



Ottawa, January 15, 2009

MEMORANDUM D8-4-1

In Brief

INFORMATION PERTAINING TO REMISSION ORDERS

This memorandum is revised to include the application process for remission orders.



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INFORMATION PERTAINING TO REMISSION ORDERS

This memorandum outlines and explains the procedures followed by the Canada Border Services Agency (CBSA) in administering remission orders. The governing authorities for granting a remission of customs duties and taxes are section 115 of the *Customs Tariff* and section 23 of the *Financial Administration Act*.

GUIDELINES AND GENERAL INFORMATION

1. All goods imported into Canada are subject to the provisions of the *Customs Act*, *Customs Tariff*, *Excise Act*, *Excise Tax Act*, and the *Special Import Measures Act*, by which customs duties and taxes, including the Goods and Services Tax/Harmonized Sales Tax, are assessed. However, the Governor in Council may remit all or a portion of the customs duties pursuant to either section 115 of the *Customs Tariff* on the recommendation of the Minister of Public Safety and Emergency Preparedness or section 23 of the *Financial Administration Act*, on the recommendation of the Minister of Finance or the Minister of Public Safety and Emergency Preparedness.

Application

2. There are two types of remission orders, one founded on administrative circumstances, the other based on the provisions of the legislation listed in paragraph 1. Applications for remission based on administrative circumstances are submitted to the Director, Tariff Policy Division. A copy of the application is attached as an Appendix. Applications for remission based on legislation are submitted to Department of Finance. For clarification of the information required contact the Manager, Domestic Tariff Affairs Unit, International Trade Policy Division, Finance Canada.

3. Some examples of requests that relate to the administration of the *Customs Tariff* are:

(a) where incorrect information supplied by CBSA officials, or improper action taken by CBSA officials, prevented an importer from receiving a refund of customs duties to which that importer was legally entitled under the provisions of the *Customs Act* or the *Customs Tariff*;

(b) where incorrect information supplied by CBSA officials to an importer concerning tariff classification, rate of duties, method of valuation, tariff treatment etc.

prior to importation caused a subsequent assessment of duties that could not be passed on by the importer to an end-user;

(c) for remedial action where the appeal process took so long to conclude that it prevented the importer from receiving a refund of duties that the importer would have received, had the appeal process not took so long to conclude.

4. The CBSA will not consider any applications for remission where the goods have not already been imported into Canada.

5. Requests related to the administration of the *Customs Tariff* take into consideration the following:

(a) there is no evidence of bad faith on the part of the applicant requesting the remission;

(b) the applicant could not reasonably have been expected to initiate timely actions to avoid or minimize the duties owing;

(c) the applicant requests remission within a reasonable time period to enable the CBSA to properly investigate the matter; and

(d) there is written evidence to substantiate the fact that the CBSA has given incorrect information to the applicant.

Documentation

6. Each remission order passed by the Governor in Council is given a registration number. This number is found on the top right hand corner of the first page of the order and is followed by the date of passage. For example, the *Charitable Goods Remission Order*, bears the number P.C. 1997-2037, dated December 29, 1997.

7. All accounting documents or importation permits relating to goods for which remission is being requested in accordance with an order are to bear the number of the order in council in the special authority field. For example, the number for the above-mentioned *Charitable Goods Remission Order* would be 97-2037. Memorandum D17-1-10, *Coding of Customs Accounting Documents* provides detailed instructions for completing customs documents.

8. Where an order sets out conditions that must be met after the importation of the goods, the importer must be prepared to provide proof of compliance should the importation be subject to verification.

Failure to Comply

9. In accordance with subsection 118(1) of the *Customs Tariff*, an importer is obligated to report the failure to comply with a condition for which the goods have received relief. For example, if the importer realizes that the goods imported using the benefits of a remission order were not in compliance with the conditions of the order or the purpose of the importation has changed (for example, goods imported under the *Commercial Samples Remission Order* are sold), the importer is obligated to report the non-compliance within 90 days of the date of failure to comply, and any amount of duties owing must be paid.

10. Where Form E29B, *Temporary Admission Permit*, was used to document the goods at time of importation, a *Canada Customs Coding Form*, Form B3-3, must be submitted to the appropriate regional customs office and any duties owing paid. Where Form B3-3 was used to account for the goods at time of importation, Form B2, *Canada Customs – Adjustment Request*, should be submitted to the appropriate regional CBSA office and any duties owing paid.

Interest

11. Under subsection 123(2) of the *Customs Tariff*, interest at the specified rate is also owing against any duties owed the CBSA for the period beginning on the day that the goods were no longer in compliance with the terms of a remission order and ending on the day the amount is paid in full. However, under subsection 123(4), no interest will be incurred if the importer pays the amount owing within 90 days of the date of failure to comply.

Administrative Monetary Penalty System (AMPS)

12. Where the importer fails to report the non-compliance or fails to pay the duties owing, an officer may apply AMP penalty C214 or C215. Further information regarding AMPS can be found in Memorandum D22-1-1, *Administrative Monetary Penalty System*.

Additional Information

13. 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
4th floor, 150 Isabella Street
Ottawa ON K1A 0L8

Telephone: 613-954-6878

Facsimile: 613-952-3971

APPENDIX

REQUEST FOR REMISSION OF DUTIES DUE TO ADMINISTRATIVE ERROR

Please provide a description of the circumstances of the importation including a copy of the accounting documentation; *Canada Customs Coding Form*, Form B3-3 or *Temporary Admission Permit*, Form E29B.

A copy of the written direction received from the CBSA

Should we decide to seek the views of interested parties on your request, would there be any objection to revealing your company's name if we should be asked for it?

Please provide any other supportive or corroborative material you have available.

Please submit the information to:

Director, Tariff Policy Division
Canada Border Services Agency
8th Floor, 150 Isabella St.
Ottawa ON
K1A 0L8

REFERENCES

<p>ISSUING OFFICE –</p> <p>Trade Incentives and Refunds Unit Tariff Policy Division Trade Programs Directorate Admissibility Branch</p>	<p>HEADQUARTERS FILE –</p> <p>6564-0</p>
<p>LEGISLATIVE REFERENCES –</p> <p><i>Financial Administration Act</i>, section 23 <i>Customs Tariff</i>, sections 115, 118, and 123 <i>Customs Act</i>, subsection 109(11)</p>	<p>OTHER REFERENCES –</p> <p>D22-1-1</p>
<p>SUPERSEDED MEMORANDA “D” –</p> <p>D8-4-1, August 7, 1998</p>	

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