



Ottawa, April 17, 2015

Memorandum D11-8-5

Conditional Relief Tariff Items

In Brief

1. This memorandum, formerly entitled “End-Use Program”, has been reissued to clarify the Canada Border Services Agency’s policy regarding the eligibility of goods for conditional relief tariff items.
2. Information regarding the keeping of records has been moved to [Memorandum D11-8-6, Interpretation of Section 3 of the Imported Goods Records Regulations](#).

This memorandum explains the legislative provisions that allow conditional duty relief for certain imported goods.

Legislation

[Customs Tariff](#) – Subsection 2(1) and Note 3 to Chapter 99

[Customs Act](#) – Subsections 32.2(2) and 32.2 (6)

[Diversion of Imported Goods Exemption Regulations](#) – Sections 1, 2 and 3

[Prescribed Classes of Persons in Respect of Diversion of Imported Goods Regulations](#) – Section 2

Guidelines and General Information

Conditional Relief Tariff Items

1. Conditional relief tariff items reduce or eliminate the rates of duty that would otherwise apply to goods, provided the conditions of relief imposed under the tariff item are satisfied.
2. Such tariff items include distinctive wording that relates the imported good to the specific condition that it must fulfill. Examples of such wording include:
 - (a) “for use in”
 - (b) “for use in the manufacture of”
 - (c) “for use by”
 - (d) “for use during”
 - (e) “for use on”
 - (f) “for the repair or remanufacture”
 - (g) “for (followed by a specified condition clearly based on the actual use of the goods)”
 - (h) “imported by”
 - (i) “imported during the period”
 - (j) “on condition that”
 - (k) “to be employed”
 - (l) “when certified by”
 - (m) “which enter into the cost of”

3. The specified conditions must be satisfied by either the importer or by persons who purchase or otherwise acquire the imported goods.
4. The conditions specified often relate to some action or use of the goods that can only be realized and confirmed after importation. For that reason, CBSA has established an administrative policy that allows importers to claim the benefit of the conditional relief at the time of accounting and before the conditions are actually met. By claiming the benefit of the conditional relief tariff item, the importer is making a declaration that the conditions of relief will be met and substantiated by documentation to that effect. Disposition of goods by the importer or subsequent owner in a manner that does not meet the conditions specified requires a correction to the declaration and payment of any duties owing in accordance with the applicable legislative and regulatory provisions.
5. In addition to the conditions specified in the text of the tariff item, importers relying on conditional relief relating to the “use” of the good are subject to specific record keeping requirements under the [Imported Goods Records Regulations](#) (Regulations).
6. This memorandum applies not only to the conditional relief tariff items found in Chapter 99 of the [Customs Tariff](#) but also those conditional relief tariff items found throughout the Chapters 1 through 97. For example, tariff item 1511.90.20 provides for “Palm oil and its fractions...” but only if it is “...for use in the manufacture of margarine and shortening”.
7. Only goods, for which a conditional relief tariff item exists, that are used in the manner specified qualify for the benefits of that provision. For example, palm oil used to manufacture something other than margarine or shortening, such as candles, does not meet the terms of tariff item 1511.90.20.
8. Goods for which the benefits of a conditional relief tariff item were claimed that were subsequently used in a manner not complying with the relief conditions are considered to have been diverted from the required use (see **Diversion of Goods**, below).

Definition of “For use in”

9. Subsection 2(1) of the [Customs Tariff](#) defines the term “for use in” as meaning “that the goods must be wrought or incorporated into, or attached to, other goods referred to in that tariff item.”
10. The terms “wrought into” and “incorporated into” reflect physical incorporation into the “other goods”.
11. The term “attached to” does not require a permanent connection, and includes goods which may be detached from the “other goods” (e.g. a music CD). In the case of electronic goods, a connection for the transfer of data via wireless technology is considered to be “attached”.
12. Other than “for use in”, none of the terms noted in paragraph 2 above are defined by legislation. This memorandum provides the CBSA’s position as to how they will be administered.

Chapter 99 Conditional Relief Items

13. As required in Note 3 to Chapter 99 of the [Customs Tariff](#), goods must first be classified under Chapters 1 to 97, before determining eligibility for provisions found in Chapter 99.
14. The determination of eligibility of a good for a conditional relief tariff item of Chapter 99 is distinct from the tariff classification of that good under Chapters 1 to 97.
15. To claim the benefits of a conditional relief tariff item in Chapter 99:
 - (a) the ten-digit classification number applicable to the goods under Chapters 1 to 97 must be entered in field 27 on the *Canada Customs Coding Form* ([B3-3](#)); and
 - (b) the first four digits of the appropriate Chapter 99 tariff item must be entered in field 28.
16. For example, dried apples are classified under tariff item 0813.30.00 (classification number 0813.30.00.00) and are specifically named in tariff item 9905.00.00. The latter tariff item relieves duty for products that are: (i) for use during the Passover holiday, (ii) marked as such and (iii) imported during the period specified in the tariff item. Entering “0813.30.00.00” in field 27 and “9905” in field 28 will relieve duty for qualifying dried apples.

