Ottawa, July 11, 2014

Memorandum D17-1-8

Release Prior to Payment Privilege

In Brief

The editing revisions made in this memorandum do not affect or change any of the existing policies or procedures.

This memorandum explains the policies and procedures related to the privilege associated with the release of imported shipments prior to payment of duties and taxes.

Legislation

Customs Act

Accounting for Imported Goods and Payment of Duties Regulations

Guidelines and General Information

- 1. The <u>Customs Act</u> and the <u>Accounting for Imported Goods and Payment of Duties Regulations</u> establish the requirement to post security for release of goods prior to payment of duties.
- 2. An importer or customs broker who wishes to obtain the release prior to payment privilege shall:
 - (a) register for an importer/exporter account (refer to Memorandum D17-1-5, Registration, Accounting and Payment for Commercial Goods); and
 - (b) post security (refer to Memorandum D1-7-1, Posting Security for Transacting Bonded Operations).
- 3. The release prior to payment privilege entitles holders to:
 - (a) obtain release of goods from the Canada Border Services Agency (CBSA) before paying duties and taxes;
 - (b) defer accounting; and
 - (c) defer payment of duties and taxes.
- 4. In addition to the security deposit, a letter with the following information should be provided when applying for this privilege:
 - (a) Name and address of importer or customs broker posting security;
 - (b) Contact name, telephone and fax numbers;
 - (c) Business number; and
 - (d) The central payment office, if requested.
- 5. The release prior to payment privilege is subject to the terms and conditions of this memorandum, and Memoranda <u>D17-1-5</u> and <u>D1-7-1</u>. The CBSA reserves the right to suspend the importer's or customs broker's privilege based on non-compliance.



Importer Security

- 6. Security can be provided in the form of cash, certified cheque, money order, transferable bond issued by the Government of Canada, and/or a <u>D120 Customs Bond</u> issued by either a surety or financial institution as detailed in <u>Memorandum D1-7-1</u>.
- 7. Security is to be posted in the legal entity name associated with their business number.
- 8. Security is to be posted at Commercial Registration (HQ) to obtain this privilege.
- 9. Security for resident importers is based on their average monthly duties and taxes owing (less the GST), up to a maximum of CAN\$10 million.
- 10. Security for non-resident importers is based on their average monthly duties and taxes owing (including GST), up to a maximum of CAN\$10 million.
- 11. The minimum security requirement to transact business at all the CBSA offices in Canada is CAN\$5,000.
- 12. The minimum security requirement to transact business at one CBSA office in Canada is CAN\$250.
- 13. Completion instructions of an importer's <u>D120 Customs Bond</u> with a sample can be found in Appendix A of this memorandum. This form is available in a fillable format on the <u>CBSA Web site</u>.
- 14. Commercial Registration (HQ) will send an acknowledgement to the importer and the surety or financial institution, within 21 calendar days confirming receipt of the security. Upon acceptance of the security, a five-digit account security number will be issued to the importer.

Uncertified Cheque Security

- 15. Importers wishing to submit uncertified cheques over CAN\$2500 must post security to obtain this privilege. The security must be enough to cover all uncertified cheques that are given to the CBSA on a single business day.
- 16. In addition to the security deposit, a letter with the following information should be provided when applying for this privilege:
 - (a) Name and address of importer or customs broker posting security;
 - (b) Contact name, telephone and fax numbers;
 - (c) Purpose for which the security is being posted (i.e. uncertified cheque privilege); and
 - (d) Business number.

Using the Services of a Customs Broker

- 17. Importers may authorize a licensed customs broker to transact business with the CBSA on their behalf.
- 18. Fees imposed by customs brokers are not regulated by the CBSA.
- 19. Importers are reminded that although they may choose to use the services of a licensed customs broker to transact business with the CBSA on their behalf, the importer is ultimately responsible for the accounting documentation, payment of all duties and taxes, and subsequent corrections.

