

MEMORANDUM D7-4-1

Ottawa, January 31, 1996

SUBJECT

DUTY DEFERRAL PROGRAM

This memorandum outlines and explains the conditions and circumstances under which relief or deferral of duties at the time of importation can be obtained.

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GUIDELINES AND GENERAL INFORMATION

1. The Duty Deferral Program is designed to allow, in certain circumstances, importers, producers, and exporters to either relieve or defer the payment of import duties on imported goods.
2. The Program consists of two separate options for participants, each with particular advantages or purposes. These options are the:
 - Duties Relief Program; or
 - Bonded Warehouse Program.
3. The Duties Relief Program relieves the payment of duties on imported goods that will eventually be re-exported either in the same condition or after being used, consumed, or expended in the processing of other goods. This allows “manufacturing-in-bond” for the export market.
4. The Bonded Warehouse Program defers the payment of all duties on goods prior to their formal entry into domestic consumption.
5. While both options have different purposes and operate under different principles, they do allow for imported goods to move between the programs.
6. The following sections explain the Duties Relief Program and the Bonded Warehouse Program in more detail.

DUTIES RELIEF PROGRAM

7. This program is for businesses who:
 - (a) import goods into Canada; or
 - (b) receive goods that were imported into Canada; and
 - (c) export those goods from Canada;
 and want to relieve the payment of duties at the time of importation.
8. Imported goods, intended for export from Canada which are for:
 - (a) further processing;
 - (b) display or demonstration in Canada;
 - (c) development or production in Canada of goods for subsequent export; or

- (d) export without having been used in Canada for any purpose other than indicated in subparagraphs (a), (b), or (c);

may qualify for relief at the time of importation. In most cases, this means there is no payment of customs duties, anti-dumping and countervailing duties, or excise taxes, other than the Goods and Services Tax (GST), at the time of importation, as long as the goods are intended for ultimate export. Excise taxes are not relieved on designated goods. The amount of relief becomes payable once the goods no longer qualify for this program, i.e., are no longer intended for exportation.

GST Relief

9. Although the GST is not relieved under the Duties Relief Program, it is available through the Exporter of Processing Services (EOPS) program. The EOPS program relieves the GST at the time of importation when goods are imported to undergo a processing service and to be re-exported. The goods must be exported within four years. To qualify for EOPS, the importer cannot own a property interest in the goods and cannot be closely related to the non-resident on who's behalf the work is done. If you believe that you qualify, please contact your nearest Trade Administration Services (TAS) office.

Who May Apply

10. Participation in the Duties Relief Program requires the completion of an application. A sample application can be found in Appendix B. When completed, the application has to be submitted to the closest TAS office of Revenue Canada. The information contained in the application is treated confidentially by the Department and is required for the approval process.

11. The Department will review the application and schedule a visit to your premises to ensure there are adequate records and mechanisms in place to control the goods while they are in Canada.

12. It should be noted that anyone who has debts due or payable to the Government will not be authorized to participate under this program.

Program User Procedures

13. Once authorized by the Department, a unique certificate number will be issued. When importing goods under this program, the certificate number has to be placed in field No. 26, "Special Authority" of Form B 3, *Canada Customs Coding Form*. This number will also identify you as an eligible participant if you purchase goods domestically from another participant.

14. When you quote your certificate number, you are responsible for controlling and monitoring of the goods until you:

- (a) transfer the goods to another program participant;
- (b) export the goods from Canada;
- (c) pay the amount relieved when the goods are no longer for export;
- (d) reclassify the goods to an eligible duty-free status; or
- (e) transfer the goods to another relief program.

15. The goods must be exported from Canada within four years of the date of release of the goods. In the case of imported spirits used to manufacture distilled spirits, the goods must be exported within five years.

16. A claim for drawback must be filed for any inventory that was duty-paid before you received your authorization. Please refer to Memorandum D7-4-2, *Duty Drawback Program*, for further details. When duties are paid on goods after the date of issuance of your certificate, they can be refunded under the program by submitting Form K 32, *Drawback Claim*, to the approving TAS office.

Records

17. On your application for Duties Relief, you are required to identify the type of records you maintain. As a program participant, you must be able to track all receipts, activities, and movement of goods that you have included under the program. These records must be sufficient to enable us to conduct an audit. It is not necessary to send monthly status reports to the Department.

18. Periodic audits will be conducted at your premises to monitor your compliance. We will notify you in advance of the visit and may ask for an activity summary since the last audit period.

19. Failure to keep adequate records may result in the application of a monetary penalty and possible removal from the program.

Certificates and Waivers

20. When goods imported under the Duties Relief Program are sold or transferred to another program participant, the liability for the payment of any duty owing transfers to the participant who receives the goods. Transferring the duty liability is documented by means of either Form K 32A, *Certificate of Importation, Sale or Transfer*, or other commercial documentation.

21. Commercial documentation is acceptable as a means of indicating the duty liability, as long as it clearly shows the amount of duty relieved and contains an acknowledgment by the receiving party accepting the liability. It should also contain the date of release, transaction number, quantity, and a complete description of the goods. You can find a sample acknowledgment in Appendix C.

Deemed Exportation

22. Subsection 80(3) of the *Customs Tariff* contains a list of when goods are deemed to be exported. This means the goods may not have physically left Canada, but they are intended for export. Some examples are goods placed in a bonded warehouse for export or supplied to a duty-free shop.

