



## Memorandum D11-8-6

Ottawa, August 19, 2015

### Interpretation of Section 3 of the *Imported Goods Records Regulations*

#### In Brief

This memorandum updates the Canada Border Services Agency's policy regarding the keeping of records in accordance with paragraph 3(a.1) of the [Imported Goods Records Regulations](#) and includes new paragraph 15 along with a consequential amendment to the Appendix.

This memorandum explains the Canada Border Services Agency's (CBSA) policy regarding section 3 of the [Imported Goods Records Regulations](#) (Regulations), for commercial goods that have been released free of duty or at a reduced rate of duty based upon their intended use in the manner specified in the tariff item.

#### Legislation

[Customs Act](#) – Subsections 40(1), 164(1) and 167.1

[Imported Goods Records Regulations](#) – Section 3

[Customs Tariff](#)

#### Guidelines and General Information

##### General direction for the keeping of records regarding conditional relief tariff items

1. While proof of actual use is not required at the time of importation, when asked, the importer must be able to demonstrate that the criteria upon which conditional relief was granted, have been met. This obligation continues for four years following the accounting of the goods.
2. This is in accordance with subsection 40(1) of the [Customs Act](#) and section 3 of the [Regulations](#), which require the importer or owner of the imported goods to maintain certificates or records of actual use and that they are readily available for inspection by a CBSA officer, when requested.
3. A certificate or record of actual use is a written document affirming that the imported goods have been or will be used in accordance with the provisions of the conditional relief tariff item. Diversions from the qualifying use must be reported.
4. The certificate or record must:
  - (a) relate to the importation of the good (e.g., transaction number, applicable conditional relief tariff item number);
  - (b) provide the user's name, address and occupation; and
  - (c) state the actual use made of the goods.
5. Such certificate or record must be signed by the user of the goods. If the certificate states that the goods will be used in a qualifying manner, rather than that the goods have been used in a qualifying manner, the importer should ensure the user accepts the responsibility to report any diversion to a non-qualifying use to the importer.

6. However, where the goods are used directly by the importer, a certificate or record merely repeats the declaration made at time of accounting. In such cases, satisfactory documentation of the importers' operations demonstrating the actual use of the goods may be requested. In the event of a compliance verification, audit or review, the importer may be asked to provide details of their manufacturing process, inventory records, production records, etc.
7. Imported goods that are sold by the importer to a purchaser that then uses them in a qualifying manner still meet the conditions for the relief. However, the importer must obtain and keep the required certificate or record signed by the purchaser affirming its use of the goods.
8. For example, palm oil imported and then sold to a company that uses it to manufacture margarine qualifies for the benefits of tariff item 1511.90.20 ("Palm oil and its fractions for use in the manufacture of margarine and shortening"), provided the importer obtains and keeps records from the manufacturer indicating the actual use made of the commercial goods.
9. However, palm oil that is to be sold to a company that does not manufacture margarine or shortening cannot be imported under tariff item 1511.90.20 as there is no reasonable expectation that the conditions of relief will be met.
10. Furthermore, palm oil imported under tariff item 1511.90.20 with the intention of it being used to manufacture margarine, but that is later sold and used to manufacture lip balm, has been diverted from the qualifying use.
11. Goods for which the benefits of a conditional relief tariff item are claimed but that are then used in a non-qualifying manner are considered to have been diverted from the qualifying use (see [Memorandum D11- 8-5, Conditional Relief Tariff Items](#)). Pursuant to subsection 32.2(6) of the [Customs Act](#) the importation related to such goods must be corrected by the importer on a [B2, Canada Customs – Adjustment Request](#), in order to pay any applicable duties and taxes. For instructions on the coding and completion of a B2 please refer to [Memorandum D17-2-1, Coding of Adjustment Request Forms](#).

### **Record keeping requirements for articles that qualify under paragraph 3(a.1) of the amended Regulations**

12. The CBSA will administer the [Regulations](#) in the manner specified in the amended regulation for importations made on and after June 28, 2013, as the amendment is retroactive to that date.
13. The provisions of the general direction for the keeping of records regarding conditional relief tariff items (see above), apply to all importation of commercial goods released free of duty under tariff item 9948.00.00 prior to June 28, 2013.
14. The amendment to section 3 of the [Regulations](#) inserted new paragraph "(a.1)".
15. The CBSA interprets the phrase, "... the intended use of the commercial goods ...", found in new paragraph 3(a.1), to mean that the design of the article is such that it becomes integral to a host good listed in tariff item 9948.00.00 (i.e. wrought into or incorporated into), or can be both connected to that host good and capable of enhancing or complementing its function. The attestation, mentioned in paragraph 3(a.1), is the importer's affirmation that the article meets that standard.
16. Therefore, the requirement under the [Regulations](#) to keep records documenting the actual use of an article, imported under tariff item 9948.00.00, no longer applies for articles that meet the requirements of the amendment and that were imported on or after June 28, 2013.
17. Consequently, instead of keeping records of actual use, the importer is only required to provide an attestation as to the intended use of the article.
18. An attestation is a written statement by the importer that must include the following information about the article:
- (a) a detailed description
  - (b) the classification of the article under Chapters 1 to 97 of the [Customs Tariff](#) as applicable, and

(c) the importer's affirmation of the intended use of the commercial goods. See the Appendix of this memorandum for an example of suitable text for an attestation.

19. Under the amended [Regulations](#), users will not be required to provide a certificate or other record that indicates the actual use made of the article.
20. Furthermore, the CBSA will not require the user to report diversions to the importer.

### **Additional Information**

21. 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\*](#).
22. 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.
23. 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 your local time / except statutory holidays). TTY is also available within Canada: **1-866-335-3237**.

## Appendix

### Attestation

(Insert the importer name, address and contact information)

(Insert the broker or agent name and address [if applicable])

### Description of Goods

(Insert the description of the article [e.g., product name, model number, etc.])

### Attestation

The above described article is classified under (insert the tariff classification number), with the conditional relief benefits of tariff item 9948.00.00.

I, (insert name of the individual signing the attestation) in the occupation of (insert occupation of the individual signing the attestation) hereby attest that the above described article has been imported into Canada and that the design of the article is such that it becomes integral to (i.e. wrought into or incorporated into), or can be both connected to and capable of enhancing or complementing the function of (insert the specific host good listed in tariff item 9948.00.00 in which the imported article will be “for use in”).

Date:

Signature:

<b>References</b>	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	HS 9948.00
<b>Legislative References</b>	<a href="#"><i>Customs Act</i></a> <a href="#"><i>Imported Goods Records Regulations</i></a> <a href="#"><i>Customs Tariff</i></a>
<b>Other References</b>	<a href="#">D11-8-5</a> , <a href="#">D11-11-3</a> , <a href="#">D17-2-1</a> Forms <a href="#">B2</a>
<b>Superseded Memorandum D</b>	D11-8-6 dated April 17, 2015