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MEMORANDUM D10-13-1

In Brief

CLASSIFICATION OF GOODS

This memorandum explains the methodology for classifying goods in the *Customs Tariff*. It is an updated version of the original memorandum



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Legislation

The following sections of the legislation are relevant to the classification of goods:

Customs Tariff

3. The List of Tariff Provisions is divided into Sections, Chapters and sub-Chapters.

10. (1) Subject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.

(2) Goods shall not be classified under a tariff item that contains the phrase “within access commitment” unless the goods are imported under the authority of a permit issued under section 8.3 of the *Export and Import Permits Act* and in compliance with the conditions of the permit.

11. In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System, published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.

Customs Act

2. (1) In this Act ...

“tariff classification” means the classification of imported goods under a tariff item in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*;

32.1(1) Subject to this section, every person who accounts for goods under subsection 32(1), (3) or (5) shall, at the time of accounting, furnish an officer at a customs office with the statistical code for the goods determined by reference to the Coding System established pursuant to section 22.1 of the *Statistics Act*.

General Rules for the Interpretation of the Harmonized System and the *Customs Tariff*

Classification of goods in the Nomenclature shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes,

classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of Rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of Rule 5(a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

Canadian Rules

1. For legal purposes, the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only tariff items at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

2. Where both a Canadian term and an international term are presented in this Nomenclature, the commonly accepted meaning and scope of the international term shall take precedence.

3. For the purpose of Rule 5(b) of the General Rules for the Interpretation of the Harmonized System, packing materials or packing containers clearly suitable for repetitive use shall be classified under their respective headings.

Note: Unless the context otherwise requires, the provisions of Rule 6 of the General Rules for the Interpretation of the Harmonized System shall apply, *mutatis mutandis*, to the classification numbers within any one tariff item. (This note does not form part of the *Customs Tariff* legislation.)

GUIDELINES AND GENERAL INFORMATION

1. The Departmental Consolidation of the *Customs Tariff* includes the 214 sections of the Act and a schedule containing the List of Tariff Provisions combined with the statistical suffixes. This memorandum explains the methodology to be employed when classifying goods for customs purposes

Classification in the *Customs Tariff*

2. When classifying goods, it is important to keep in mind that the Tariff schedule consists of Sections, Chapters, headings, subheadings, tariff items, and classification numbers all structured in a hierarchical manner. Thus, the classification of goods must be performed using a step-by-step methodology.

3. Headings are four digit codes, e.g. 08.03, in which the first two digits indicate the chapter in which the heading is located and the last two digits indicate the position of the heading within that chapter. Headings are mutually exclusive in that no two headings may provide for the goods.

4. Subheadings are six digit codes, e.g. 0803.10, which represent subdivisions of the heading providing greater product detail. Not all headings have been subdivided. In such cases, the fifth and sixth digits are zeros. The headings and subheadings are part of the internationally recognized Harmonized System (HS) and are common to the customs tariffs of almost all trading nations.

5. Tariff items are eight digit codes, e.g. 0803.10.10. These subdivisions have been created to provide further product detail for domestic tariff purposes. As with headings, not all subheadings have been subdivided, in which case the seventh and eighth digits are zeros. Rates of duty are applied at this level.

6. Classification numbers are ten digit codes, e.g. 0803.10.10.11, required for the reporting of goods imported into Canada. Again, not all tariff items have been subdivided, in which case the ninth and tenth digits are zeros. These last two digits are also referred to as statistical suffixes.

7. The HS and thus the Schedule of the *Customs Tariff* is generally arranged with the least processed or manufactured goods in earlier Sections and Chapters and the further manufactured goods in later Sections and Chapters. Thus, agricultural products can be found in Section I, while more complex goods such as machinery and precision instruments can be found in later sections.

8. This same structure is followed within each Section and Chapter. For example, Chapter 50 provides for silk products. The first heading in that Chapter provides for

silk-worm cocoons while articles made from silk can be found in the later headings of the Chapter.

9. There are six rules for interpreting the Harmonized System which must be followed at all times. They are the General Rules for the Interpretation of the Harmonized System (GIRs).

10. Rule 1 specifies that goods must be classified according to the terms of the headings and the relative Section and Chapter notes. In many cases, Rules 2 through 6 will not affect classification of goods if the terms of the heading and the Section and Chapter notes result in there being only one heading under which the goods qualify.