23. Where goods are delivered to a bonded warehouse or duty-free shop for exportation, the documentation you must retain for your records must include a copy of Form B 3, *Canada Customs Coding Form* or Form B 116, *Canada Customs Duty Free Shop Accounting Document*.

Consumable and Expendable Goods

24. Goods, other than fuel or plant equipment, that are consumed or expended in the direct manufacture of goods that are intended for export from Canada are eligible for Duties Relief.

25. Consumables are goods that virtually disappear in the manufacturing process and do not form part of the finished product.

26. Expendables are goods that, after use, retain some physical characteristics but have become useless or devitalized and do not form part of the finished product.

Equivalence

27. Equivalence is a term used in Duties Relief where both imported and domestic goods of the same class are used interchangeably in the manufacture of end products, some of which are exported. The imported goods must be in sufficient quantities to produce the goods exported and be used in production prior to the domestic goods. The imported goods must be used in the plant producing the exported products. The finished product (using domestic goods) must be exported within two years of the imported goods' release date.

28. Equivalents can only be applied to goods that are further manufactured, including consumable or expendable goods.

29. In order to consider domestic and imported textile fabrics composed of different fibres equivalent for duties relief purposes, the fabrics must be made from fibres that fall within the same class, as listed in the regulations. Where the fabrics are composed of fibres of different classes, they will only be considered equivalent if they meet the weight requirements of the regulations. Production of the textile goods using the imported and domestic fabrics may take place at different plants.

30. The following are examples of the application of subsection 10(2) of the Regulations.

Eligible Equivalent Blends or Mixtures

Polyester/Cotton 65/35 and 50/50

Polyester/Cotton 80/20 and 50/50

Wool/Viscose 70/30 and 40/60

Nylon/Cotton 15/85 and 40/60

Nylon 100 per cent and Nylon/Acetate 96/4

Ineligible Equivalent Blends or Mixtures

Polyester/Cotton 45/55 and 80/20

Nylon/Cotton 50/50 and 15/85

Scrap or Waste

31. Scrap or waste resulting from a processing operation is also eligible for relief under this program when the processed goods are exported. However, if the scrap or waste is dutiable if imported and has a merchantable value, it is not entitled to the relief, unless the scrap is exported. In this case, the duties applicable to the scrap must be paid. The rate of duty to use is that which applies to similar scrap, if it was being imported.

Non-qualifying Use

32. When the imported goods no longer qualify for Duties Relief, you must submit Form B 2, *Canada Customs – Adjustment Request*, and voluntarily pay the duties owing. Examples of non-qualifying use include, but is not limited to:

(a) a sale in Canada to a person who is not a participant; and

(b) goods that are no longer for export.

33. Payments made for failing to comply must be received by the Department within 90 days from the date the goods no longer qualified.

34. If the imported goods qualify for a refund, drawback or some other form of relief or remission, no duties are owing. However, the goods must be reported to TAS specifying how they qualify for the relief, remission, refund or drawback.

Sanctions

35. Failure to maintain the records required to participate in this program by the *Importers Records Regulations* will result in the following monetary sanctions being applied:

- (a) 1st occurrence \$1,000;
- (b) 2nd occurrence \$2,500; and
- (c) 3rd occurrence \$5,000.

36. In addition to the fine for inadequate records, if you fail to report non-compliance (goods that no longer qualify for the program), within the legislated time limits, the Department's sanction policy will be applied as follows:

- (a) For each instance of non-compliance that is not paid on time, a penalty will be applied of 5% of the duties payable plus 1% of the duties payable for every full month until the amount is paid, not to exceed 12 months.
- (b) Should there be further instances of non-compliance that are not paid on time in the next three years, the penalty will be 10% of the duties payable plus 2% of the duties payable for every full month until the amount is paid, not to exceed 20 months.

BONDED WAREHOUSE PROGRAM

37. Customs Bonded Warehouses are departmentally licensed and regulated facilities operated by the private sector. Goods in a bonded warehouse are considered to be imported into Canada but have not been released from customs. Imported and domestic goods destined for export may be placed in a bonded warehouse.

38. These facilities provide for the complete deferral of customs duties, anti-dumping and countervailing duties, excise duties and taxes including the GST. This deferral continues up to the point the goods are released for Canadian domestic consumption or exported.

39. This program will be of benefit to persons who:

- (a) import goods into Canada and wish to defer, for up to four years, the payment of duties until the goods are released for Canadian consumption;
- (b) consolidate imported and domestic goods for export;
- (c) perform the operations listed in paragraph 40, and
- (d) import goods temporarily for display at conventions, exhibitions or trade shows.

Alteration of Goods

40. The *Customs Bonded Warehouse Regulations* will allow an expanded range of activities to be carried on in a bonded warehouse. However, certain conditions apply. The goods in a bonded warehouse shall not be manipulated, altered or combined with other goods except for the purpose of or in the course of:

- (a) disassembling or reassembling goods that have been assembled or disassembled for packing, handling or transportation;
- (b) displaying;
- (c) inspecting;
- (d) marking, labelling, tagging, or ticketing;
- (e) packing, unpacking, packaging or repackaging;
- (f) removing from the warehouse, for the sole purpose of soliciting orders for goods or services, a small quantity of material, or a portion, a piece or an individual object, that represents the goods;

(g) storing, or

(h) testing.

41. In addition, the following activities that do not materially alter the characteristics of the goods may be carried on in a bonded warehouse. These are:

(a) cleaning,

(b) complying with any applicable law of Canada or of a province,

(c) diluting,

(d) normal maintenance and servicing,

(e) preserving,

(f) separating defective goods from prime quality goods,

(g) sorting or grading, and

(h) trimming, filing, slitting or cutting.

