



Ottawa, February 14, 2008

MEMORANDUM D9-1-17

In Brief

CANADA BORDER SERVICES AGENCY'S DETERMINATION PROCEDURES FOR OBSCENITY AND HATE PROPAGANDA

1. This memorandum has been developed to clearly outline the Canada Border Services Agency's procedures for the determination of obscenity and hate propaganda.
2. This memorandum replaces the publication *Interim Guidelines – Canada Border Services Agency's Policy on the Determination of Obscenity and Hate Propaganda in Centralized Regions*, dated September 29, 2003.



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CANADA BORDER SERVICES AGENCY'S DETERMINATION PROCEDURES FOR OBSCENITY AND HATE PROPAGANDA

This memorandum outlines and explains the roles and responsibilities of Canada Border Services Agency (CBSA) officials in dealing with suspect obscenity and hate propaganda (including sedition and treason).

GUIDELINES AND GENERAL INFORMATION

1. The handling of suspect material and the decision-making process for classifying material as obscenity or hate propaganda under tariff item 9899.00.00 have different repercussions for the CBSA and for importers than do comparable decisions made in respect of other goods that do not involve issues relating to the *Canadian Charter of Rights and Freedoms*.
2. Before goods can be detained as suspect obscenity or hate propaganda, CBSA officials must first determine the presence of the undue exploitation of sex or the targeting of an identifiable group. They must also search the Technical Reference System (TRS) for any previous decisions made in respect of identical goods.
3. All suspect goods requiring a determination must be detained and forwarded to the Prohibited Importations Unit (PIU) at Headquarters in Ottawa, where the determination will be made.
4. A detailed summary of this process is set out in Appendix A.

Targeting

5. Effective targeting is an essential element in the success of the prohibited importations program.
6. By applying appropriate targeting criteria and using a risk management approach prior to the actual detention of goods, CBSA officials will ensure more accurate detentions and, ultimately, a higher rate of prohibition. This will ensure that there is no unnecessary infringement upon the right to freedom of expression guaranteed by the Charter.
7. CBSA officials are reminded that the CBSA does not target importers in relation to potential obscenity or hate propaganda.
8. Material should only be targeted for closer examination when it meets one or more of the following criteria:

- (a) The invoice description of the goods, and/or any other documentation available, describes the importation and gives an indication that the shipment may contain suspect material that has been previously prohibited by the CBSA;
- (b) The exporter is known to deal in obscenity or hate propaganda;
- (c) The geographic origin of the production or publishing company is known in relation to obscenity or hate propaganda;
- (d) There is approved intelligence information relating to the shipment;
- (e) There is other information known about the goods that would lend itself to possible obscenity or hate propaganda.

9. Suspect material takes many forms, including written, visual and audio materials. This commonly includes videocassettes, DVDs, audiocassettes, books and magazines. Laptops and computer hardware are unique material types and must be dealt with differently, as set out below.

Preliminary Examination

10. During the initial examination of suspect goods, CBSA officials must scan for the undue exploitation of sex (obscenity) or the targeting of an identifiable group (hate propaganda). For more detailed information, refer to the current versions of Memoranda D9-1-1, *Canada Border Services Agency's Policy on the Classification of Obscene Material* and D9-1-15, *Canada Border Services Agency's Policy on the Classification of Hate Propaganda, Sedition and Treason* respectively.
11. Following the initial examination, if the goods are found not to contain the undue exploitation of sex or the targeting of an identifiable group, the goods must be released immediately. No Form K27 is required, as the goods have not been detained.
12. When the undue exploitation of sex or the targeting of an identifiable group is suspected during the initial examination of the goods, CBSA officials must proceed with a search of the TRS, looking for an exact match to the suspect item.

Technical Reference System (TRS)

13. The TRS is a part of the Customs Commercial System (CCS) and identifies material that has previously been determined by the PIU. In the case of all suspect material identified as a result of targeting, the TRS should be consulted immediately in order to determine whether the suspect item has been previously reviewed. Appendix B provides a step-by-step guide on accessing the TRS and searching for titles of suspect material.

14. It is important for CBSA officials to ensure that the suspect item (i.e. title, material type, running time, number of pages, etc.) matches the TRS listing exactly.

