

Canada-U.S. Blog

LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

How To File A Tariff Classification Appeal in Canada

By Cyndee Todgham Cherniak on January 7th, 2016

Posted in Customs Law, tariff classification



If the Canada Border Services Agency (“CBSA”) has made an error during a tariff classification verification, the importer may file a request for re-determination to appeal the assessment of duties. In most cases, the CBSA changes the tariff classification from duty-free (i.e., 0%) to a higher duty rate (e.g., 10%) and issues a detailed adjustment statement charging the additional duties and interest.

If you believe the assessment is incorrect and/or the CBSA misunderstood the facts or ignored relevant facts, you may file a request for re-determination (an appeal). You must file the request for re-determination within **90 days** of the date on the detailed adjustment statement. Do not miss this deadline. While there are exceptional circumstances that would allow a late filed request for re-determination, it is best to not have to prove that you meet the limited criteria.

You file the request for re-determination by completing a B2 “Adjustment Request”. If there is more than one detailed adjustment statement, you will have to complete more than one form. The B2 form must match with the original B3 “Customs Coding Form”. The CBSA has one year to review the request for determination and make a decision.

Make sure that you provide reasons for the request for re-determination. If there isn’t enough room in the B2 “Adjustment Request” form, file an attached schedule. If you would like to resolve the issues more quickly, put your best arguments forward in a clear and concise manner. Let the appeals officer understand your point of view and evidence in support of your position. A common mistake that we see is that the importer has a customs broker file the B2 “Adjustment Request” form without providing clear information for the CBSA to consider. A mere “you are wrong” is not sufficient to prove your case.

You must pay the amount of duties and interest owing as stated on the detailed adjustment statement or the CBSA may detain future imports of goods – they have ways to make you pay.

If the CBSA does not change their minds about the tariff classification, you may file an appeal with the Canadian International Trade Tribunal (“CITT”) **within 90 days** of the adverse decision of the CBSA. Do not miss this deadline. The

initial appeal is relatively simple. An appeal may be in the form of a simple letter to the Registrar of the CITT. The notice of appeal or appeal letter must state the appellant's intentions and be accompanied by a copy of the assessment, reassessment, rejection, decision, determination or re-determination, as the case may be, from which the appeal is launched. You should provide the CITT with sufficient information to identify (1) the appellant, (2) the applicable statutory provisions, (3) the date of the CBSA decision being appealed, (4) the detailed adjustment statements at issue and (5) a brief indication of the issues to be decided. This can be done in a letter to the Registrar of the CITT.

However, **within 60 days**, you must file an Appellant's Brief. This document must set out all the relevant facts, the law, and arguments. You must file your supporting evidence that the CITT is to consider. The Appellant's Brief takes planning (as you may need expert evidence or test reports). This document takes time to prepare – good arguments are drafted and redrafted. Based on our experience, if the Appellant's Brief can show the Department of Justice lawyer the weaknesses in their case, they may settle prior to having to file the Respondent's Brief. You may also wish to file physical exhibits so that the CITT can see what is the good at issue.

You should know the case you wish to present as early as the request for re-determination. You should have your evidence plan in the works at this stage. If you wait until the CITT hearing, you may find that the CITT does not accept your evidence. If you do not make certain arguments in the Appellant's Brief, you may be precluded from arguing certain points later (e.g. in argument at the hearing).

So, plan your litigation strategy as early as possible and stay organized from the point of the initial verification by the CBSA. Seek help in preparing written representations and the available arguments.

Tags: "detailed adjustment statement", Canada Border Services Agency, CBSA, request for redetermination, tariff classification

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