Claiming Relief at the Time of Accounting

17. Most conditional relief tariff items set conditions that will only be met after the goods are imported.

18. In those cases, the CBSA allows importers to claim the conditional relief at the time of accounting provided that:

- (a) the goods are described in the tariff item
- (b) the goods are capable of meeting the conditions of relief; and
- (c) the importer has a reasonable expectation that the conditions of relief will be met.

19. In the example cited in paragraph 7 above, a manufacturer does not have a reasonable expectation at time of importation that the conditions of relief will be met if they import palm oil for making candles.

20. However, if that importer also manufactures margarine or shortening, or distributes palm oil to manufacturers of margarine or shortening, they would have a reasonable expectation that palm oil imported for those purposes would be used in a qualifying manner.

21. As another example, an importer of automotive paint that has a purchase order or supply contract with a manufacturer of automobiles may, at the time of importation, claim the benefits of tariff item 9959.00.00 that provides, in part, for “Materials of Section III, VI, VII, XI, XIII, XIV or XV... for use in the manufacture of... passenger automobiles...”.

22. Automotive paint, which is a product of Section VI of the [Customs Tariff](#), is clearly suitable for use in the manufacture of automobiles and the importer has an expectation that they will sell or dispose of the goods to a purchaser that will use the paint in a manner that meets the qualifying conditions. The requirements set out in paragraph 18 above would be met.

23. However, importations of automotive paint would not qualify for conditional relief for an importer that supplies the same paint to automotive repair shops rather than automobile manufacturers.

24. Claiming the benefit of a conditional relief tariff item at the time of accounting is a declaration under section 32 of the [Customs Act](#). Doing so when there is no reasonable expectation that the conditions of relief will be satisfied would be considered a false declaration; for example, claiming the benefits of tariff item 9959.00.00 for paints not suitable for automobile manufacturing (e.g., interior latex house paint).

Diversion of Goods

25. Diversion occurs when the conditions for which an imported good was granted relief of duty are no longer met.

26. Subsection 32.2(6) of the [Customs Act](#) obligates importers to treat diversions as an incorrect declaration of tariff classification that must be corrected by the importer under subsection 32.2(2).

27. Section 2 of the [Prescribed Classes of Persons in Respect of Diversion of Imported Goods Regulations](#) extends this obligation to all subsequent purchases or owners.

28. Since any subsequent owner of the imported goods for which certification of actual use is required must advise the importer of any diversion, the importer must ensure that subsequent owners of the goods are aware of this responsibility. Subsequent owners of the imported goods must report diversions to their supplier within 90 days of the date that the diversion occurred.

29. That same subsection further obliges the importer to correct the declaration of tariff classification within 90 days of being notified that a diversion has occurred.

30. Once goods have been diverted, the importer must correct the declaration and pay the duties owing. There is no provision that allows for a refund should the goods at a later time be used in a qualifying manner.

31. For example, tariff item 8214.90.10 provides duty free entry for “Clippers for animals, for use on the farm”. If the clippers were imported for use on a farm and subsequently sold for use in a municipal veterinary clinic, the clippers would be considered diverted from the specified use, even if at a later date they are sold for use, once again, on a farm.

32. Certain goods, by their very nature (e.g. clippers for animals) may be used interchangeably for both qualifying and non-qualifying uses. Such “interchangeable goods” have a high risk of diversion to a non-qualifying use. Therefore, the benefits of a conditional relief tariff item should only be claimed if the importer has a reasonable expectation that the conditions of relief will be met.

33. Any non-qualifying use of goods when conditional relief was claimed constitutes a diversion. The obligation to correct a declaration, including due to diversion, lasts for four years from the date of accounting for the goods. Any disposition of goods for which the importer does not obtain the documentation required under the [Imported Goods Records Regulations](#) constitutes a failure to meet the conditions of relief.

34. Subsection 32.2(4) establishes the four year time period during which diversions from the qualifying conditions must be reported.

35. Goods in inventory have neither fulfilled the conditions for relief nor been used in a non-qualifying manner. But provided the goods are capable of satisfying the criteria, and there is a reasonable expectation that they will do so, they are not considered to have been diverted.

36. However, if goods in inventory will not be used in a qualifying manner within four years of the date of accounting, they have not met the conditions of relief and the importer must correct their declaration.

Diversion of Goods – Exemptions

37. The [Diversion of Imported Goods Exemption Regulations](#) exempts imported goods that are temporarily diverted to respond to an emergency situation for the duration the goods are used in response to the emergency, or if they are consumed in the response to an emergency, from the obligation to make a correction based on diversion as per subsection 32.2(6) of the [Customs Act](#).