15. CBSA officials must also always ensure that they are looking at the most recent decision on the TRS, as well as the most exact match, as some titles will appear more than once. In instances where a TRS search results in more than one entry for a given title, the last entry to appear, in respect of that same material type, is the most current and should be consulted first.

TRS Results and Actions

16. When the exact item appears in the TRS as “Prohibited: N”, the item is admissible and must be released to the importer immediately, subject to the payment of any applicable duties and/or taxes. No Form K27 is required, as the goods have not been detained.

17. When the exact item appears in the TRS as “Prohibited: Y”, and the effective date is on or after April 1, 2001, the item is prohibited. (The effective date is located in the top right corner of the “Decision Inquiry” screen of the TRS.) As a result, the top portion and both parts A and B of the Form K27 must be completed in full, quoting the TRS number and providing the reasons for prohibition. The appropriate copy of the Form K27 must be forwarded to the importer and the remaining copies distributed as required.

18. When the exact item appears in the TRS as “Prohibited: Y”, and the effective date is prior to April 1, 2001, the item must be detained for a new determination by the PIU. The top portion and Part A of the Form K27 must be completed in full. The appropriate copy of the Form K27 must be provided to the importer and the item forwarded to the PIU, along with a copy of the Form K27.

19. Goods that have been incorrectly forwarded to the PIU for determination will be immediately returned to the originating port for processing.

20. When the exact item does not appear in the TRS, but remains suspect, a secondary examination is required.

Secondary Examination

21. When the exact item does not appear in the TRS, CBSA officials must examine the goods more closely,

searching for indicators of obscenity or hate propaganda. For detailed information on these indicators, refer to Memoranda D9-1-1 and D9-1-15, respectively.

22. If the suspect item does not contain any indicators, the item must be released to the importer immediately. No Form K27 is required, as the goods have not been detained.

23. If the suspect item is found to contain indicators, the item must be detained for determination by the PIU. The top portion and Part A of the Form K27 must be completed in full. The appropriate copy of the Form K27 must be provided to the importer and the item forwarded to the PIU, along with a copy of the Form K27.

24. When a shipment contains multiple items, some of which have been previously prohibited and others that are suspect, the top portion and both Parts A and B of the Form K27 must be completed. In Part A, all of the titles in the shipment must be listed. In Part B, only the titles that have been previously prohibited, as per the TRS, should be listed in the appropriate area. An asterisk must then be inserted in Part B explaining that the remaining titles have been forwarded to the PIU for determination. In cases where a shipment also contains non-suspect material, the admissible goods must be immediately released to the importer and should not be reflected on the Form K27, as they have not been detained.

Form K27

25. The Form K27, *Notice of Detention/Determination*, is required when suspect goods are detained and/or prohibited, as per the TRS, as obscenity or hate propaganda.

26. CBSA officials must always use the current version of the Form K27. Paper copies of this form are no longer available. The current version is available to all CBSA officials electronically, exclusively through the CBSA’s intranet under “Forms and Templates”. All forms are to be completed legibly and, whenever possible, electronically.

27. In the space labelled “Regional Control No.”, the port is to maintain a log in order to assign a separate running control number to each Form K27. All regional control numbers must be entered in the same manner, listing the calendar year, the unique port number, the term “K27”, and a sequential four-digit number (e.g. 2008-803-K27-0001). Note that the numbering system will begin again at the start of each new calendar year.

28. When goods are detained as suspect obscenity or hate propaganda, both the top portion and Part A of the Form K27 must be completed in full.

29. When goods are prohibited as obscenity or hate propaganda, as per the TRS, the top portion, Part A and Part B of the Form K27 must be completed in full.

30. Care must be taken to ensure that all of the appropriate fields on the Form K27 are completed in full. If a CBSA official is unable to fit all relevant information into the

space provided on the Form K27, an attached list is to be used and referenced on the K27 accordingly.

31. Completed copies of the Form K27 are to be distributed as follows:

- (a) one copy – importer/consignee
- (b) one copy – originating CBSA office
- (c) one copy – Prohibited Importations Unit
- (d) one copy – goods control

Form K27A

32. When a shipment contains more than one prohibited title, the Form K27A, *Continuation Sheet*, is required. Paper copies of this form are no longer available. The current version of this form is available to all CBSA officials electronically, exclusively through the CBSA's intranet under "Forms and Templates". Care must be taken to ensure that all of the relevant fields are completed in full.

