

WELCOME

Risk Minimization Strategies: Advance Rulings Recording:

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Thursday, September 3, 2020

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Please note all information provided during this session is not intended to constitute legal advice; instead, all information, content, and materials available are for general informational purposes only.



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Overview

- Countermeasure Action in response to U.S. tariffs on Canadian aluminum products
 - U.S. Section 232 Trade measure
 - Canadian response
- Advance Rulings
 - Classification
 - Origin
 - Valuation

Quick intro to US Customs Advance Rulings Program



Section 232 Duties On Aluminum

- On August 6, 2020, President Trump issued a Presidential Proclamation on Adjusting Imports of Aluminum Into the United States, announcing that certain aluminum articles imported under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7601.10 that are the products of Canada will be subject to the additional 10 percent ad valorem rate of duty, effective August 16, 2020.
- Canada is looking to impose retaliatory tariffs on U.S. goods in response to President Donald Trump's decision to restore a 10 per cent tariff on Canadian aluminum imports.



Scope of Countermeasures

- Canada's countermeasures will only apply to goods originating from the U.S., which shall be considered as those goods eligible to be marked as a good of the U.S. in accordance with the [Determination of Country of Origin for the Purpose of Marking Goods \(CUSMA Countries\) Regulations](#)
- The products subject to countermeasures will be drawn from those listed in Table 1 of the [Notice of intent to impose countermeasures action against the United States in response to tariffs on Canadian aluminum products](#). Goods selected from Table 1 will be subject to a 10% surtax.
- Countermeasures will take effect by September 16, 2020 and remain in place until the U.S. eliminates its tariffs on Canadian aluminum products.



Comments and Inquiries

- Department of Finance is requesting for comments and inquiries from importers by September 6, 2020. All comments and comments are to be sent to e-mail address: fin.tariff-tarif.fin@canada.ca
- The subject line on the e-mail needs to include the term, “Aluminum countermeasures.”
- The minimum information required for comments and inquiries is as follows:
 1. Canadian company/industry association name and contact person.
 2. Relevant eight-digit tariff item(s) and description of the goods of particular interest.
 3. Reasons for the expressed support for, or concern with, the proposed countermeasures, including detailed information substantiating any expected beneficial or adverse impact
 4. Identify if information provided in the submissions is commercially sensitive.



Advance Rulings

- Subsection 43.1(1) of the Customs Act defines the term, ‘advance ruling’ to mean:

43.1 (1) Any officer, or any officer within a class of officers, designated by the President for the purposes of this section shall, before goods are imported, on application by any member of a prescribed class that is made within the prescribed time, in the prescribed manner and in the prescribed form containing the prescribed information, give an advance ruling with respect to

- (a) whether the **goods qualify as originating goods** and are entitled to the benefit of preferential tariff treatment under a free trade agreement;
- (b) in the case of goods exported from a country or territory set out in column 1 of Part 3 of the schedule, **any matter**, other than those referred to in paragraphs (a) and (c), concerning those goods that is set out in the provision set out in column 2; and
- (c) the **tariff classification** of the goods.



Benefits of an Advance Ruling

- Tariff classification can be complex for certain goods. Advance Ruling will ensure that the tariff classification number is deemed correct by the Canada Border Services Agency (CBSA). The ruling is binding until revoked by the CBSA.
- Advance rulings will provide importers with:
 - Certainty;
 - Mitigate customs risk; and
 - Reduce costs (planning costs, switching costs, custom duty, taxes, regulatory costs etc.)



Who Can Request an Advance Ruling

- Canadian importers;
- Persons who are authorized to account for goods under paragraph 32(6)(a) or subsection 32(7) of the Customs Act (the Act) (i.e. agents, non-resident importers etc.)
- Exporters or producers of those goods outside of Canada



Requesting an Advance Ruling

- To submit a request for an advance ruling on a product a letter, in English or French, that includes the following information will need to be submitted to the CBSA:
 - name and address;
 - business number (if applicable);
 - a statement indicating whether the requestor is the importer, exporter, producer or authorized representative;



Requesting an Advance Ruling (cont'd)

- the name and telephone number of a contact person who has full knowledge of the request;
- the principal ports of entry through which the goods will be imported;
- a statement noting whether the item is, or has been, the subject of a verification of tariff classification, an administrative review or appeal, a judicial or quasi-judicial review, a request for a national customs ruling or other advice, or a request for an advance ruling;



Requesting an Advance Ruling (cont'd)

- whether the goods have previously been imported into Canada;
- a full description of the goods, including trade names, or their commercial, common or technical designation;
- the composition of the goods;
- the process by which the goods are manufactured;
- a description of the packaging;
- the anticipated use of the goods; and
- the tariff classification you consider appropriate and your rationale.