Reporting Diversion

38. Multiple corrections may be required if portions of the goods are diverted to a non-qualifying use at different times.

39. For example, 800 litres of palm oil is imported with the benefits of tariff item 1511.90.20 claimed. If it is sold 200 litres at a time to different purchasers, and one or more of the purchasers do not manufacture margarine or shortening, each sale of the oil for a non-qualifying use is a separate diversion and each must be reported.

40. To correct a declaration of tariff classification involving diverted goods, a fully completed form *Canada Customs – Adjustment Request (B2)*, must be submitted to the appropriate regional CBSA office. For instructions on the coding and completion of a B2, please refer to [Memorandum D17-2-1, Coding of Adjustment Request Forms](#).

Date of Liability for Duties

41. Where the conditions of relief have never been met, the liability for duties and taxes begins on the date of accounting.

42. Where the conditions of relief have been met and the goods are subsequently diverted to a non-qualifying use, the date of liability for duties and taxes is the date the diversion occurred.

Reason to Believe

43. Reason to believe that a diversion has occurred starts on the date that the importer has specific information that the conditions for which relief of duty was granted are no longer met.

44. If the importer makes any non-qualifying use of the goods, they are considered to have specific information that the goods no longer meet the conditions of relief.

45. Where the importer sells or otherwise disposes of the goods without obtaining certification of actual use, the importer is considered to have specific information that the goods no longer meet the conditions of relief as of the date of the related sales invoice, lease agreement, contract, work order, or other document. Such goods are considered to have never qualified for the conditional relief, and the importer must correct their declaration.

46. Where there is more than one such document the one dated closest to the date of importation applies.

Claiming the Benefits of a Conditional Relief Tariff Item After the Initial Accounting

47. To claim the benefits of a conditional tariff item after the goods are accounted for, the documentation specified in the [Imported Goods Records Regulations](#) must be presented along with the [B2](#) adjustment request.

48. Such claims are to be made under paragraph 74(1)(f) of the [Customs Act](#) and must be made within four years of the date of accounting.

49. As stated in subsection 74(5) of the [Customs Act](#), "...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 ... 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." Therefore, a denial based on failure to provide documentation is not subject to any further request for re-determination under section 60 of the Act.

50. However, in the event of such a denial, the importer may resubmit a request under paragraph 74(1)(f) of the [Customs Act](#), provided they are still within the four-year time limit.

Audits, Verifications and Penalties

51. CBSA officers may perform periodic compliance verification audits or reviews under the authority of sections 42 and 42.01 of the [Customs Act](#).

52. Confirmation of the certification of actual use of the goods by subsequent owners may form part of such verifications.

53. Goods found to have been incorrectly declared under a conditional tariff item, or diverted to a non-qualifying use, will be subject to a re-determination or further re-determination of the tariff classification.

54. Any verification of the use of a conditional relief tariff item will consider only those goods that have been put into use by the importer, or have been sold, leased or disposed of in some manner after importation. The actual use of the goods that are still in the importer's inventory will not be at issue.

55. In addition to the amount of duties owing, every person who fails to correct a declaration of tariff classification in accordance with subsections 32.2(2) of the [Customs Act](#) may be subject to a penalty under the Administrative Monetary Penalty System pursuant to section 109.1 of the [Customs Act](#). Details are available in [Memorandum D22-1-1, Administrative Monetary Penalty System](#).

Additional Information

56. For certainty regarding the tariff classification of a product, importers may request an advance ruling for tariff classification. Details on how to make such a request are found in CBSA [Memorandum D11-11-3, Advance Rulings for Tariff Classification](#).

57. An advance ruling may only consider the potential of the goods to satisfy the conditional relief requirements of a tariff item. An advance ruling does not impact the record keeping obligations including any obligations to demonstrate actual use nor does it impact the obligation that the importations actually satisfy the conditions for relief.

58. For more information, call contact the [CBSA Border Information Service](#) (BIS):

Calls within Canada & the United States (toll free): **1-800-461-9999**

Calls outside Canada & the United States (long distance charges apply):

1-204-983-3550 or 1-506-636-5064

TTY: **1-866-335-3237**

[Contact Us online](#) (webform)

[Contact Us](#) at the CBSA website.

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	4500-6
Legislative References	<u>Customs Tariff</u> <u>Customs Act</u> <u>Diversion of Imported Goods Exemption Regulations</u> <u>Imported Goods Records Regulations</u> <u>Prescribed Classes of Persons in Respect of Diversion of Imported Goods Regulations</u>
Other References	<u>D11-8-6</u> , <u>D11-11-3</u> , <u>D17-2-1</u> , <u>D22-1-1</u> Forms <u>B2</u> , <u>B3-3</u>
Superseded Memorandum D	D11-8-5 dated August 27, 2008