33. The Form K27A is to be distributed in the same manner as the Form K27.

Abandoning Goods

34. Importers have the right to abandon suspect goods to the Crown, as forfeit, prior to determination. If an importer wishes to exercise this right, CBSA officials should complete the top portion and Part A of the Form K27 and have the importer authorize the abandonment by signing in the designated area, just below Part A. A copy of the completed Form K27 is to be provided to the importer and the remaining copies distributed accordingly. Abandoned goods may be destroyed immediately or be adequately secured in the interim. Abandoned goods are not to be forwarded to the PIU.

Exporting Goods

35. Importers have the right to export prohibited obscenity and hate propaganda from Canada within 90 days of the date of determination. All exportations must be done under customs control and at the importer's arrangement and expense. Goods held inland, such as those prohibited at international mail centres, may only be exported by a licensed customs bonded carrier. All exportations of prohibited goods must be fully documented on a Form E15, *Certificate of Destruction/Exportation*.

Forwarding Goods

36. Only suspect goods that have been properly detained on a Form K27 may be forwarded to the PIU for determination. All non-suspect goods must be immediately released to the importer.

37. Goods that have been incorrectly forwarded to the PIU for determination will be returned to the originating port for processing.

38. The suspect material must be forwarded to the PIU immediately in order to ensure that a determination is made within 30 days of the date of detention. As this timeframe is court-directed, the CBSA must make every effort to ensure that this deadline is met.

39. As suspect goods are controlled, they must be sent to the PIU using only a reputable overnight courier service. This will ensure that the goods arrive promptly and can be traced throughout the shipping process. Regular mail or internal mail are not acceptable shipping methods.

40. Goods, and the required Form K27, should be securely packaged and couriered to the following address:

Prohibited Importations Unit
Canada Border Services Agency
150 Isabella Street, 5th floor
Ottawa ON K1S 1V7

41. When a shipment contains multiple copies of the same item, only one copy of each title should be sent to the PIU for determination. The remaining copies must be held securely at the port until further notice.

42. Once suspect goods have been properly detained on a Form K27 and are forwarded to Ottawa for a determination, CBSA officials should immediately notify the PIU. An e-mail message should be sent to piu-uip@cbsa-asfc.gc.ca advising the PIU of the specifics of the goods that have been detained and providing the shipping details. When an electronic version of the Form K27 has been prepared for the detention, a copy should be attached to the e-mail message. When required, advisals may also be conveyed by fax, at 613-957-4653.

43. If confirmation of the receipt of goods has not been received from the PIU within five working days of the goods having been sent, the port must follow up by contacting the PIU.

44. Copies of the forms K27 and K27A, as well as the related shipping paperwork, must be retained at the port for reference.

Laptops and Computer Hardware

45. Laptops and computer hardware are unique material types and therefore must be dealt with differently. If a laptop or computer hardware device has been targeted as suspect, and is subsequently accessed and is found to contain obscenity or hate propaganda, the laptop or device should be detained, including any necessary power cords or batteries as well as any peripherals (mouse, external hard drive, etc.). If any passwords are required to access the files held on the laptop or device, CBSA officials must ensure that these passwords are properly noted and forwarded to the PIU.

46. When detaining laptops or computer hardware, the top portion and Part A of the Form K27 must be completed in full and the appropriate copy of the completed form provided to the importer. At this point, CBSA officials should contact the PIU at 613-954-7049 for specific information on how to proceed. Laptops and computer hardware should **not** be packaged and forwarded to Ottawa without first having consulted with the PIU.

Prohibited Importations Unit (PIU)

47. All new determinations of obscenity and hate propaganda will be made by the PIU at Headquarters.

48. When a detained item that has been sent to the PIU for a determination is found to be admissible, the item will be returned to the port of entry for immediate release to the importer, subject to the payment of any applicable duties and/or taxes. Both the port of entry and the importer will be provided with written notice of the determination by way of the Form K27.