Who May Apply

42. Residents and non-residents can apply to operate a bonded warehouse. There are no citizenship restrictions placed on the operator of the warehouse.

43. Any operator of a bonded warehouse who would like to perform the operations listed in paragraph 40 may submit an application to amend their licence.

Application

44. The prospective operator must present a fully completed Form E 401, *Application for Licence to Operate a Customs Bonded Warehouse* to the customs office closest to the warehouse location. You can find a sample of the application in Appendix E and in Memorandum D4-1-2, *Customs Bonded Warehouses Regulations*. Applications and further information are also available at your local customs office.

45. When received, officers from the local customs office will review the application and request any additional information.

46. A visit to your premises will be scheduled to review the proposed site and record-keeping system to ensure that the goods are secure and readily identifiable through your records.

Licence

47. When the proposed operator has met the requirements of the program, a Customs Bonded Warehouse licence with a unique licence number will be issued. The licence number will be identified in field No. 44 of Form B 3, *Canada Customs Coding Document*, warehouse types.

Records

48. Your record-keeping system must be able to track the movement of all goods under Revenue Canada's control in the bonded warehouse including:

(a) the movement into the warehouse;

(b) the movement while in warehouse;

(c) transfers to and from other licenced warehouses;

(d) records of manipulation, unpacking, packing, alteration or combination with other goods in warehouse; and

(e) all ex-warehouse movements.

49. Revenue Canada will make every effort to utilize your current record-keeping system to eliminate unnecessary duplication of records.

50. Periodic verifications will be conducted to monitor your compliance. This verification will be based on risk analysis and will be conducted a minimum of once per year.

51. Failure to keep adequate records will result in the application of a monetary penalty and in the case of continued non-compliance, possible suspension and/or cancellation of your licence.

Site Plan

52. Greater flexibility has been provided in the identification of the bonded area to provide for the storage of domestic and in-bond goods. The goods must be readily identifiable through your record-keeping system and be situated in the area designated on your approved site plan.

Security

53. The requirement for security to be posted with the Department will be based on risk analysis factors such as type of goods, operators' financial and compliance profile.

54. If it is identified during the application process that security will be required, the amount of security will be the maximum amount of duties and taxes that would be payable at any time in the year following the issuance of the licence.

Fee

55. The bonded warehouse program is a cost recovery program. A licensing fee is payable annually which covers all costs associated with licensing the warehouse, including audit and verifications. As such, no special service charges will be assessed for service provided during regular business hours as outlined in Memorandum D1-1-1, *List of Customs Offices*.

Time Limits – Short-term

56. A new category of time limits has been added for short-term (90 days) bonded warehouse licenses for goods for display at conventions and exhibitions and for marking purposes. This is available for the one-time event organizer and for the importer who has imported goods that are not marked according to the *Marking of Imported Goods Regulations*.

57. There are also provisions under the *Customs Act* for extensions of this time limit if it is deemed necessary.

Time Limits – Long-term

58. In general, the goods must be removed from the warehouse within four years of the date they were entered into the warehouse. Other goods, such as intoxicating liquor and tobacco products, have a five-year time limit.

59. There are provisions under the *Customs Act* for extensions of these time limits if it is deemed necessary.

Permits

60. All permits or certificates are required to be presented when the goods enter the warehouse.

61. Prohibited goods or restricted goods without permits **are not** permitted in a bonded warehouse.

Display Goods

62. The program provides for the importation of goods for display, inspection, and exhibition that have been reported and documented to enter the facility, other than prohibited or restricted goods. These goods include products on display and those that form part of the display such as stands, tables, backdrops, decorations, display booths, tents, and other housings or coverings.

Deemed Exportation

63. Imported goods that have been duty paid or imported under the Duties Relief Program may be entered into a bonded warehouse. Upon entry, the goods are considered to be exported and eligible for drawback.

Sanctions

64. Bonded Warehouse Sanctions are outlined in Memorandum D4-1-2.

NAFTA

65. If you are a processor and export goods to the United States or Mexico, you should be aware that the NAFTA may have an effect on the amount of customs duties you may relieve or defer. The provisions of Article 303 of NAFTA, "Restriction on Drawback and Duty Deferral Programs" apply to processed goods exported to the United States on or after January 1, 1996, and processed goods exported to Mexico on or after January 1, 2001.

66. NAFTA defines the programs effected to include such measures as those governing foreign-trade zones, temporary importations under bond, bonded warehouses, "*maquiladoras*" and inward processing programs.

67. In general, NAFTA affects goods imported from non-NAFTA countries that are used in the production of another product that is subsequently exported to a NAFTA country. The following are exceptions:

(a) Goods exported in the same condition as imported are not affected by NAFTA. As well, these goods may undergo certain minor processing operations in Canada and still be considered to be in the same condition;

(b) NAFTA originating imports (whether used in the production of another exported good or not) are not affected by NAFTA;

(c) NAFTA also does not affect certain specifically named products.

Full deferral of customs duties may apply in these instances.

68. If you are currently authorized for Duties Relief, or if you are about to make an application, you may still relieve or defer customs duties on imported goods even if they are exported to a NAFTA country. For products processed in Canada using non-NAFTA originating goods, relief or deferral of customs duties will be allowed in an amount equal to the lesser of the amount of customs duties relieved or deferred on the goods imported into Canada and the amount of customs duties paid on the end products when entered into the United States or Mexico (converted to Canadian funds). This simply means that you may relieve or defer duties in an amount that is the lesser of these two amounts. This is commonly referred to as the "lesser of" concept.