Requesting an Advance Ruling (cont'd)

- If possible the following information should be submitted with the ruling request:
 - the manufacturer's product literature;
 - drawings and/or photographs;
 - schematics.
- A list of requirements is provided in [Memorandum D11-11-3](#), Advance Rulings for Tariff Classification, Appendix A.



SITUATIONS WHERE ADVANCE RULING WILL NOT BE PROVIDED BY THE CBSA

- The CBSA will not issue a ruling where:
 - the issue involves a matter that is before the courts;
 - there is a re-determination on identical goods;
 - it is not possible to determine all the material facts;
 - the request is hypothetical;



SITUATIONS WHERE ADVANCE RULING WILL NOT BE PROVIDED BY THE CBSA (cont'd)

- there are multiple goods on the request;
 - the goods have already been imported and the importation will not continue;
 - the request involves proposed or draft legislation; or
 - the goods are subject to a verification.
- Advance rulings are in effect from the date of issue as long as the ruling has not been modified, cancelled or reversed.



DISPUTING AN ADVANCE RULING

- Where the person (“requestor”) wants to dispute the classification number provided in the ruling, the right to dispute the advance ruling is provided under subsection 60(2) of the Customs Act. The following steps will need to be taken:
 - the person must write a letter that provides arguments to support the dispute;
 - the letter must be sent within 90 days of the effective date of the ruling; and
 - the letter must be sent to the appropriate regional recourse office (see [Memorandum D11-11-3](#) for more information).



ADVANCE RULINGS FOR ORIGIN UNDER FREE TRADE AGREEMENTS

- Pursuant to paragraphs 43.1(1)(a) and (b) of the Customs Act provides Canada's commitment to provide advance rulings as outlined in various free trade agreements (FTA).
- An advance ruling on origin may only be issued with respect to those subject matters set out in the advance rulings provisions contained within a free trade agreement as follows:



ADVANCE RULINGS FOR ORIGIN UNDER FREE TRADE AGREEMENTS (cont'd)

| | |
|--------|---|
| CUSMA | paragraph 1 of Article 7.5 |
| CCFTA | paragraph 1 of Article E-09 |
| CCOFTA | paragraph 1 of Article 419 |
| CCRFTA | paragraph 1 of Article V.9 and paragraph 10 of Article IX.2 |
| CEFTA | Article 28(2) of Annex C |
| CIFTA | paragraph 1 of Article 5.8 |
| CJFTA | paragraph 1 of Article 5-9 |
| CPFTA | paragraph 1 of Article 419 |

Canada Current FTA's

| Agreement name | Abbreviation | Countries/blocs involved | Signed | Entered into force |
|---|------------------|--|------------------|--|
| Canada-United States Free Trade Agreement | CUSFTA | United States | 12 October 1987 | 1 January 1989 |
| North American Free Trade Agreement | NAFTA | Mexico United States | 17 December 1992 | 1 January 1994 ^(a) |
| Canada – Israel Free Trade Agreement | CIFTA | Israel | 31 July 1996 | 1 January 1997 |
| Canada – Chile Free Trade Agreement | CCFTA | Chile | 5 December 1996 | 5 July 1997 |
| Canada – Costa Rica Free Trade Agreement | CCRFTA | Costa Rica | 23 April 2001 | 1 November 2002 |
| Canada-European Free Trade Agreement | CEFTA | <ul style="list-style-type: none"> • Iceland • Liechtenstein • Norway • Switzerland | 26 January 2008 | 1 July 2009 |
| Canada-Peru Free Trade Agreement | CPFTA | Peru | 29 May 2008 | 1 August 2009 |
| Canada-Colombia Free Trade Agreement | | Colombia | 21 November 2008 | 15 August 2011 ^(a) |
| Canada-Jordan Free Trade Agreement | | Jordan | 28 June 2009 | 1 October 2012 |
| Canada-Panama Free Trade Agreement | | Panama | 14 May 2010 | 1 April 2013 |
| Canada – Honduras Free Trade Agreement | | Honduras | 5 November 2013 | 1 October 2014 |
| Canada-Korea Free Trade Agreement | CKFTA | South Korea | 11 March 2014 | 1 January 2015 |
| Canada-Ukraine Free Trade Agreement | CUFTA | Ukraine | 11 July 2016 | 1 August 2017 |
| Comprehensive Economic Free Trade Agreement | CETA | European Union | 30 October 2016 | 21 September 2017 (provisional) ^(a) |
| Comprehensive and Progressive Agreement for Trans-Pacific Partnership | CPTPP, TPP-11 | <ul style="list-style-type: none"> • Australia • Brunei • Chile • Japan • Malaysia • Mexico • New Zealand • Peru • Singapore • Vietnam | 8 March 2018 | 30 December 2018 |
| Canada-US-Mexico Free Trade Agreement | CUSMA, USMCA | Mexico United States | 30 November 2018 | 1 July 2020 |