49. When a detained item is determined to be inadmissible and, as a result, is prohibited, the item will be retained by the PIU. Both the port of entry and the importer will be provided with written notice of the determination, by way of the Form K27. A list of options will also be provided to the importer.

Destruction of Goods

50. The port must ensure that adequate control is maintained over prohibited and abandoned goods until their final disposition.

51. In the case of goods abandoned to the Crown, the destruction may take place immediately, provided that the importer has signed the designated area of the Form K27.

52. In the case of prohibited goods, destruction is not to take place until at least 120 days after the date of determination (30 days after the statutory appeal period of 90 days).

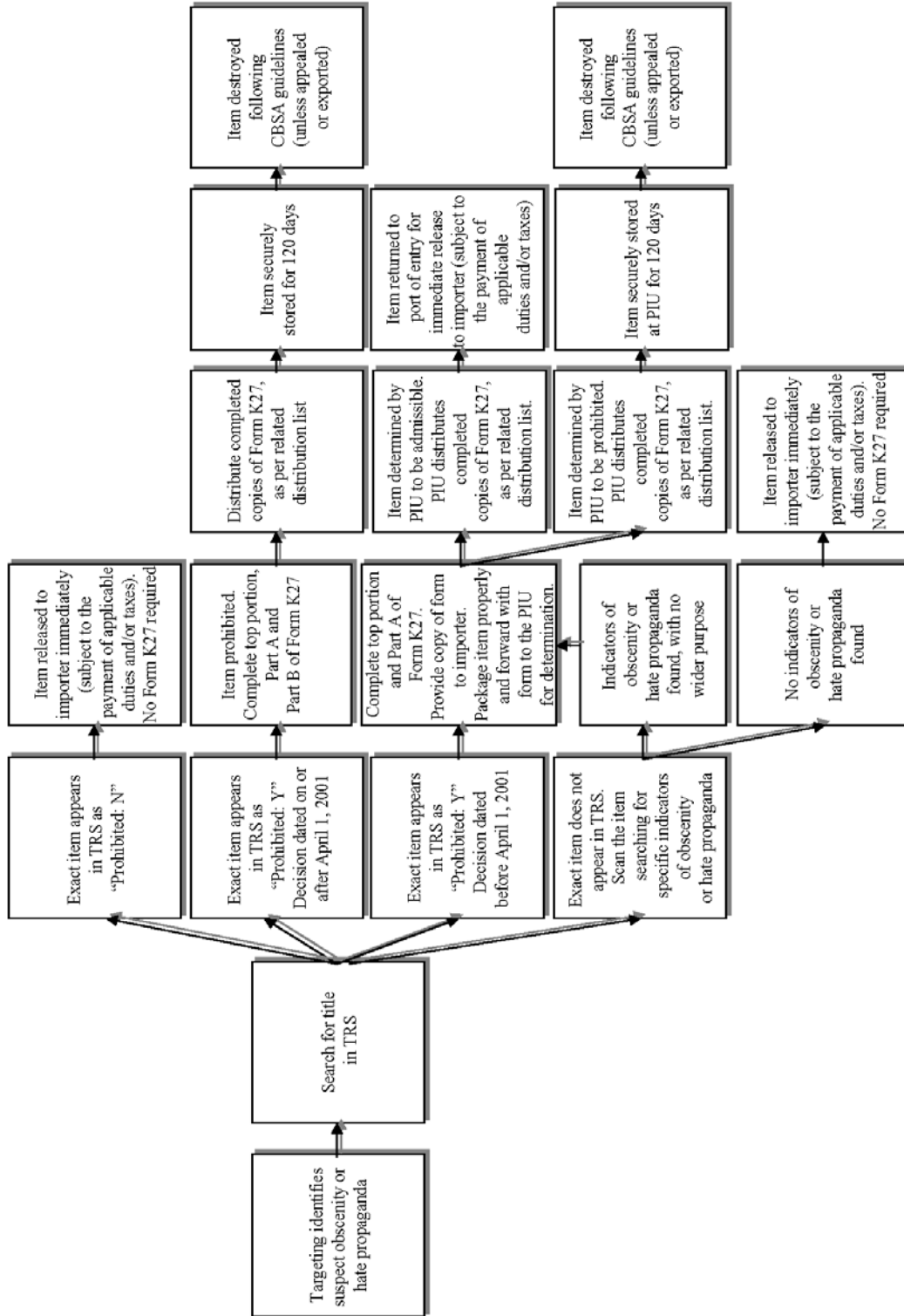
53. Prohibited goods must be destroyed. They cannot be recycled or resold and they must be destroyed in a secure environment.

