(1) Subject to this section, section 75 and any regulations made under section 81, a person who paid duties on any imported goods may, in accordance with subsection (3), apply for a refund of all or part of those duties, and the Minister may grant to that person a refund of all or part of those duties, if

(a) they have suffered damage, deterioration or destruction at any time from the time of shipment to Canada to the time of release;

(b) the quantity released is less than the quantity in respect of which duties were paid;

(c) they are of a quality inferior to that in respect of which duties were paid;

(c.1) the goods were exported from a NAFTA country or from Chile but no claim for preferential tariff treatment under NAFTA or no claim for preferential tariff treatment under CCFTA, as the case may be, was made in respect of those goods at the time they were accounted for under subsection 32(1), (3) or (5);

(c.11) the goods were imported from Israel or another CIFTA beneficiary but no claim for preferential tariff treatment under CIFTA was made in respect of those goods at the time they are accounted for under subsection 32(1), (3) or (5);

(d) the calculation of duties owing was based on a clerical, typographical or similar error;

(e) the duties were paid or overpaid as a result of an error in the determination under subsection 58(2) of origin (other than in the circumstances described in paragraph (c.1) or (c.11)), tariff classification or value for duty in respect of the goods and the determination has not been the subject of a decision under any of sections 59 to 61;

(f) the goods, or other goods into which they have been incorporated, are sold or otherwise disposed of to a person, or are used, in compliance with a condition imposed under a tariff item in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, or under any regulations made under that Act in respect of a tariff item in that List, before any other use is made of the goods in Canada; or

(g) the duties were overpaid or paid in error for any reason that may be prescribed.

(1.1) The granting of a refund under paragraph (1)(c.1), (c.11), (e) or (f) or, if the refund is based on tariff classification, value for duty or origin, under paragraph (1)(g) is to be treated for the purposes of this Act, other than section 66, as if it were a re-determination made under paragraph 59(1)(a).

(1.2) The duties that may be refunded under paragraph (1)(f) do not include duties or taxes levied under the *Excise Tax Act*, the *Excise Act* or the *Special Import Measures Act*.

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

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

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

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

(i) in the case of an application for a refund under paragraph (1)(a), (b), (c), (c.11), (d), (e), (f) or (g), four years after the goods were accounted for under subsection 32(1), (3) or (5), and

(ii) in the case of an application for a refund under paragraph (1)(c.1), one year after the goods were accounted for under subsection 32(1), (3) or (5) or such longer period as may be prescribed.

(4) A denial of an application for a refund of duties paid on goods is to be treated for the purposes of this Act as if it were a re-determination under paragraph 59(1)(a) if

(a) the application is for a refund under paragraph (1)(c.1) or (c.11) and the application is denied because at the time the goods were accounted for under subsection 32(1), (3) or (5), they were not eligible for preferential tariff treatment under a free trade agreement; or

(b) the application is for a refund under paragraph (1)(e), (f) or (g) and the application is denied because the origin, tariff classification or value for duty of the goods as claimed in the application is incorrect.

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

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

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

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

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

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

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

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

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

(2) Any person who is granted a refund under section 74, 76 or 79 of an amount in respect of duty levied under the *Special Import Measures Act* shall be granted, in addition to the refund, interest on the refund at the prescribed rate in respect of each month or fraction of a month in the period beginning on the ninety-first day after the day an application for the refund is received in accordance with paragraph 74(3)(b) and ending on the day the refund is granted.

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

80.2(1) Subject to subsection (2), if an abatement or refund is granted to a person under sections 73 to 76 and the person is not entitled to all or part of it, the person is liable to repay the amount to which they are not entitled to Her Majesty in right of Canada, on the day it is received by the person, together with any interest that was granted to the person under section 80 or 80.1 on that amount.

(2) If an abatement or refund is granted to a person under paragraph 74(1)(f) and the goods are sold or otherwise disposed or are subsequently used in a manner that fails to comply with a condition imposed under a tariff item in the List of Tariff Provisions in the schedule to the *Customs Tariff*, the person who was granted the refund or abatement

(a) shall, within ninety days after the failure to comply, report the failure to an officer at a customs office; and

(b) is, from the day of the failure to comply, liable to repay to Her Majesty in right of Canada any amount to which they are not entitled, together with any interest that was granted to the person under section 80 or 80.1 on that amount.

