



Ottawa, June 22, 2009

# MEMORANDUM D8-2-4

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## **In Brief**

### **CANADIAN GOODS ABROAD PROGRAM EMERGENCY REPAIRS**

This memorandum has been written to clarify the administration of the emergency repair provisions of subsection 101(2) of the *Customs Tariff*. This information was previously found in Memorandum D8-2-1, *Canadian Goods Abroad*.



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## CANADIAN GOODS ABROAD PROGRAM EMERGENCY REPAIRS

The conditions for obtaining full relief of the customs duties and taxes, including the Goods and Services Tax/Harmonized Sales Tax (GST/HST), under the Canadian Goods Abroad provisions in subsection 101(2) of the *Customs Tariff*, are explained in this Memorandum. These provisions apply to aircraft, vehicles or vessels returned to Canada if the conveyance was repaired outside Canada as a result of an unforeseen contingency that occurred outside Canada, and the repairs were necessary to ensure the safe return of the aircraft, vehicles or vessels to Canada.

### Legislation

Relevant portion of the *Customs Act*:

Subsection 12(3.1) Goods returned to Canada — For greater certainty, for the purposes of the reporting of goods under subsection (1), the return of goods to Canada after they are taken out of Canada is an importation of those goods.

Relevant portions of the *Customs Tariff*:

#### Section 80 - Definitions

“duties”, other than for the purposes of section 106, means duties or taxes levied or imposed on imported goods under Part 2, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament relating to customs, but for the purposes of sections 89 and 113 does not include the Goods and Services Tax.

Canadian goods abroad

101.(2) Emergency repairs — Subject to section 104, if an application is made in accordance with section 102, relief shall be granted from the payment of the whole of the duties that, but for this section, would be payable in respect of aircraft, vehicles or vessels returned to Canada after their exportation if

(a) the aircraft, vehicles or vessels were repaired outside Canada as a result of an unforeseen contingency that occurred outside Canada; and

(b) the repairs were necessary to ensure the safe return to Canada of the aircraft, vehicles or vessels.

(3) Regulations — The Governor in Council may make regulations

(a) on the recommendation of the Minister, prescribing the manner for determining what goods are considered

to be a product of Canada for the purposes of subsection (1); and

(b) on the recommendation of the Minister of Public Safety and Emergency Preparedness, defining the words “aircraft”, “vehicles” and “vessels” for the purposes of subsection (2).

102. Application — An application for relief under section 101 must be ...

or

(b) if the application is made under subsection 101(2), made in the prescribed form and manner, with the prescribed information, at the time of the return to Canada of the goods in respect of which the application is made.

103. Release of returned goods — Subject to section 104, goods in respect of which relief is granted under section 101 before they are released may be released without any payment of duties.

104. Conditions for relief — Relief shall be granted under section 101 in respect of goods that were returned to Canada after being exported only if

(a) relief, conditional on the exportation of the goods, was not granted in respect of any duties paid or payable; or

(b) if an application for relief under subsection 101(1) is made, the portion of the duties, calculated in accordance with paragraph 105(1)(b), has been paid.

## GUIDELINES AND GENERAL INFORMATION

### Definitions

1. The term “duties” used in this memorandum means duties as defined in section 80 of the *Customs Tariff*, i.e. duties or taxes levied or imposed on imported goods under Part 2 of the *Customs Tariff*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament relating to customs, including the Goods and Services Tax/Harmonized Sales Tax (GST/HST)

2. For the purposes of administering the Canadian Goods Abroad Program, the term “repair” is defined as a corrective maintenance activity, which restores an item to its original “as-finished” condition. It includes replacing pieces of the good with new, reconditioned, overhauled or rebuilt components.

## Background

3. As per subsection 12(3.1) of the *Customs Act*, all goods imported into Canada, even goods that have been in Canada prior to their importation, are subject to customs duties and taxes, including the GST/HST, unless there is a provision in legislation or regulation that relieves or remits the requirement to pay.

4. Normally aircraft, vehicles, and vessels return to Canada customs duty free under tariff item 9813.00.00 or 9814.00.00. The first tariff item applies to goods that are a product of Canada returning to Canada and the second applies to goods that have been previously duty and tax paid returning to Canada. However, to be eligible to claim the benefits of these tariff items, the goods must be returned to Canada without having been advanced in value or improved in condition by any process of manufacture or other means, or combined with any other article abroad. Where the goods have been subject to repair while outside Canada they cannot be classified under either of these tariff items. For information on the duty and tax treatment of goods that are returning to Canada in the same condition as exported, please refer to Memorandum D10-14-11 *Canadian Goods and Goods Once Accounted for, Exported and Returned*.

5. Subsection 101(2) of the *Customs Tariff* provides full duties relief for aircraft, vehicles, or vessels that have undergone emergency repairs while abroad. Both non-commercial and commercial importers may claim the benefits of this provision.

6. Where the repairs are not performed as a result of an unforeseen contingency, the aircraft, vehicle or vessel may qualify for full or partial relief of the duties under an alternate provision. For additional information on the various provisions available for goods which undergo repairs, other than emergency repairs, outside Canada, please consult Memorandum D8-2-10 *Goods Returning to Canada Having Been Repaired Outside of Canada*.