69. In order to compare the two amounts, you will need evidence of the amount of customs duties paid on your exports when entering a NAFTA country. You must obtain proof of such payment, calculate the amount of customs duties you may relieve or defer, and pay any customs duties due under the lesser of concept. Proof and payment must be reported and submitted to Revenue Canada within 60 days of the goods' date of export from Canada. A copy of a US customs entry is an example of acceptable proof.

70. NAFTA also limits relief or deferral of anti-dumping and countervailing duties (*Special Import Measures Act* [SIMA]). Relief or deferral of SIMA duties is not permitted on goods that are subject to Article 303 of NAFTA. The lesser of concept does not apply and all SIMA duties relieved or deferred must be repaid within 60 days of export. However goods that are not restricted by NAFTA are allowed full relief or deferral of SIMA duties.

71. NAFTA does not affect relief or deferral of customs duties on products exported to non-NAFTA countries. The lesser of formula does not apply to such exports.

72. Additional information concerning the application of Article 303 of NAFTA may be found in Memorandum D7-4-3. *NAFTA Requirements for Drawback and Duty Deferral*.

APPENDIX A

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Minister of National Revenue, pursuant to subsection 80(3), paragraphs 83.02(1)(a)* and 83.05(a)** and section 95*** of the *Customs Tariff*****, is pleased hereby to repeal the Duties Relief Regulations, made by Order in Council P.C. 1987-1570 of July 30, 1987***** Part II, p. 3273>, and to make the annexed Regulations respecting relief from the payment of duties, in substitution therefor, effective on the day on which section 55 of An Act to amend the *Customs Act* and the *Customs Tariff* and to make related and consequential amendments to other Acts, being chapter 41 of the Statutes of Canada, 1995, comes into force.

REGULATIONS RESPECTING RELIEF FROM THE PAYMENT OF DUTIES

Short Title

1. These Regulations may be cited as the *Duties Relief Regulations*.

Interpretation

2. In these Regulations,
“Act” means the *Customs Tariff*; (*Loi*)
“textile fabric” means textile fibre, glass fibre, textile fabric, glass fabric or other textile product that is of a stage between textile fibre and fabric that is composed exclusively of fibres that fall within a class set out in Schedule II. (*tissus textiles*)

Classes of Persons who may Apply for Relief

3. An application for relief described in subsection 80(1) of the Act may be made by any person who is the importer or exporter of the imported or exported goods, or is the processor, owner or producer of those goods between the time of their direct shipment to Canada and their export or deemed export.

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- * S.C. 1995, c. 41, s. 47
 - ** S.C. 1995, c. 41, s. 48(1)
 - *** S.C. 1995, c. 41, s. 49
 - **** S.C. 1995, c. 41, s. 55
 - ***** R.S., c. 41 (3rd Supp.)
 - ***** SOR/87-475, 1987 *Canada Gazette* Part II, p. 3273

No Relief to be Granted

4. Relief under subsection 80(1) of the Act may not be granted in respect of the imported goods described in that subsection where the exported goods described in that subsection are damaged before being exported.

5. For the purposes of paragraphs 80(1)(c) and (e) of the Act, relief may not be granted in respect of the goods described in Schedule I.

6. For the purposes of paragraphs 80(1)(d) and (e) of the Act, relief may not be granted in respect of the following goods:

(a) spirits that are imported for use in the processing in Canada of distilled spirits or that are directly consumed or expended in the processing in Canada of distilled spirits;

(b) goods that are imported for processing in Canada or are directly consumed or expended in the processing in Canada of other goods, where they are processed or directly consumed or expended after the same quantity of domestic or imported goods of the same class is processed or directly consumed or expended; and

(c) imported goods, other than textile fabric, where the imported goods are processed or directly consumed or expended in a plant in Canada other than the plant in which the same quantity of domestic or imported goods of the same class is processed or directly consumed or expended.

Time Limits for Exportation

7. (1) Subject to subsection (2), the following goods must be exported within four years after the date on which the imported goods were released:

(a) goods described in paragraph 80(1)(a) or (b) of the Act on which duties are relieved; and

(b) goods, in the processing of which in Canada, goods described in paragraph 80(1)(c) of the Act on which duties are relieved are directly consumed or expended.

(2) Imported spirits described in paragraph 80(1)(b) of the Act on which duties are relieved must be exported within five years after the date on which they were released.

(3) For the purposes of paragraphs 80(1)(d) and (e) of the Act, the exported goods must be exported within two years after the date on which the imported goods on which duties are relieved were released.

Portion of Duties that may be Relieved

8. Where the amount of duties otherwise payable in respect of imported textile fabric that is considered under section 10 to be of the same class as domestic textile fabric exceeds the amount of duties that would have been payable had the domestic textile fabric been imported, the portion of the duties so payable that may be relieved is the proportion that the amount that would have been so payable is of the amount that was payable.

Same Condition Processes

9. For the purposes of paragraph 80(1)(a) of the Act, goods are considered to be in the same condition in which they were imported after they

(a) undergo any of the processes described in Article 303(6)(b) of NAFTA or any of the operations described in paragraph 8 of Article X of Section F of the *Uniform Regulations for the Interpretation, Application, and Administration of Chapters Three (National Treatment and Market Access for Goods) and Five (Customs Procedures) of the North American Free Trade Agreement*, if those processes or operations do not materially alter the characteristics of the goods;

(b) are used for

(i) display or demonstration, or

(ii) the development or production, other than as plant equipment, of goods to be exported; or

(c) in the case of reusable containers, are used in the international transportation of goods.

