



Ottawa, January 17, 2014

Memorandum D10-14-28

Bath Preparations, Shower Gels, and Other Preparations for Use in Washing the Skin

In Brief

The editing revisions made in this memorandum do not affect or change any of the existing policies or procedures.

This memorandum explains the Canada Border Services Agency's (CBSA) administrative policy with respect to products such as shower gels, bath preparations and other preparations for use in washing the skin.

Legislation

Customs Tariff

- 33.05 Preparations for use on the hair.
- 33.07 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties.
- 34.01 Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, moulded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent.
- 34.02 Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 34.01.

Guidelines and General Information

Administrative Policy

1. This administrative policy was originally developed as a result of a Canadian International Trade Tribunal (CITT) decision rendered on October 28, 1999, in Reha Enterprises Ltd and Cosmetic Import Co. Limited versus the Deputy Minister of National Revenue, Appeal Nos. AP-98-053 and AP-98-054. The goods at issue were a body wash and a shower gel, both in various fragrances. They were further described as organic surface-active preparations in the form of liquid, for washing the skin. The CITT determined that the goods were not bath preparations or toilet preparations of heading 33.07, but rather were more appropriately classified under 3402.20.90 as surface-active preparations put up for retail sale. Note that prior to January 2002, there was no provision in either heading 34.01 or 34.02 for organic surface-active products, in the form of liquid or cream, for washing the skin.

2. The classification of products, such as shower gels and body washes, was greatly simplified in January, 2002, when the World Customs Organization (WCO) amended heading 34.01 to include “Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap”. Products imported into Canada that meet all the terms of the heading are classified under tariff item 3401.30.00.

3. With regard to “bath preparations”, the CBSA’s long-standing position has been to interpret this phrase to mean those products such as perfumed bath salts and foam bath mixtures that are actually added to the bath water for the preparation of the bath. The phrase “bath preparations” is not to include those products that are applied directly to various parts of the human body for washing the skin. This is supported by the Explanatory Notes to heading 33.07, paragraph (III), which provide for “Bath preparations, such as perfumed bath salts and preparations for foam baths, whether or not containing soap or other organic surface-active agents (see Note 1(c) to Chapter 34)”. The Note also states that “Preparations for washing the skin, in which the active component consists wholly or partly of synthetic organic surface-active agents (which may contain soap in any proportion), in the form of liquid or cream and put up for retail sale, are classified in heading 34.01. Such preparations not put up for retail sale are classified in heading 34.02.”

Multi-function products

4. Multi-function products have more than one function or use. In such cases, it is important to determine: (1) how the product is described; (2) how the product is used; and (3) how the marketer intends the product to be used.

Example

The product is primarily a shower gel or body wash which may also be used on the hair, as a substitute for shampoo. In the CITT case cited in paragraph 1, above, the Tribunal accepted the notion that the product may be used on the hair; however, it determined that the product is used for much more than simply washing the hair, and most notably for washing the body. Accordingly, it is much more than a hair shampoo and, therefore, excluded from heading 33.05. This is further supported by the terms of heading 33.05, which provide for “Preparations for use on the hair.” Thus, the reference to “shampoos” in subheading 3305.10 covers hair shampoos (i.e., those applied to the hair on the scalp) and not body shampoos.

Toilet sets

5. Toilet sets, comprising a number of components (e.g., perfume, foaming bath powder and body wash), are generally classified in accordance with General Interpretative Rule 3(b), which provides that mixtures, composite goods consisting of different components, and goods put up in sets for retail sale, shall be classified according to the component, or components taken together, which gives them their essential character.

6. Regarding the classification of toilet sets, further reference can be made to CITT Appeal No. AP-97-117, *Sanofi Canada Inc. versus The Deputy Minister of National Revenue*, dated December 18, 1998. In this case, two toilet sets were at issue – one set consisting of perfume, eau de toilette, body lotion, body bath, foaming bath powder, and perfumed dusting powder; the other set consisting of eau de toilette, body lotion, and body bath. In its decision, the Tribunal noted two factors: (1) the value of the various components, and (2) that most components contained an ingredient identified as a fragrance. Based on these two factors, the Tribunal determined that both sets were a fragrance collection. Furthermore, it decided that the perfume in one set, and the eau de toilette in the other set, gave each of these sets their respective essential character. Accordingly, the goods at issue were both classified under heading 33.03.

Re-determination and Appeals

7. Importers who are not satisfied with the specific tariff classification rendered by the CBSA, on importation, may request a re-determination or further re-determination of tariff classification pursuant to Section 60 of the [Customs Act](#) (the Act). An importer may also appeal a re-determination made pursuant to Section 60 of the Act to the CITT. Refer to Memorandum D11-6-7, *Importers’ Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*. Guidelines regarding the self-adjustment process are found in [Memorandum D11-6-6](#), *“Reason to Believe” and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty*.

Additional Information

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

9. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time/except holidays). TTY is also available within Canada: **1-866-335-3237**.

References	
Issuing Office	Trade Programs Directorate
Headquarters File	
Legislative References	Customs Act
Other References	D11-6-6 ; D11-6-7 ; D11-11-3 Explanatory Notes to the Harmonized Commodity Description and Coding System Reha Enterprises Ltd and Cosmetic Import Co. Limited versus the Deputy Minister of National Revenue (AP-98-053 and AP-98-054) Sanofi Canada Inc. versus The Deputy Minister of National Revenue (AP-97-117)
Superseded Memorandum D	D10-14-28 dated November 20, 2003