## Conditions

7. The aircraft, vehicle, or vessel, must have been repaired as a result of an unforeseen contingency that occurred outside Canada. The conveyance cannot be exported outside Canada for repair as a result of an unforeseen contingency occurring in Canada. For example, if a vehicle is involved in an accident in Windsor, it cannot be repaired in Detroit and re-enter Canada under the provisions of this program.

8. In some cases it will be self-evident that the repair was required as a result of an unforeseen contingency, for example replacing a broken fan belt or a cracked windshield. Additional proof that the repairs were required as a result of an unforeseen contingency includes, but is not limited to, police reports, insurance reports and detailed repair invoices.

9. The emergency repairs must also have been necessary to ensure the safe return of the aircraft, vehicle, or vessel to Canada. Examples of work that is not required to ensure the safe return of a vehicle would be painting, changing the oil, and rotating the tires, where these activities are the only repair done to the vehicle. Where these activities form part of a larger repair, for example, rotating the tires and aligning them when replacing a blown tire, these contingency repairs are acceptable. Replacing trim and other minor cosmetic finishes are also acceptable repairs when performed as part of a larger repair. Tires can be replaced in pairs, regardless of the condition of the second tire.

10. In some cases the emergency repair is required to ensure the safe return of the contents of the aircraft, vehicle, or vessel, not the conveyance itself. For example, if the refrigeration unit on a transport truck carrying produce fails, repairing the refrigeration unit is an acceptable activity under this provision, although the lack of a refrigeration unit in no way renders the vehicle unsafe. If the transport truck were carrying televisions, repairing the refrigeration unit would not be eligible under the program.

## Replacement goods

11. If a conveyance is irreparably damaged and replaced, the replacement aircraft, vehicle or vessel is not eligible under the Canadian goods abroad provisions. Full duty and taxes are owed on the replacement conveyance at the time of importation. Importers should ensure that any insurance claims include the cost of the duties and taxes owed. In addition, there are restrictions on the types of vehicles that can be imported into Canada. Please consult Memorandum D19-12-1 *Importation of Vehicles* for more information.

## Documentation

12. At the time of importation, both non-commercial and commercial importers, or their agent, for example, a truck driver working for a shipping company, must report all emergency and non-emergency repairs to the inspecting border services officer. The officer will stamp the repair invoice as proof of reporting.

13. Non-commercial importers are generally not required to account for conveyances that are imported after being the subject of emergency repairs.

14. The CBSA has in place a program that allows authorized highway carriers to present a summary accounting for repairs, including emergency repairs. For more information, please consult Memorandum D8-4-2, *Reporting and Summary Accounting of Vehicle Repairs by Highway Carriers*.

15. In all other cases, the conveyance should be accounted for on a Form B3-3, *Canada Customs Coding Form*. The value for duty (VFD) appearing in field 37 is the value of

the repair. This is contrary to the valuation provisions in the *Customs Act*, so special authorization code 98-02-0101 must be entered in field 26. Failure to use this code may subject the importer to an Administrative Monetary Penalty (AMP) for failing to value the goods correctly.

16. Special authorization code 98-02-0101 also fully remits the duties owing against this line.

17. Where there is any doubt that the repairs were required as a result of an emergency, the inspecting border services officer will require the importer to account for their conveyance as a regular importation. Non-commercial importers will account for their conveyance on a Form B15, *Casual Goods Accounting Document*, while commercial importers will use a Form B3-3.

18. To obtain a refund of the duties and taxes paid, a non-commercial importer must submit a Form B2G, *CBSA Informal Adjustment Request*, along with a copy of the Form B15 and all the information necessary to support the claim of emergency repairs to a CBSA Casual Refund Centre. The addresses for the centres are found on the reverse of the Form B2G.

19. Commercial importers must submit a Form B2, *Canada Customs - Adjustment Request*, along with the supporting information to the nearest CBSA office.

20. If the importer fails to claim the benefits of the provision at the time of importation, and the full customs duties payable under the *Customs Tariff* are paid at the time of accounting, the importer may claim a refund under the same process as outlined in paragraphs 18 and 19.

#### **Additional information**

21. Any questions regarding this memorandum should be directed to:

Manager  
Trade Incentives and Refunds Unit  
Tariff Policy Division  
Trade Programs Directorate  
Admissibility Branch  
Canada Border Services Agency  
150 Isabella Street, 8th floor  
Ottawa ON K1A 0L8

Telephone: 613-954-6878  
Facsimile: 613-952-3971

**REFERENCES**

<p><b>ISSUING OFFICE –</b>  Trade Incentives and Refunds Unit  Tariff Policy Division  Trade Programs Directorate  Admissibility Branch</p>	<p><b>HEADQUARTERS FILE –</b>  6565-0</p>
<p><b>LEGISLATIVE REFERENCES –</b>  <i>Customs Tariff</i>, sections 80, 101 to 105, <i>Customs Tariff</i>,  heading Nos. 9813 and 9814, <i>Customs Act</i>,  subsection 12(3.1)</p>	<p><b>OTHER REFERENCES –</b>  D8-2-1, D8-2-10, D8-4-2, D10-14-11, D19-12-1</p>
<p><b>SUPERSEDED MEMORANDA “D” –</b>  N/A</p>	

Services provided by the Canada Border Services Agency are available in both official languages.