Goods of the Same Class

10. (1) Subject to subsection (2), for the purposes of paragraphs 80(1)(d) and (e) of the Act, domestic or imported goods shall be considered to be of the same class if the goods are so similar that they may be

(a) used interchangeably in the processing of goods in Canada; or

(b) directly consumed or expended interchangeably in the processing in Canada of goods.

(2) For the purposes of paragraphs 80(1)(d) and (e) of the Act, domestic and imported textile fabrics composed of different fibres shall be considered to be of the same class if the domestic and imported textile fabrics are composed of

(a) fibres that fall within one class set out in Schedule II; or

(b) fibres that do not fall within one class set out in Schedule II, if

(i) any particular class set out in that Schedule within which fall fibres of which the domestic textile fabric is composed

(A) is a class within which fall fibres of which the imported textile fabric is composed, or

(B) represents less than five per cent of the weight of the domestic textile fabric, and

(ii) the difference between the following proportions does not exceed 33 percentage points:

(A) the proportion, expressed as a percentage, that the aggregate weight of the fibres of which the domestic textile fabric is composed that fall within the particular class is of the weight of the domestic textile fabric, and

(B) the proportion, expressed as a percentage, that the aggregate weight of the fibres of which the imported textile fabric is composed that fall within that particular class is of the weight of the imported textile fabric.

Prescribed Classes of Ships, Aircraft and Telegraph Cable Ships

11. For the purposes of paragraph 80(3)(b) of the Act, the ships and aircraft described in Schedule III are prescribed as classes of ships and aircraft.

12. For the purposes of paragraph 80(3)(c) of the Act, the prescribed class of telegraph cable ships includes only those ships that are

- (a) registered in any country;
- (b) used exclusively for the laying and repairing of oceanic telegraph cables outside Canada; and
- (c) proceeding on an ocean voyage outside Canada.

Prescribed Use

13. For the purposes of paragraph 80(3)(g) of the Act, goods are used or destined for use where they
- (a) are purchased by the government of a NAFTA country or its authorized agent, by a department of the Government of Canada or by a Crown corporation acting on behalf of the government of a NAFTA country;
 - (b) are for use solely and exclusively in conjunction with
 - (i) a project undertaken jointly by the Government of Canada and the government of a NAFTA country, or
 - (ii) an undertaking, located in Canada, of the government of a NAFTA country; and
 - (c) are or will become the property of the government of a NAFTA country.

Amendment of Certificate

14. The Minister may amend a certificate issued under subsection 80.1(1) of the Act where any of the information set out in the application for relief has changed.

Cancellation or Suspension of Certificate

15. The Minister may cancel a certificate issued under subsection 80.1(1) of the Act where the person to whom the certificate was issued

- (a) requests the Minister in writing to cancel the certificate;
- (b) is bankrupt;
- (c) is the subject of a receivership in respect of the person's debts;
- (d) ceases to operate in Canada; or
- (e) fails to make representations in accordance with subsection 17(2).

16. The Minister may suspend or cancel a certificate issued under subsection 80.1(1) of the Act where the person to whom the certificate was issued

- (a) fails to comply with any Act of Parliament, or any regulation made pursuant to an Act of Parliament that prohibits, controls or regulates the importation or exportation of goods; or
- (b) has, in the use of the certificate, acted dishonestly in business dealings with Her Majesty or servants of Her Majesty.

17. (1) The Minister shall, immediately after suspending a certificate, give the certificate holder notice confirming the suspension and providing all relevant information concerning the grounds on which the Minister suspended the certificate.

(2) The certificate holder may, within 30 days after the day on which the certificate is suspended, make representations to the Minister regarding why the certificate should be reinstated.

(3) The Minister shall, before cancelling a certificate, except in the case of a cancellation under section 15 or a cancellation subsequent to a suspension under section 16, give the certificate holder

- (a) 30 days notice of the proposed cancellation; and

(b) all relevant information concerning the grounds on which the Minister proposes to cancel the certificate.

(4) The certificate holder may, within 15 days after the day on which the notice referred to in subsection (3) is given, make representations to the Minister regarding why the certificate should not be cancelled.

Reinstatement of Certificate

18. The Minister may reinstate a certificate suspended under section 16 where the cause for the suspension no longer exists.

Manner of Reporting Exports to a NAFTA Country

19. (1) For the purposes of paragraph 83.02(1)(a) of the Act, the person who exports the goods shall report to an officer at a customs office by providing the evidence described in section 83 of the Act.

(2) For the purposes of paragraph 83.05(a) of the Act, the person who exports the goods shall report to an officer at a customs office by providing a written declaration of the amount of duties that was relieved.

Satisfactory Proof of Exportation

20. For the purposes of section 88 of the Act, an application shall be accompanied by proof of export in the form of

(a) a customs document presented to an officer of the customs administration of the country where the repair, addition of equipment or work was performed respecting the importation of the goods into that country;

(b) a document of a transportation company respecting the exportation of the goods;

(c) a written statement made by the exporter in the country where the work was performed stating that the goods exported to Canada are the goods that were imported into that country for repair, the addition of equipment or work; or

(d) other documentation that establishes that the goods were exported.