ADVANCE RULING – ORIGIN – WHO MAY APPLY?

- Section 2 of the [Free Trade Agreement Advance Rulings Regulations](#) stipulates the following classes of persons may apply for an advance ruling:
 - a) importers of those goods in Canada;
 - b) persons who are authorized to account for those goods under paragraph 32(6)(a) or subsection 32(7) of the Act;



ADVANCE RULING – ORIGIN – WHO MAY APPLY? (cont'd)

- c) exporters and producers of those goods in a free trade partner other than Canada;
- d) if the goods are produced in a NAFTA country other than Canada or in Chile, Costa Rica, Peru, Colombia, Jordan or in Panama, producers in a NAFTA country other than Canada or in Chile, Costa Rica, Peru, Colombia, Jordan or Panama of a material that is used in the production of those goods; and
- e) where the goods are produced in Israel or another CIFTA beneficiary, producers in Israel or another CIFTA beneficiary or in the United States of a material that is used in the production of those goods.



ADVANCE RULINGS – ORIGIN – APPLICATION PROCESS

- Advance ruling may only be requested for a future importation of goods and at least 120 days prior to the importation of those goods into Canada.
- Advance ruling restricted to an individual product or issue. The CBSA will not accept or process a request that relates to more than 5 separate products unless it can be shown that the range of goods are so similar that a decision on one model or style of the goods can be considered a representative decision.



ADVANCE RULINGS – ORIGIN – APPLICATION PROCESS (cont'd)

- A request for an advance ruling must be submitted in writing in the form of a letter that contains all the required information. The Appendixes to Memorandum [D11-4-16 Advance Rulings for Origin under Free Trade Agreements](#) provide the information required for requests under the corresponding free trade agreement (e.g. Appendix A – NAFTA, Appendix B – CCFTA, etc.)



TIME STANDARDS FOR PROCESSING AN ADVANCE RULING APPLICATION

- Advance rulings will be issued within 120 days of receipt of all required information. This time frame should be taken into consideration when submitting an advance ruling request. Where a request with complete information is submitted less than 120 days before the importation in question, an advance ruling may not be issued before the importation. Where all necessary information is not received with an application and further information is requested, the time frame of 120 days will commence from receipt of all necessary information.



TIME STANDARDS FOR PROCESSING AN ADVANCE RULING APPLICATION (cont'd)

- Where the CBSA has received complete information, but fails to issue an advance ruling within 120 days, the CBSA will administratively allow any importation, imported after 120 days from the receipt of complete information and before an advance ruling is issued, to be accorded the treatment requested in the advance ruling request.



SITUATIONS WHERE AN ADVANCE RULING FOR ORIGIN WILL NOT BE ISSUED

- An Advance Ruling would not be issued where:
 - a) where a verification of origin is being conducted on similar goods under sections 42.1 and 97.201 of [the Act](#), and the outcome of the verification may affect the advance ruling request;
 - b) where a request for a re-determination of the origin or marking determination on identical goods has been made, and the re-determination decision is outstanding;
 - c) where the request involves a matter that is before the Canadian International Trade Tribunal, the courts, the Free Trade Commission or any group or sub-group established thereunder;



SITUATIONS WHERE AN ADVANCE RULING FOR ORIGIN WILL NOT BE ISSUED (cont'd)

- d) where it is not possible to determine all the material facts;
- e) where the acceptance of the request would result in requests relating to more than five separate products produced by a single producer being processed by the CBSA at any one time; and
- f) where the request only relates to an importation or importations that have already occurred.