54. The following methods are recommended for destruction:

- (a) Running a magnet over audio or video cassettes and subsequently verifying that the recording has been fully erased from the medium;
- (b) Shredding or pulverizing the material into unidentifiable matter;
- (c) Incineration;
- (d) Other means, as directed by the PIU.

APPENDIX A

Process for Dealing With Suspect Obscenity and Hate Propaganda



APPENDIX B

TRS Title Search

1. After logging onto CCS, type **TRS** in the Trans prompt line and press **Enter**.

2. From the *TECHNICAL REFERENCE MENU* screen, type **RTRV** in the Trans prompt line and press **ENTER**.

*If the screen freezes up during any stage of the search, (a little stickman will appear at the bottom left of the screen), press the **SCROLL LOCK** key to unlock the screen and proceed.

```
TRFMENU0 10 TECHNICAL REFERENCE - TECHNICAL REFERENCE MENU
05/04/01
      Trans      Description
      CINQ      Case Inquiry
      DEC       Decision Type Menu
      DECQ      Decision Inquiry
      DEST      Decision Status History
      INV       Inventory Type Menu
      PLCY      Policy Type Menu
      RTRV      Retrievals
      SIMA      Special Import Measures Menu
      STS       Status Menu
      CCS       CCS System Menu
      EXIT      Exit Application
      HELP      Display Valid Responses
```

Trans: **RTRV**

3. From the *DECISION RETRIEVAL TYPE MENU* screen, type **PROH** in the Trans prompt line and press **ENTER**.

* To return to this screen at any time, press the **PAUSE/BREAK** key.

```
TRFRTMN0 10 TECHNICAL REFERENCE - DECISION RETRIEVAL TYPE MENU
05/04/01
      Trans      Description
      FTA       Origin Decisions
      GEN       General Decisions
      INST      Inst/End-Use Decisions
      MARK      Marking Decisions
      OIC       OIC Decisions
      PROH      Prohibited 9956 Decisions
      VALU      Valuation Decisions
      CCS       CCS System Menu
      EXIT      Exit Application
      HELP      Display Valid Responses
      RETURN    Return To Previous Menu
      TRS       Technical Reference Menu
```

Trans: **PROH**

4. From the *PROHIBITED 9956 RETRIEVALS* screen, type the title into the space provided and press **ENTER**.

```
TRFSPRC0 TECHNICAL REFERENCE - PROHIBITED 9956 RETRIEVALS
```

```
Title : VISTA VALLEY P.T.A.
Language: E
```

```
Author :
```

```
SI          Issue          Material Type/Title
```

```
Trans:
DC945025 ENTER RETRIEVAL CRITERIA
```

5. Place an **X** next to the most precise title match and press **ENTER**.

* To advance to the next page and view more titles, use the **F5** key. To view the previous page of titles, use the **F4** key. To return to the previous screen, use the **F2** key.

TRFGKWHO	TECHNICAL REFERENCE - KEYWORD REVIEW	NEXT
Keyword: VISTA VALLEY P.T.A.		
Origin agreement:		
SI	VISION OF LOVE	
	VISIONS OF FANTASY ALL-MALE CLASSICS SERIES, DIRECT MALE	
	VISIONS OF VICE (4 PAGES OF PHOTOS)	
	VISIONS...., ILLUMINISTIC CONSPIRACIES AND END-TIME PROPH	
X	VISTA VALLEY P.T.A.	
	VISTAPRO USER MANUAL	
	VISUAL COLLECTION	
	VIT AGRESSION / DOD AT ZOG	
	VIVE A VERDADE, REVOLUCAO DA VERDADE, LISBOA	
	VIVID RAW	
Trans:		

6. Place an **X** next to the most exact match by title / volume / issue / material type and press **ENTER**.

*When there is more than one entry for any given title, ensure that the material type is an exact match to the suspect item.