SCHEDULE I (Section 5)

GOODS NOT ELIGIBLE FOR RELIEF

1. Fuel
2. Plant equipment

SCHEDULE II (Sections 2 and 10)

CLASSES OF FIBRES

1. Natural textile fibres such as silk, wool, cotton, flax and sisal
2. Artificial fibres that are viscose or acetates

APPENDIX D

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Minister of Finance and the Minister of National Revenue, pursuant to subsection 81(4), paragraphs 95(1)(f)*, (q)** and (r)** and subsection 95(3)** of the Customs Tariff***, is pleased hereby to make the annexed Regulations respecting customs bonded warehouses, effective on the day on which section 55 of An Act to amend the *Customs Act* and the *Customs Tariff* and to make related and consequential amendments to other Acts, being chapter 41 of the Statutes of Canada, 1995, comes into force.

REGULATIONS RESPECTING CUSTOMS BONDED WAREHOUSES

Short Title

1. These Regulations may be cited as the *Customs Bonded Warehouses Regulations*.

Interpretation

2. In these Regulations,

“applicant” means a person who applies for a licence; (*demandeur*)

“chief officer of customs,” with respect to a bonded warehouse or a proposed bonded warehouse, means the manager of the customs office or customs offices that serve the area in which the bonded warehouse is located or is proposed to be located; (*agent en chef des douanes*)

“Department” means the Department of National Revenue; (*ministère*)

“excise bonding warehouse” means a bonding warehouse within the meaning of section 2 of the *Excise Act*; (*entrepôt d'accise*)

“intoxicating liquor” has the same meaning as in subsection 2(1) of the *Importation of Intoxicating Liquors Act*; (*boissons enivrantes*)

“licence” means a licence to operate a place as a bonded warehouse; (*agrément*)

* S.C. 1995, c. 41, s. 47

** S.C. 1995, c. 41, s. 55(1)

*** S.C. 1995, c. 41, s. 55(2)

**** R.S., c. 41 (3rd Supp.)

“licensee” means a person who is the operator of a bonded warehouse and to whom a licence has been issued; (*exploitant*)

“preserving” means the preserving of goods by the application of preservative, including lubricants, protective encapsulation and preservation paint, and, if the condition of the goods is not changed, by other means such as freezing, drying and freeze-drying. (*préservation*)

PART I

LICENSING OF BONDED WAREHOUSES

Issuance of Licence

3. (1) Subject to subsection (4), the Minister may issue a licence to any person who
- (a) makes an application in accordance with subsection (2);
 - (b) provides such security as may be required under subsection 81(4) of the *Customs Tariff* and in accordance with section 4; and
 - (c) pays any fee required to be paid under section 5.
- (2) Any person who wishes to apply for a licence in respect of a proposed bonded warehouse shall submit a completed application in the prescribed form, together with a detailed plan of the proposed bonded warehouse, to the chief officer of customs.
- (3) The plan referred to in subsection (2) must indicate
- (a) whether the place proposed to be operated as a bonded warehouse exists or is to be constructed;
 - (b) the type of construction of the place, whether or not it already exists; and
 - (c) the area, within the place, that is to be used for the storage of goods.
- (4) The Minister shall not issue a licence to an applicant unless
- (a) the applicant is of good character;
 - (b) the site of the proposed bonded warehouse is within an area served by a customs office;
 - (c) the applicant has sufficient financial resources
 - (i) to meet the requirements set out in sections 11 and 12, and
 - (ii) to lease or purchase the place proposed to be operated as a bonded warehouse;
 - (d) the applicant will provide conditions suitable for the safekeeping of goods; and
 - (e) the Department is able to provide customs services with respect to the proposed bonded warehouse.
- (5) The terms and conditions under which a licence may be issued include the extent to which and circumstances in which, in accordance with section 20, goods may be manipulated, unpacked, packed, altered or combined with other goods while in bonded warehouses.

Security

4. For the purposes of subsection 81(4) of the *Customs Tariff*, security shall be deposited with the chief officer of customs and shall be in the form of
- (a) cash;
 - (b) a certified cheque;
 - (c) a transferable bond issued by the Government of Canada; or
 - (d) a bond issued by
 - (i) a company that is licensed or otherwise authorized under the laws of Canada or of a province to carry on the fidelity or surety class of insurance business and that is recommended to the

Treasury Board by the Office of the Superintendent of Financial Institutions as a company whose bonds may be accepted by the Government of Canada,

(ii) a member of the Canadian Payments Association referred to in section 4 of the *Canadian Payments Association Act*,

(iii) a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the *Régie de l'assurance-dépôts du Québec* to the maximum permitted by the statutes under which those institutions were established,

(iv) a credit union as defined in subsection 137(6) of the *Income Tax Act*, or

(v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province.

Licence Fees

5. (1) Subject to subsection (2), every licensee shall pay to the chief officer of customs an annual fee for the licence, for the period beginning on the day on which the licence is issued and ending on March 31 in the same fiscal year and for each fiscal year of operation thereafter, determined on the basis of the amount of security deposited under section 4, in accordance with the table to this subsection.

TABLE

Amount of Security Deposited	Amount of Fee Payable Per Fiscal Year
Up to \$10,000	\$ 100
\$10,001 to \$50,000	\$ 800
\$50,001 to \$200,000	\$ 1,500
\$200,001 to \$500,000	\$ 3,000
More than \$500,000	\$ 5,000

(2) Where a licence is issued on or after October 1 of a fiscal year, the fee payable for that fiscal year shall be half the applicable fee but not less than \$100.