11. Rule 2 functions in conjunction with Rule 1 to address the classification of goods which are incomplete, unassembled, unfinished or disassembled, as well as mixtures and combinations of goods.

12. Rules 3 and 4 are employed to resolve the classification of goods that cannot be classified by the application of the preceding rules. Rule 5 deals with specific aspects of packaging and containers while Rule 6 allows the same process to be applied in the determination of the proper subheadings.

13. For an official detailed explanation of the rules, reference should be made to the Harmonized System Explanatory Notes, Volume 1. These Notes are published by the World Customs Organization in Brussels but may be purchased through a Canadian distributor.

14. The classification process further reflects the hierarchical structure. Headings are only to be compared with other headings with no consideration being given to subheadings, tariff items or statistical subdivision what determining which heading is applicable.

15. The same process is followed when selecting each level of subheading, tariff item and statistical breakout.

16. The example shown in Appendix A to this memorandum illustrates this concept of comparing at equal levels:

(a) First, to classify goods, it must be determined that the goods meet the requirement of the heading. Therefore, in this example the goods must be petroleum gases or other gaseous hydrocarbons. It is not possible to look at further subdivisions if the goods do not meet the requirement of the heading.

(b) Once it has been determined that the heading applies, the subheadings must be compared. In this case, there are two one-dash subheadings. Consequently, it must be determined whether the gases are liquefied or gaseous. If the gas is liquefied, the two-dash subheadings relating to liquefied must be examined. In this example, they are 2711.11, 2711.12, 2711.13, 2711.14, and 2711.19. The last or residual subheading relating to liquefied gas is 2711.19,

“Other.” “Other” provides for goods which are not described in subheadings at the same level; in this case, other than natural gas (2711.11), propane (2711.12), butane (2711.13), ethylene, propylene, butylene, and butadiene (2711.14).

(c) This same process is used at each level. Once the appropriate subheading is located, the process is repeated at the tariff item level except that, rather than examining one- and two-dash subheadings, three- and four-dash tariff items are examined (and ultimately the five- and six-dash statistical subdivision level).

17. To illustrate this process refer to Appendix A and examine the following example:

Suppose liquefied ethane gas imported in bulk containers is to be classified. Since the gas is in the liquefied state, it is evident that it fits into the subheading for liquefied gas. Next, it falls into the two-dash subheading number 2711.19, – “Other,” since this particular gas is not specified in any of the other two-dash subheadings. Tariff items which must be compared before looking at the statistical suffix are 2711.19.10 and 2711.19.90. Tariff item 2711.19.10 specifies that the gas must be “in containers ready for use.” In the example given, the ethane gas is not in containers ready for use. Therefore, it must be classified in the three-dash tariff item 2711.19.90. Since there are no further statistical subdivisions, the classification number is 2711.19.90.00.

18. As part of the legal framework, Section and Chapter notes are located at the beginning of the Chapter or Section. Most, but not all, Sections and Chapters have such notes. It must be recognized that these notes are part of the legislation and, therefore, must be observed. Typically, these notes will list certain inclusions and exclusions for the Chapter or Section. In some cases, the notes define certain terms or they may specify how a certain commodity is to be classified. Also, where applicable, they may indicate how parts of goods are to be classified.

19. For classification purposes, the legal core of the *Customs Tariff* consists of the General Rules for the Interpretation of the Harmonized System, the Section or Chapter notes, and the heading or subheading texts.

20. To complement the legal core, there are the HS Explanatory Notes as noted above. Section 11 of the *Customs Tariff* requires that regard shall be had to the Explanatory Notes in interpreting the headings and subheadings in the schedule to the *Customs Tariff*.

21. As the name indicates, the Explanatory Notes offer explanations as to what is included in certain headings or subheadings, how certain Chapter or Section notes should be interpreted, how certain products of a heading are manufactured, and general information respecting the scope of the various headings and subheadings. In addition to

having general Explanatory Notes to each Section and Chapter, there are Explanatory Notes corresponding to every heading. Many subheadings also have Explanatory Notes.