## APPENDIX D

### REFUND OF DUTIES REGULATIONS

#### *Interpretation*

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

“Act” means the Customs Act. (Loi)

“carrier” means a person who transports imported goods. (*transporteur*)

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

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

#### PART 1

#### GOODS THAT HAVE SUFFERED DAMAGE, DETERIORATION OR DESTRUCTION

#### *Application*

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

#### *Notice*

3. Written notice of a claim for a refund of duties and the reasons for the claim must be given to an officer within

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

#### *Evidence in Support of Application*

4. An application for a refund of duties must be supported by

- (a) a written statement by any carrier, any operator of a sufferance warehouse, bonded warehouse or duty free shop or any competent authority having knowledge of the circumstances, time and place of the damage, deterioration or destruction suffered by the goods, giving the particulars or, if such a statement cannot be obtained, a written statement by a competent authority certifying that the goods suffered damage, deterioration or destruction before they were released; and
- (b) documentation in the form of
  - (i) an appraisal by a qualified appraiser verifying the loss in value of the goods as a result of the damage, deterioration or destruction of the goods,
  - (ii) a copy of any document, including a credit note from the vendor, indicating the amount granted to compensate for the damage, deterioration or destruction of the goods, or

(iii) a commitment of payment from the carrier or the carrier's insurers given to the importer or owner of the goods and showing the amount of compensation given for the loss in value of the goods.

#### *Amount of Refund*

5. The amount of a refund of duties shall be

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

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

(i) the duties paid on the goods, and

(ii) the duties that would be payable if, after the percentage of polarization of the goods is determined, there is deducted from that percentage an amount equal to five times the percentage of salt present in that portion of the water found in the damaged goods that is in excess of the water found in samples of undamaged goods, as certified in writing by an officer authorized to test such samples; and

(c) in the case of any other goods, an amount equal to that proportion of the duties paid on the goods that the loss in value of the goods is of the value for duty of the goods.

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

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

(a) goods for which there is a manufacturer's or producer's recommended shelf life period or allowable storage-before-use period if the goods have suffered damage or deterioration by reason of the expiration of that period; or

(b) iron or steel or any product manufactured from iron or steel that has suffered damage or deterioration by reason of rust.

## PART 2

### GOODS DEFICIENT IN QUANTITY

#### *Application*

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

#### *Notice*

8. Written notice of a claim for a refund of duties and the reasons for the claim must be given to an officer within four years after the release of the goods.



*Evidence in Support of Application*

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

*Amount of Refund*

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

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

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

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

12. In accordance with subsection 75(2) of the Act, if the quantity of imported goods released is less than the quantity in respect of which duties were paid and no refund of duties has been granted in respect of the deficient quantity, an officer may, where the goods were deficient in quantity before their arrival in Canada, at the request of the person by whom the duties were paid, apply any duties paid in respect of the deficient quantity of the goods to any duties that become due on the deficient quantity if any portion of the goods is subsequently imported by the same importer or owner, on condition that the person submits to the officer a copy of the document referred to in paragraph 9(a) or a written statement as described in paragraph 9(b), as the case may be.

PART 3

GOODS OF INFERIOR QUALITY

*Application*

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

*Notice*

14. Written notice of a claim for a refund of duties and the reasons for the claim must be given to an officer within

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

*Evidence in Support of Application*

15.(1) Subject to subsection (2), an application for a refund of duties must be supported by a copy of any document, including a credit note from the vendor, indicating the amount granted to compensate for the difference between the value of the goods in respect of which duties were paid and the value of the goods of inferior quality.

(2) If a person who paid duties is unable to provide the document referred to in subsection (1) because of circumstances beyond their control and the person provides evidence of those circumstances, the application for a refund of duties must be supported by

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

*Amount of Refund*

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

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

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

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

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

PART 4

GOODS EXPORTED FROM A NAFTA COUNTRY OR CHILE

*Application*

18. This Part applies to the granting of a refund under paragraph 74(1)(c.1) of the Act of duties paid on goods

- (a) that were exported from a NAFTA country or Chile and imported into Canada

- (i) on or after January 1, 1994, in the case of goods exported from a NAFTA country, and
  - (ii) on or after July 5, 1997, in the case of goods exported from Chile; and
- (b) where no claim for preferential tariff treatment under NAFTA or no claim for preferential tariff treatment under CCFTA, as the case may be, was made in respect of those goods at the time they were accounted for under subsection 32(1), (3) or (5) of the Act.

*Evidence in Support of Application*

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

*Amount of Refund*

20. The amount of a refund of duties shall be an amount equal to the difference between
- (a) the duties paid, and
  - (b) the duties payable on the goods as a result of the goods being eligible for preferential tariff treatment under NAFTA or preferential tariff treatment under CCFTA, as the case may be.

PART 5

GOODS IMPORTED FROM ISRAEL OR ANOTHER CIFTA BENEFICIARY

*Application*

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

*Evidence in Support of Application*

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

*Amount of Refund*

23. The amount of a refund of duties shall be an amount equal to the difference between
- (a) the duties paid, and
  - (b) the duties payable on the goods as a result of the goods being eligible for preferential tariff treatment under CIFTA.

PART 6

CLERICAL, TYPOGRAPHICAL OR SIMILAR ERROR

*Application*

24. This Part applies to the granting of a refund under paragraph 74(1)(d) of the Act of duties paid on goods where the calculation of duties owing was based on a clerical, typographical or similar error.