(3) The fee payable under subsections (1) and (2) for the period beginning on the day on which the licence is issued and ending on March 31 in the same fiscal year shall be paid on or before the issuance of the licence and the fee for each fiscal year of operation thereafter shall be paid on or before April 1 of that fiscal year of operation.

(4) For the purposes of this section, "fiscal year" means the period beginning on April 1 and ending on March 31 in the following year.

Amendment of Licence

6. The Minister may amend a licence only where the name of the licensee has been changed legally.

Cancellation or Suspension of Licences

7. The Minister may cancel a licence where the licensee

(a) no longer owns or leases the place that is licensed as a bonded warehouse;

(b) requests the Minister in writing to cancel the licence; or

(c) is bankrupt.

8. (1) Subject to section 9, the Minister may suspend or cancel a licence where the licensee

(a) is the subject of a receivership in respect of the licensee's debts;

(b) fails to comply with any Act of Parliament, or any regulation made pursuant to an Act of Parliament, that prohibits, controls or regulates the importation or exportation of goods;

(c) has, in the course of operating the bonded warehouse, acted dishonestly in business dealings with customs brokers, importers, carriers, Her Majesty or servants of Her Majesty;

(d) has not met any of the requirements set out in sections 11 and 12; or

(e) has been incompetent in the operation of the bonded warehouse.

(2) Subject to section 9, the Minister may cancel a licence where

(a) the volume of goods being received in the bonded warehouse is no longer sufficient to warrant the continued operation of the bonded warehouse;

(b) there is no longer a need for a bonded warehouse in the area in which the bonded warehouse is located;

(c) the Department is no longer able to provide customs services with respect to the bonded warehouse; or

(d) the licensee manipulates, unpacks, packs, alters or combines the goods with other goods while in the bonded warehouse other than in accordance with the specifications set out in the licence or in the circumstances set out in section 20.

(3) Where a licence is suspended, an officer may lock and seal the bonded warehouse and keep it locked and sealed during the period of suspension.

9. (1) The Minister shall, immediately after suspending a licence, give to the licensee a notice confirming the suspension and providing all relevant information concerning the grounds on which the Minister has suspended the licence.

(2) The licensee may, within 90 days after the day on which the licence is suspended, make representations to the Minister regarding why the licence should be reinstated.

(3) The Minister shall, before cancelling a licence under section 8, give the licensee 90 days notice of the proposed cancellation and provide the licensee with all relevant information concerning the grounds on which the Minister proposes to cancel the licence.

(4) The licensee may, within 90 days after the day on which the notice referred to in subsection (3) is given, make representations to the Minister regarding why the licence should not be cancelled.

Reinstatement of Licences

10. The Minister may reinstate a suspended licence where the cause for the suspension no longer exists.

PART II

OPERATION OF BONDED WAREHOUSES

Facilities, Equipment and Personnel

11. (1) Every licensee shall provide at the bonded warehouse in respect of which the licence was issued
- (a) such facilities, equipment and personnel as are sufficient to control access to the bonded warehouse premises and provide secure storage of the goods in it, including
 - (i) doors and other building components of sturdy construction,
 - (ii) secure locks on doors and windows,
 - (iii) signs that indicate the security requirements applicable to the premises, and
 - (iv) where the bonded warehouse will be used for the storage of designated goods, such additional facilities and equipment as may be required to ensure the secure storage of those goods;
 - (b) adequate space for the examination of goods by officers;
 - (c) the personnel and equipment necessary to ensure that the goods to be examined by an officer are made available to the officer for examination; and
 - (d) the personnel necessary to furnish information, for audit purposes, to an officer with respect to the bonded warehouse operations and inventory system.
- (2) Where a bonded warehouse forms only part of a building, the licensee shall, if so requested by the chief officer of customs, keep the bonded warehouse separate from the remainder of the building by a partition or other structure.

Operation and Maintenance Standards

12. (1) Every licensee shall ensure that the goods received in the bonded warehouse are
- (a) stored safely and securely in the area designated for that purpose in the plan referred to in subsection 3(2); and
 - (b) identified in such a manner so as to enable an officer to locate the goods and check them against the appropriate documentation.
- (2) No person, other than the licensee, an employee of the licensee or an employee of a carrier engaged in the delivery of goods to or the removal of goods from the bonded warehouse, shall enter any place in it where goods are stored, without the written authorization or the attendance of an officer.
- (3) Every licensee of a bonded warehouse shall have in place
- (a) procedures to maintain the security of, and restrict access to, the bonded warehouse; and
 - (b) procedures to ensure that personnel working in the bonded warehouse are aware of and follow the procedures referred to in paragraph (a).
- (4) A bonded warehouse may be locked and sealed by an officer where the chief officer of customs requests that the bonded warehouse be locked and sealed, for the purpose of verifying the goods received or the warehouse documentation.

Restrictions on Goods

13. No licensee shall receive in or transfer from a bonded warehouse in a province intoxicating liquor unless the licensee has obtained written approval to receive or transfer the intoxicating liquor from the board, commission or agency authorized by the laws of that province to sell or authorize the sale of intoxicating liquor in that province.

14. No licensee shall receive imported tobacco products into a bonded warehouse unless

(a) they are to be removed from the warehouse for

- (i) sale to a foreign diplomat in Canada,
- (ii) export from Canada,
- (iii) sale to a duty free shop, or
- (iv) use as ships' stores; or

(b) they are manufactured tobacco, other than cigarettes, tobacco sticks or snuff, and the licensee is a licensed tobacco or cigar manufacturer under the *Excise Act*.