22. The *Customs Act* contains specific direction for goods that are subject to tariff rate quotas and the same principles of tariff classification will apply. However, the Act states that, certain agricultural products can only be classified under a tariff item that contains the phrase “within access commitment” when the importer has a valid import permit specifying entitlement to the “within access commitment” rate of duty, issued by the Department of Foreign Affairs and International Trade Canada (FAITC). These permits may be issued individually for particular importations of goods (application required), or they may be General Import Permits (GIPs) (for which no application is required) such as for wheat, barley, and wheat and barley products which are administered on a first-come first-served basis. Further, these permits will have terms and conditions which must be met to be valid. If the importer does not have an import permit or if the “within access commitment” GIP has been revoked by FAITC, the goods are classified under the “over access commitment” tariff item, which attracts a higher rate of duty than the “within access commitment” tariff item for those goods.

23. To illustrate this process, refer to Appendix B to this memorandum and examine the following example:

Suppose live broilers (fowls of the species *Gallus Domesticus*), weighing 180 grams, are being imported for domestic production. Live poultry is specifically provided for under heading No. 01.05. Since the broilers weigh 180 grams, they meet the one-dash subheading which reads, “weighing not more than 185 grams.” The broilers are for domestic production, and therefore, tariff item Nos. 0105.11.21 and 0105.11.22 must be examined. If the importer has a valid import permit specifying entitlement to the “within access commitment” rate of duty, the broilers are classified under tariff item No. 0105.11.21. If the importer does not have a specific import permit, or the terms and conditions of the permit have not been complied with, the broilers are classified under “over access commitment” tariff item No. 0105.11.22 as broilers for domestic production,

24. For more information on GIPs and import permits, refer to Memorandum D19-10-2, *Export and Import Permits Act*.

25. For more information on the administration of “within access commitment” and “over access commitment” tariff items, consult Memorandum D10-18-1, *Tariff Rate Quotas*.

26. For information concerning the coding of Form B3, refer to Memorandum D17-1-10, *Coding of Customs Accounting Documents*.

Classification in Chapters 97 and 98 of the Customs Tariff

27. Goods that satisfy the conditions in any of the provisions of Chapter 98 (Special Classification Provisions – Non-Commercial) are to be classified under the appropriate classification number of that Chapter, rather than elsewhere in the tariff.

28. Goods that satisfy the conditions in any of the provisions of Chapter 99 (Special Classification Provisions – Commercial) are first to be classified in Chapters 1 to 97. The first four digits of the appropriate Chapter 99 classification number must also be entered on the Form B3, *Canada Customs Coding Form* (Field 28).

APPENDIX A**EXAMPLE FOR CLASSIFICATION**

Tariff Item	Description of Goods
27.11	Petroleum gases and other gaseous hydrocarbons.
	- Liquefied:
2711.11.00	- - Natural gas
2711.12	- - Propane
2711.12.10	- - - In containers ready for use
2711.12.90	- - - Other
2711.13.00	- - Butanes
2711.14.00	- - Ethylene, propylene, butylene and butadiene
	10 - - - - Ethylene
	20 - - - - Propylene
	30 - - - - Butylene
	40 - - - - Butadiene
2711.19	- - Other
2711.19.10	- - - In containers ready for use
2711.19.90	- - - Other
	- In gaseous state:
2711.21.00	- - Natural gas
2711.29.00	- - Other

APPENDIX B**LIVE BROILERS FOR DOMESTIC PRODUCTION**

Tariff Item	Description of Goods
01.05	Live poultry, that is to say, fowls of the species Gallus domesticus, ducks, geese, turkeys, and guinea fowls. - Weighing not more than 185g:
0105.11	- - Fowls of the species Gallus domesticus
0105.11.10	- - - For breeding purposes - - - Broilers for domestic production
0105.11.21	- - - Within access commitment
0105.11.22	- - - - Over access commitment
0105.11.90	- - - Other

REFERENCES

ISSUING OFFICE – Tariff Policy Division Trade Programs Directorate Admissibility Branch	HEADQUARTERS FILE – N/A
LEGISLATIVE REFERENCES – <i>Customs Tariff</i> , S.C. 1997, c.36	OTHER REFERENCES – D8-5-1, D10-18-1, D17-1-10, D19-10-2
SUPERSEDED MEMORANDA “D” – D10-13-1, February 19, 1998	

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