*Amount of Refund*

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

PART 7

DUTIES PAID OR OVERPAID  
DUE TO AN ERROR IN DETERMINATION

*Application*

26. This Part applies to the granting of a refund under subsection 74(1)(e) of the Act of duties paid on goods where duties were paid or overpaid as a result of an error in the determination under subsection 58(2) of the Act of origin (other than in the circumstances described in paragraph 74(1)(c.1) or (c.11) of the Act), tariff classification or value for duty in respect of the goods and the determination has not been the subject of a decision under section 59 or 61 of the Act.

*Amount of Refund*

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

PART 8

GOODS SOLD OR OTHERWISE DISPOSED OF OR USED, BEFORE ANY  
OTHER USE IS MADE OF THE GOODS IN CANADA

*Application*

28. This Part applies to the granting of a refund under paragraph 74(1)(f) of the Act of duties paid on goods, where the goods or other goods into which they have been incorporated, are sold or otherwise disposed of to a person, or are used, in compliance with a condition imposed under a tariff item in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, or under any regulations made under that Act in respect of a tariff item in that List, before any other use is made of the goods in Canada.

*Evidence in Support of Application*

29. An application for a refund of duties must be accompanied by
- (a) a declaration signed by the end-user of the goods affirming that the goods comply in all respects with the conditions imposed under the tariff item referred to in the application;
  - (b) a copy of the purchase order, sales invoice, contract or other document that relates to the sale or disposal of the goods in Canada, if applicable; and
  - (c) a copy of the prescribed form containing the prescribed information required by paragraph 32(1)(a) of the Act for the goods accounted for under subsection 32(1), (3) or (5) of the Act in respect of which the application is made.

*Amount of Refund*

30. The amount of a refund of duties shall be an amount equal to the difference between
- (a) the duties paid, and
  - (b) the duties that would have been payable if the goods had been classified under a tariff item, the conditions of which have subsequently been met by virtue of the goods being incorporated, sold or otherwise disposed of or used in compliance with those conditions.

PART 9

DUTIES OVERPAID OR PAID IN ERROR FOR OTHER REASONS

*Application*

31. This part applies to the granting of a refund under paragraph 74(1)(g) of the Act of duties overpaid or paid
- (a) if the duties are reduced or removed by a retroactive order or regulation made under the *Customs Tariff*; or
  - (b) if the goods are prohibited for use or sale by a provincial law.

*Evidence in Support of Application*

32. An application for a refund of duties under paragraph 31(a) must be supported by
- (a) a copy of the prescribed form containing the prescribed information required by paragraph 32(1)(a) of the Act for the goods accounted for under subsection 32(1), (3) or (5) of the Act in respect of which the application is made; and
  - (b) a copy of the commercial invoice or similar document substantiating that the goods subject to the refund of duties are the goods for which the duties were paid.
33. An application for a refund of duties under paragraph 31(b) must be supported by:
- (a) proof of exportation in the form of
    - (i) a copy of a customs document presented to an officer of the customs administration of a foreign country respecting the importation of the goods into that country,
    - (ii) a copy of a document of a transportation company respecting the exportation of the goods, or
    - (iii) other documentation that establishes that the goods were exported; or

(b) proof of destruction of the goods under customs supervision relating to the goods for which the application is made.

#### *Amount of Refund*

34. The amount of the refund of duties shall be an amount equal to the duties overpaid or paid in the case of a refund under paragraph 31(a).

35. The amount of the refund of duties shall be in an amount equal to the duties paid in the case of a refund under paragraph 31(b).

### PART 10

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

#### *Application*

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

#### *Notice*

37. Written notice of a claim for a refund of duties and the reasons for the claim must be given to an officer within

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

#### *Evidence in Support of Application*

38. An application for a refund of duties must be supported by

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

*Amount of Refund*

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

PART 11

REDUCTION OF AMOUNT OF REFUND

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

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

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

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

41. The *Refund of Duties Regulations* (SOR/86-945) are repealed

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

## REFERENCES

### ISSUING OFFICE –

Trade Incentive Programs

### LEGISLATIVE REFERENCES –

Sections 74 to 80 of the *Customs Act*

### HEADQUARTERS FILE –

6561-5, 6561-9, 6561-16

### SUPERSEDED MEMORANDA “D” –

N/A

### OTHER REFERENCES –

D6-2-1, D7-4-1, D7-4-2, D7-4-3, D11-4-2, D11-6-1, D11-6-5, D17-1-10, D17-1-1, D17-1-19

SERVICES PROVIDED BY THE DEPARTMENT ARE AVAILABLE IN BOTH OFFICIAL LANGUAGES.

THIS MEMORANDUM IS ISSUED UNDER THE AUTHORITY OF THE DEPUTY MINISTER OF NATIONAL REVENUE.