15. No licensee shall remove imported tobacco products from a bonded warehouse unless

(a) they are removed for

- (i) sale to a foreign diplomat in Canada,
- (ii) export from Canada,
- (iii) sale to a duty free shop, or
- (iv) use as ships' stores; or

(b) they are manufactured tobacco, other than cigarettes, tobacco sticks or snuff, and the licensee is a licensed tobacco or cigar manufacturer under the *Excise Act*.

16. (1) No licensee shall receive domestic tobacco products into a bonded warehouse unless the domestic tobacco products are to be removed for use as ships' stores.

(2) No person shall remove domestic tobacco products from a bonded warehouse unless the domestic tobacco products are being removed for use as ships' stores.

Receipt of Goods

17. Every licensee shall

(a) acknowledge receipt of imported goods into the bonded warehouse in respect of which their licence was issued by endorsing

- (i) the transportation document presented to the licensee by the carrier, and
- (ii) the form that is referred to in subsection 19(2) of the *Customs Act* and is presented to the licensee by the importer or owner of the goods; and

(b) acknowledge the receipt of any other goods that have been received in the bonded warehouse by completing the delivery document in the manner described in the prescribed form.

Prescribed Class of Goods and Period of Time

18 For the purposes of subsections 37(2) and 39.1(2) of the *Customs Act*, tobacco products are a prescribed class of goods that are forfeit if they have not been removed from the bonded warehouse within five years after the day on which the goods are described in the form prescribed under subsection 19(2) of the *Customs Act*.

Time Limits

19. For the purposes of subsection 37(2) of the *Customs Act*, the prescribed time in respect of goods referred to in column I of an item of the schedule is the time set out in column II of that item, which time begins on the day on which the goods are described in the form prescribed under subsection 19(2) of the *Customs Act*.

Manipulation, Alteration, Packing, Unpacking, Combination of Goods

20. Goods shall not be manipulated, altered or combined with other goods while in a bonded warehouse except for the purpose of or in the course of

- (a) disassembling or reassembling goods that have been assembled or disassembled for packing, handling or transportation;
- (b) displaying;
- (c) inspecting;
- (d) marking, labelling, tagging or ticketing;
- (e) packing, unpacking, packaging or repackaging;
- (f) removing from the warehouse, for the sole purpose of soliciting orders for goods or services, a small quantity of material, or a portion, a piece or an individual object, that represents the goods;
- (g) storing;
- (h) testing; or
- (i) any of the following that do not materially alter the characteristics of the goods:
 - (i) cleaning,
 - (ii) complying with any applicable law of Canada or of a province,
 - (iii) diluting,
 - (iv) normal maintenance and servicing,
 - (v) preserving,
 - (vi) separating defective goods from prime quality goods,
 - (vii) sorting or grading, and
 - (viii) trimming, filing, slitting or cutting.

Transfer and Removal of Goods

21. Where there is a transfer of ownership of goods stored in a bonded warehouse, the importer or owner of the goods shall submit a transfer document in the prescribed form to an officer at the customs office where the goods were described under subsection 19(2) of the *Customs Act*.

22. Where the importer or owner of goods stored in a bonded warehouse wants the goods removed from the bonded warehouse in smaller units than those described under subsection 19(2) of the *Customs Act*, the importer or owner shall submit to the chief officer of customs

- (a) where the goods are to be released, an amended accounting in the prescribed form; or
- (b) where the goods are not to be released, an amended description in the prescribed form.

SCHEDULE
(Section 19)

Item	Column I Warehouse Goods	Column II Time Limits
1.	Spare parts for aircraft or vessels, oceanic cable, oil-drilling supplies and related parts and equipment, not intended for domestic consumption	15 years
2.	Intoxicating liquor	5 years
3.	Goods placed in a bonded warehouse for marking in accordance with the <i>Marking of Imported Goods Regulations</i> or for display at conventions, exhibitions or trade shows	90 days
4.	Any other goods	4 years

APPENDIX E

APPENDIX F

LISTING OF TAS OFFICES

ATLANTIC REGION

1557 Hollis Street
P.O. Box 3080
Halifax South Postal Station
Halifax NS B3J 3G6

QUEBEC REGION

130 Dalhousie Street
P.O. Box 2267
Québec QC G1K 7P6

50 Place de la Cité
P.O. Box 1300
Sherbrooke QC J1H 5L8

400 Youville Square
Montréal QC H2Y 2C2

NORTHERN ONTARIO REGION

2265 St. Laurent Boulevard
Ottawa ON K1G 4K3

SOUTHERN ONTARIO REGION

1 Front Street, West
P.O. Box 10
Station A
Toronto ON M5W 1A3

310 Simcoe Street, South
Oshawa ON L1H 4H7

350 Rutherford Road, South
Plaza II, Suite 204
Brampton ON L6W 4N6

26 Arrowsmith Road
P.O. Box 2989
Hamilton ON L8N 3V8

451 Talbot Street
P.O. Box 5940
Station A
London ON N6A 4T9

Paul Martin Building
185 Ouellette Avenue
P.O. Box 1655
Windsor ON N9A 7G7

PRAIRIE REGION

Federal Building
269 Main Street
Winnipeg MB R3C 1B3

720 Harry Hays Building
220-4th Avenue South East
Calgary AB T2G 4X3

PACIFIC REGION

333 Dunsmuir Street
Vancouver BC V6B 5R4