Reliance on Advance Ruling - Origin

- An advance ruling will be administered by the CBSA with regard to a particular importation of goods:
 - a) as long as the material facts and circumstances surrounding the importation of the goods in question are the same as the material facts and circumstances presented in the request for the advance ruling;
 - b) if all conditions in the ruling have been met and if the ruling has not been modified, revoked, revised, or cancelled; and
 - c) if the importation of the goods is made by the applicant or someone importing the goods from that person.



Review of an Advance Ruling under Section 60

- An applicant may request a review of an advance ruling within 90 days of its issuance. All requests for reviews must be submitted in English or French and in the form of a letter quoting the advance ruling number and providing written arguments in support of the review.



Review of an Advance Ruling under Section 60 (cont'd)

- After reviewing all the relevant information, the CBSA will make a decision on the review of the advance ruling. The notice of the decision under paragraph 60(4)(b) of the Customs Act shall be in the form of a further advance ruling issued to the party who requested the review. The advance ruling, issued as a notice of the decision under paragraph 60(4)(b) of the Customs Act, will either confirm the original advance ruling or will render a retroactive revision or reversal favourable to the person requesting the review. Such a retroactive revision or reversal will be retroactive to the date of the issuance of the original advance ruling, unless otherwise noted.



NATIONAL CUSTOMS RULING - VALUATION

- Subsection 43.1(1) of the Customs Act does not provide provisions to request an advance ruling for customs valuation. For this reason, an application for a customs valuation request is typically processed under a National Customs Ruling (NCR) request.
- An NCR will provide instruction concerning the CBSA's origin (Most-Favored Nation Tariff or non-Free Trade Agreement (FTA) Preferential Tariff Treatment), valuation, or marking programs. NCRs are provided as an administrative service for the convenience and guidance of importers, foreign exporters, and foreign producers.



NATIONAL CUSTOMS RULING – VALUATION

(cont'd)

- An NCR is a written statement by the CBSA, outlining how provisions of existing customs legislation apply to goods imported into Canada



NCR – WHO MAY APPLY

- An importer, foreign exporter or foreign producer of a good, or agents thereof, may request a valuation, origin or marking NCR. The NCR will be issued to the applicant.
- An NCR request must be submitted in the form of a letter, written either in English or in French, and should contain all the information required under Appendix A, B, C, D or E of [Memorandum D11-11-1 - National Customs Rulings](#). Appendix A outlines the information needed to make a customs valuation NCR request.



NCR – PROCESSING OF REQUESTS

- The CBSA has set a standard for issuing an NCR within 120 days of receiving complete information.
- At any time during the course of an evaluation of an NCR request, the CBSA may solicit additional information from the applicant. The applicant will be given a period of 30 calendar days from the date of the letter (or such longer period as the letter may provide) to supply any additional information that is requested.
- The applicant is responsible for providing complete and accurate information in support of the subject in the NCR request.



SITUATIONS WHERE NCR WILL NOT BE ISSUED

- Circumstances in which it is not appropriate for the CBSA to issue an NCR include the following:
 - a) the request is hypothetical in nature;
 - b) the request pertains to multiple goods such as the contents of commercial catalogues (except, in the case of a valuation NCR, to different goods imported in identical circumstances);
 - c) supplementary information was requested and not provided within 30 days or by a date as determined by the officer; or
 - d) the request does not meet the requirements listed within customs memorandum D11-11-1



NCR IS BINDING

- An NCR is binding on both the CBSA and the applicant, and is effective until:
 - a) a change occurs in the information that was provided in support of the NCR request;
 - b) an NCR applicant is notified in writing that the NCR has been modified or revoked as a result of a dispute or a determination, redetermination, or change to the legislation upon which the NCR is based;
 - c) relevant CBSA legislation is amended;



NCR IS BINDING (cont'd)

- d) a successful appeal of an importation accounted for to the CBSA based on information included in an NCR is made; or
- e) the duration of its applicability indicated in the NCR letter expires.
- Where a legislative or regulatory reference in an NCR occurs, the NCR ceases to be valid from the effective date of the legislative or regulatory amendment. In such cases, the applicant is encouraged to apply for a new NCR.
- Where a decision of the CITT is further appealed to the judiciary and the judicial decision rendered runs contrary to the instruction provided in the NCR, the NCR ceases to be valid from the date on which the subject good was accounted for.



