What Every Importer Should Know About Canada's Customs Duty Reassessment Policy

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On January 8, 2015, the Canada Border Services Agency ("CBSA") released D-Memorandum D11-6-10 "Reassessment Policy". **This is one of the most important CBSA policies. Every importer should read this policy and consider if it is possible that they have made a mistake on their Canada customs documents.**

The CBSA Reassessment Policy sets out the rules that an importer must follow if it learns of a mistake (tariff classification, valuation or origin) in their customs filings (whether on their own initiative or after a CBSA verification). The Reassessment Policy contains useful guidance on how far back an importer must go in correcting their mistakes. This is directly correlated to the amount of money it will cost in terms of duties and taxes payable to the CBSA. The Reassessment Policy answers questions regularly asked by importers who are contemplating correcting mistakes.

Appendix A of the Reassessment Policy contains a useful decision tree that applies when an importer has hired a consultant to conduct an internal audit or review and where an error is discovered.

Appendix B of the Reassessment Policy contains a useful decision tree that applies when an importer has undergone a CBSA verification (tariff classification, valuation or origin) and the CBSA determines that declarations were incorrect and must be amended.

Appendix C of the Reassessment Policy contains a useful decision tree that applies when an importer has self-corrected errors (according to Appendix A) and the CBSA subsequently conducts a verifications and determines that the importer is still incorrect.

It is important to know that under subsection 32.2(4) of the *Customs Act*, the obligation on an importer to make a correction in respect of imported goods ends four years after the goods are accounted for. Corrections must be submitted on a B2 "Adjustment Request".

To shift from 4 years of corrections to a shorter period pursuant to the Reassessment Policy, the importer must meet the requirements of the Reassessment Policy. Most of the concessions do not apply in circumstances where the importer owes the CBSA/Government of Canada customs duties, SIMA duties, excise duties and GST (in these cases, the voluntary disclosure policy is generally more appropriate). That being said, there are circumstances where the CBSA will limit the adjustment period to less than 4 years – so, continue reading.

Some of the important administrative concessions granted by the CBSA in the Reassessment Policy include:

1. Where an importer conducts a voluntary self-initiated internal audit or review (or engages a third party such as a lawyer), the importer may correct on a going forward basis as of the date of the internal report (does not have to correct entries going back in time) if the following criteria are satisfied:

    (a) the importer conducted an internal audit or review and prepares a written report that provides a detailed account of the issue that was examined, the scope of the review, and a clear description of the errors that were found in the customs accounting documents;

    (b) there was no previous information available that would be considered to be a "reason to believe" that a declaration was incorrect;

    (c) the CBSA has not initiated a trade compliance verification; and

    (d) the report identifies only revenue neutral corrections or ones in which duty is payable to the CBSA.

2. Caveat to 1. The importer may be required to correct back in time even if the above criteria are satisfied in the issue relates to origin of the goods. When dealing with goods covered by a free trade agreement, an importer may be required to make a correction to a declaration for the period before the date that they have specific information because of obligations regarding importations under that free trade agreement. When an importer becomes aware that a proof of origin is no longer valid for imported goods, it is required to make corrections to all affected declarations for the period covered by that proof of origin in accordance with the self-adjustment provisions of the *Customs Act.*

3. Where an importer conducts a voluntary self-initiated internal audit or review (or engages a third party such as a lawyer) and the importer does not agree with the result of the review or is unsure, the importer should seek an advance ruling from the CBSA. The importer will be required to declare all future importations in accordance with the ruling. The CBSA may not ask for corrections to go back in time.

4. Where an importer conducts a voluntary self-initiated internal audit or review (or engages a third party such as a lawyer) and becomes aware that specific information (e.g. a D-Memo) was previously available but was not considered by the importer such that declarations of tariff classification and/or value for duty are incorrect, the importer may only be required to go back the last fiscal period (e.g., January 1 – December 31, 2015) if the corrections would result in no duties or GST payable and the importer is entitled to claim input tax credits. The importer will be required to use the correct tariff classification, value-for duty or origin on a going forward basis.

5. Where the CBSA conducts a trade compliance verification (e.g. a tariff classification audit) and finds errors in circumstances where specific information is not available to the importer (e.g., there are no rulings, D-Memos, decided cases on the issue), the importer will not be considered to have a "reason to believe". The importer will only be required by the CBSA to correct declarations during the CBSA verification period (often a one year period of time). The importer will be required to use the correct tariff classification, value-for duty or origin on a going forward basis.

6. Where the CBSA conducts a trade compliance verification (e.g. a tariff classification audit) and finds errors in circumstances where the importer corrected errors in accordance with 1. above AND determines that the importer was incorrect in its corrections, the importer may be required to make new corrections only for the verification period and on a going forward basis.

7. Caveat to 6 – Where the CBSA determines that there was actually specific information available to the importer regarding the correct accounting (that is, there was specific information before the internal report), the importer may have to correct declarations going back 4 years. The CBSA could request corrections for a shorter period of time.

8. Where the CBSA conducts a trade compliance verification (e.g. a tariff classification audit) and finds errors in circumstances where specific information was available to the importer, the importer will be considered to have a "reason to believe". The importer may have to correct declarations going back 4 years. The CBSA could request corrections for a shorter period of time.

The Reassessment Policy clarifies the CBSA's plans for reassessment time periods. It also makes it very clear that there are significant benefits to importers when they conduct internal investigations. An internal verification has benefits over a CBSA verification — find the errors before the CBSA does and win a time concession!

Cyndee Todgham Cherniak
cyndee@lexsage.com
Mobile: (416) 389-8999

The Gooderham "Flatiron" Building
49 Wellington Street East, Suite 501
Toronto, Ontario M5E 1C9

Phone: 416-307-4168/416-760-8999
Main Office: 647-290-4249
Fax: 416-760-899

www.lexsage.com

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