Customs Broker Security

- 20. Security for customs brokers is based on their average monthly duties and taxes owing (including GST) up to a maximum of CAN\$10 million.
- 21. Security is submitted along with brokerage application (refer to <u>Memorandum D1-8-1, *Licensing of Customs Brokers*</u>). Any changes to their security once the customs broker license application is approved, is to be sent to the Commercial Registration (HQ) for acceptance.
- 22. The minimum security requirement to transact business at all CBSA offices in Canada is CAN\$25,000.
- 23. The minimum security requirement to transact business at one CBSA office is CAN\$5,000.

24. A sample of a customs broker's <u>D120 Customs Bond</u> with completion instructions can be found in Appendix B of this memorandum. This form is available in a fillable format on the <u>CBSA Web site</u>.

Direct Security Option

- 25. Customs brokers may arrange for their clients to obtain their own release prior to payment privilege (account security number) by posting security with the CBSA. This option allows customs brokers to reduce their level of security by the importer's average monthly duties and taxes, provided the importer completes a direct security letter, authorizing the customs broker(s) to transact on the importer's behalf. Under this option, business is transacted using the customs broker's account security number. Should the importer wish to authorize the disclosure of information regarding their account security profile to the customs broker, the letter is to be submitted to the CBSA, Commercial Registration (HQ) to be placed on the importer's file. A specimen of the Direct Security Letter can be found in Appendix C of this memorandum.
- 26. Importers on the direct security option agree to pay the full amount of duties and taxes owing at a CBSA office, or to their customs broker with a cheque made payable to the Receiver General for Canada by the last business day of the month. If payment is not made by this date, this option may be suspended. Should a customs broker default or fail to pay the amount owing, the importer remains liable for the payment. Importers should advise their customs broker when they submit payment directly to a CBSA office.
- 27. The customs broker must reconcile the importer's payments on their monthly account statement reconciliation control sheet, as per the requirements of Memorandum D17-1-5.
- 28. The CBSA no longer acknowledges direct security letters; however, if Commercial Registration (HQ) receives a valid letter, it will be placed on the importer's account security file. In the event that a bond is amended, cancelled or suspended, Commercial Registration (HQ) will notify the customs broker within 21 calendar days from the date of receipt.
- 29. The CBSA requires a written letter from the importer, if they wish to have a customs broker removed from their account security profile. Once an acknowledgement is sent to all parties, the customs broker will no longer be notified of activities on the importer's account.

Goods and Services Tax (GST) Option

- 30. In order to reduce a customs broker's security requirement, the customs broker may place resident importers on the GST option, thus allowing for a reduction in security equivalent to the importer's monthly GST owing. A specimen of the GST Letter can be found in Appendix D of this memorandum.
- 31. The importer must agree to provide payment by a cheque payable to the Receiver General for Canada for the full amount of GST for all transactions processed during a billing period. The cheque must be given to a CBSA office or to the customs broker for remittance to the CBSA. Importers should advise their customs broker when they submit payment directly to a CBSA office.
- 32. The customs broker must reconcile the importer's payments on their monthly account statement reconciliation control sheet, as per the requirements of <u>Memorandum D17-1-5</u>.
- 33. Failure to provide payment by the due date may result in the loss of the option.
- 34. An importer cannot be on the Direct Security option and the GST option at the same time.

Interim Payment Option

35. Customs brokers may apply for an interim payment in lieu of increasing their current level of security. Under this option, a customs broker must commit to the CBSA, in writing that they will make payments whenever the amount of outstanding duties and taxes exceeds their level of security. Failure to make the necessary payments may result in the customs broker being removed from this option, thereby requiring an increase in their security level. A request to participate on the interim payment option is to be submitted in writing every year after July 25, to Commercial Registration (HQ). Commercial Registration (HQ) will send an acknowledgement notifying of their decision.

Maintaining Security for Importers and Customs Brokers

- 36. Importers and customs brokers are responsible for the annual review of their security level and are to maintain a record of their review on file as the CBSA may request a copy for verification purposes. When additional security is required, the importer or customs broker will submit a rider, endorsement or an amendment (refer to Memorandum D1-7-1). The review period is from July 25 of the previous year to July 24 of the current year.
- 37. Failure to comply with security requirements may result in the suspension of the release prior to payment privilege.