PROCESS TO DISPUTE AN NCR

- An NCR may be disputed after the goods have been imported by submitting a Form B2, Canada Customs – Adjustment Request under either section 32.2 or 74 of the Act and referencing the NCR number. Once the decision (i.e. section 59, Customs Act) on the B2 has been made, a request under section 60 of the Act may be submitted on the basis of the CBSA's decision. The CBSA no longer processes dual legislative requests (i.e. B2 decisions/ Appeals)



US CUSTOMS RULINGS

- The US Customs and Border Protection –CBP Rulings Program applies to requests for binding classification rulings under the Harmonized Tariff Schedule (HTS) and certain marking, origin, USMCA and applicability of Trade Program rulings.
- Under the newly enhanced eRulings program, the importing community may submit an electronic request for a binding ruling by accessing the new [eRulings Template](#). The template permits the online filing of an electronic binding ruling request directly to the National Commodity Specialist Division (NCSD) of Regulations and Rulings.



US CUSTOMS RULINGS (cont'd)

- Upon transmission of an eRuling request, the requester will receive an email acknowledging his or her use of the template. If the transmission is received by the NCSD in good order, the requester will receive an email acknowledgement of receipt, complete with a binding ruling control number, within one business day. The official binding ruling response, complete with an electronic signature, will also be returned by email. Ruling requests that require a sample are now also included in the program.



US CUSTOMS RULINGS (cont'd)

- Generally, the NCSD will issue all such rulings within 30 calendar days of the date of receipt. Some delay may occur if a laboratory report or consultation with another agency is required. Rulings that require referral to Headquarters, R&R, will be issued by mail within 90 days of receipt.
- The ruling request must concern prospective shipments. If for any reason you cannot meet the requirements for filing an electronic ruling request, you can still file for a binding ruling by mail



Information Required in a CBP Ruling Request

- The name, address, email address and phone number of the requesting party.
- A statement that there are, to the importer's knowledge, no issues on the commodity pending before CBP or any court.
- A statement as to whether advice has been sought from a CBP office; and if so, from whom, and what advice was issued.



Information Required in a CBP Ruling Request

(cont'd)

- Classification-Full and complete description of the goods. Principal use in the United States. Pictures, technical information, web links, illustrative literature and any other information deemed pertinent.
- Country of Origin for Trade Agreements-pertinent information for qualification under specific rules of origin.
- Country of Origin and Markings- Detailed description on how the goods will be labelled and marked. Illustrations all other labelling. Information on how goods will be used and sold upon import



CBP-CUSTOMS RULINGS ONLINE SEARCH SYSTEM-CROSS

- <https://rulings.cbp.gov/home>
- CROSS was last updated Aug 25, 2020, 2:50 PM with 57 rulings, bringing the total number of searchable rulings to 207033. The most recent ruling is dated Aug 25, 2020.

- NY H83961
July 24, 2001
CLA-2-85:RR:NC:1: 112 H83961
CATEGORY: Classification
TARIFF NO.: [8543.89.9695](#)

Mr. Dave Pentland
Carson Customs Brokers (USA) Inc.
PO Box 635
Blaine WA 98231

RE: The Tariff Classification of a "Scam Cam" from Canada.

Dear Mr. Pentland:

In your letter dated July 16, 2001, on behalf of Global Shoplifting Solutions Inc (GSS), you requested a tariff classification ruling.

The "Scam Cam", sample submitted, is a plastic replica mock security camera. It can be wall or ceiling mounted by a sticky adhesive strip. The only working part on the mock camera is a small battery operated LED that illuminates to give the impression that the "camera" is on.

The applicable subheading for the "Scam Cam" will be [8543.89.9695](#), Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus,...., not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.6 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-637-7049.

Sincerely,

Robert B. Swierupski
Director,
National Commodity
Specialist Division



Questions?

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