* To advance to the next page and view more titles, use the **F5** key. To view the previous page of titles, use the **F4** key. To return to the previous screen, use the **F2** key.

TRFSPRC0	TECHNICAL REFERENCE - PROHIBITED 9956 RETRIEVALS	
Title :	VISTA VALLEY P.T.A.	
Language:	E	
Author :		
SI	Issue	Material Type/Title
		VIDEO CASSETTES
		VIDEO CASSETTES
		CD ROM
X	DVD	DVD
Trans:		

7. The decision screens contain three pages of input. Each screen must be reviewed.

From the first screen, note the "TRS No", the "Effect Date" and the prohibition decision:

"Prohibited: N" = admissible
 "Prohibited: Y" = prohibited

TRFPDEI0	TECHNICAL REFERENCE - PROHIBITED 9956 DECISION INQUIRY				
Case No :	F0254022	Type	Decsn Status: 850	Officer ID :	BXC227
TRS No :	200149	F		Effect Date:	04/05/17
New TRS No :				Expiry Date:	99/99/99
Repl TRS No:				Class No :
Adj/Appl No:		Decsn Level :	REQ	Rev Officer:	BXC227
File No :	4547-5-13	RP			
Correspondent:	JOHN DOE				
Material Type:	DVD	Film Type :			
Title :	VISTA VALLEY P.T.A.				
Issue :					
Author :					
Prohibited :	Y	Category :	OBSC		
Trans:					

8. The second screen provides applicable reason codes.

* To return to the previous screen, use the **F2** key.

TRFPDEI2 TECHNICAL REFERENCE - PROHIBITED 9956 REASONS INQUIRY

Case No : F0254022 TRS No : 200149 Decsn Status: 850
 Title : VISTA VALLEY P.T.A.
 Pages:
 Reason No Reason
 16 SEXUAL ASSAULT (INCLUDING COERCION,
 EXPLOITATION, DOMINATION WITHOUT CONSENT)
 23 INCEST
 24 BESTIALITY
 29 SEX WITH PAIN

Trans:

9. The third and final decision screen may include additional information, such as the name of the producer / director, the total running time as noted on the case, the number of pages, an ISBN number, elaboration on the reasons for the determination and sometimes a brief summary of the material's content.

* To return to the previous screen, use the **F2** key.

TRFTGLI0 TECHNICAL REFERENCE - PROHIBITED REMARKS

TRS No : 200149
 Case Number : F0254022

Text:

THIS DVD IS "LIVE ACTION" AND IS RECORDED IN ENGLISH. PREVIOUSLY REVIEWED AUGUST 16/01 AND WAS DETERMINED TO BE PROHIBITED (F229223 / TRS#179650). NEW DECISION ENTERED WITH UPDATED REASON CODES. IN ADDITION TO THE FEATURE, THERE IS A SLIDESHOW OF THE FEATURE AND THE FLIP SIDE OF THE DISK HAS PREVIEW TRAILERS WITH DEPICTIONS OF BESTIALITY AND SEX WITH PAIN. THIS DVD HAS DEPICTIONS OF INCEST AND DEPICTIONS AND DESCRIPTIONS OF SEXUAL ASSAULT. DIRECTOR IS ANTHONY SPINNELLI AND IT IS PRODUCED BY SKYLARK PRODUCTIONS / NUTECH DIGITAL, INC. IT RUNS FOR 1:24:52 HOURS AND IS PART OF THE "CLASSICS COLLECTION". COPYRIGHT YEAR IS 1980 CAL VISTA INTERNATIONAL / 2000 NUTECH DIGITAL.

Trans:
 DC946540 PRESS <ENTER> TO CONTINUE

REFERENCES

<p>ISSUING OFFICE – Prohibited Importations Unit Border and Compliance Programs Directorate Admissibility Branch</p>	<p>HEADQUARTERS FILE – 5905-7-4</p>
<p>LEGISLATIVE REFERENCES – <i>Customs Tariff</i>, tariff item 9899.00.00 of the Schedule</p>	<p>OTHER REFERENCES – D9-1-1 and D9-1-15</p>
<p>SUPERSEDED MEMORANDA “D” – N/A</p>	

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