Monitoring of Late Payment and Non-compliance

- 38. Payment history will be monitored by Commercial Registration (HQ). Importers who are late paying three times in a one-year period may be removed from the GST or direct security options. Commercial Registration (HQ) will notify the importer and their customs broker, in writing, of the removal. Should the customs broker continue to use their own account security privilege for these importers, the customs broker will be held responsible for these payments. The importer may only be placed back on the GST or direct security options after one year following their date of removal.
- 39. Importers with their own release prior to payment privilege not using the direct security option may be suspended after their third late payment. Commercial Registration (HQ) will notify these importers in writing of their non-compliance.
- 40. An Administrative Monetary Penalty System (AMPS) contravention applies to late payment on duties and taxes owing. Please refer to <u>Memorandum D22-1-1</u>, *Administrative Monetary Penalty System* for further information.

Customs Brokers Non-compliance

- 41. Customs brokers who do not pay their monthly K84 amount in full, by the due date may be placed on a daily K84 payment schedule until the outstanding debt is paid. In addition, customs brokers may be required to pay at least 5% of the outstanding amount on all previous K84s, each day, until the outstanding debt is cleared.
- 42. Once a customs broker has been placed on daily payments, any failure to pay the daily K84 in full may result in the suspension of the customs broker's release prior to payment privilege until the outstanding amount has been paid.
- 43. If the outstanding amount is not paid in full by the end of the following month, the customs broker's release prior to payment privilege may be suspended until the outstanding amount is paid with a certified cheque. Further action on the part of the CBSA will be determined on a case-by-case basis.

Claims Against Security

- 44. When the terms and conditions for which security is taken are not met and there is outstanding debt, the CBSA will withhold a sufficient portion of the security to cover the amount owing. The CBSA will provide relevant documentation to substantiate the claim.
- 45. If the CBSA is required to file a claim against the importer's security for the release prior to payment privilege, the importer will no longer be eligible for the privilege, nor the direct security or GST options for a three year period following the resolution of the collection action.

Additional Information

46. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time/except holidays). TTY is also available within Canada: **1-866-335-3237**.

47. Documents for the release prior to payment privilege should be submitted to the CBSA via registered mail to:

Commercial Registration (HQ) Canada Border Services Agency 191 Laurier Avenue W., 12th floor Ottawa ON K1A 0L8

Appendix A

Instructions for the completion of Form D120, Customs Bond with sample

For Importers

- 1. Indicate the bond number.
- 2. In field 1, enter the specific bonded activity that will be secured. For this privilege, indicate the following: "Release of goods from the CBSA prior to payment of duties".
- 3. Insert the relevant authority by writing in the appropriate legislation. "<u>Accounting for Imported Goods and Payment of Duties Regulations.</u>"
- 4. Write the amount of security in words.
- 5. Write the amount of security in figures.
- 6. In field 3A, insert the effective date of the customs bond (month, day, year). Release prior to payment bonds are continuous.
- 7. In field 4, enter the CBSA office where the activities are to be conducted. For the national privilege, enter "All CBSA offices in Canada". For the local privilege, enter the applicable CBSA office.
- 8. In field 7, enter the principal's legal name and address, along with the principal's nine digit business number.
- 9. Affix the signatures of two duly authorized officers of the principal and indicate their names and titles.
- 10. Enter the surety's or financial institution's name and address.
- 11. Affix the signature(s) of authorized individual(s) of the surety company or financial institution, indicate their names, titles and impress the customs bond with the corporate seal.
- 12. In field 8, if required, affix the name, signature and the seal of the witness.
- 13. In field 9, the surety or financial institution is to enter the date the bond is completed.

Importer Bond Sample

Canada Border Agence des services Services Agency frontaliers du Canada			Bond No.	
Services Agency frontaliers du Canada				
custo	OMS BOND			
in accordance with the Acts, Regulations and other authorities governing the severally bind ourselves, our respective heirs, executors, administrators, suc Canada, her heirs and successors. We, the principal, further acknowledge the	ccessors and assign	ns in the amo	unt stated belo	ow unto Her Majesty in right of
. Activity to be secured Release of goods from the CBSA prior to pay	ment of dut	ies		
Relevant legislative authority Accounting for Imported Go	ods and Pay	ment of	Duties R	egulations
Bondamount Is to be written in words (example:	five thous	and doll	ars)	
		dollars (\$	x,xxx	
2. Legislative authorities				
Customs Brokers Licensing Regulations Transportation of Goods Regulations Customs Bonded Warehouse Regulation Customs Sufferance Warehouse Regulations	Duty Free Shop R Temporary Import Accounting for Im Other authorities	tation (Tariff Ite ported Goods a	and Payment of	00) Regulations Duties Regulations
The condition of the above written obligation is such that, if the obligation imposed by effect, but, otherwise, shall be and remain in full force, virtue and effect. Notwithstandi shall be limited to the amount stated herein and shall not be cumulative during the exis	ng the foregoing, it is			
3. Specify the penod of validity of this bond as determined by the relevant Regulations a) Continuous bond — Effective date: (example: January 1,		!		
b) Bond for a specified period — Starting on the	day of			year
and terminating on the	day of			year
It is understood that the above-written obligation shall apply to activities conducted Provided that the surety gives the CBSA office <u>holding the security</u> 30 days not and all liability shall cease insofar as any act or dealing by the principal subseque Dh. The liability of the principal and of the surety hereunder, shall arise upon receipt containing relevant documentation to substantiate the claim. However, if the prin the claim, then such liability, if any, arises on the date of the notice confirming the following the date of termination of this bond.	otice by registered mai ent to the termination by the surety of a writ noipal or the surety pro	il of its intention date is concent tten demand fro ovides, within 6	n to terminate the ned, but, otherw om the Canada I 0 days of the da	e obligation undertaken, this obligation ise, shall remain in full force and effect. Border Services Agency (CBSA) te of such demand, evidence to disprovi
Notwithstanding this bond, it is understood that the CBSA may, at any time, as it se	es fit, refuse the privile	eges associate	d with this bond.	
 In witness whereof, the principal has hereunto set his hand and seal and the surety of its duly authorized officials, the day and year written below. We the principal furth authorities indicated herein, and hereby undertake to be strictly governed by the pro 	er testify that we have			
Principal (name and address) Name of Company	Signature and se	al		
Complete Address	President's name			
City, Province	Signature			
Postal Code	Secretary or treas	surer's name		
Postal Code Susiness number 123456789	Name			
Surety (name and address) Name of Surety/Financial Institution				
Complete Address	Name and title			
City, Province	Signature			
Postal Code	Name and title Name + T:	itle		
B. Signed, sealed, and delivered in the presence of				
			upmer of neth or by	a (avvef)
	vitness for principal, notar	y public, commiss	torior or other by	

Appendix B

Instructions for the completion of Form D120, Customs Bond with sample

For Customs Brokers

- 1. Indicate the bond number.
- 2. In field 1, enter the specific bonded activity that will be secured. For the release of goods prior to payment privilege, insert the following: "Remittance to the Canada Border Services Agency, within the delays applicable to the importers and/or owners under relevant legislative authority for the release of goods prior to the payment of duties, of all monies that the principal, as agent for the importer and/or owner has taken to remit on account of duties."
- 3. Insert the relevant authority by writing in the appropriate legislation. "<u>Accounting for Imported Goods and Payment of Duties Regulations</u>".
- 4. Write the amount of security in words.
- 5. Write the amount of security in figures.
- 6. In field 3A, insert the effective date of the bond. Release prior to payment bonds are continuous.
- 7. In field 4, enter the CBSA office where the activities are to be conducted. For the national privilege, enter "All CBSA offices in Canada". For the local privilege enter the applicable CBSA office.
- 8. In field 7, enter the principal's legal name and address, along with the principal's nine digit business number.
- 9. Affix the signatures of two duly authorized officers of the principal and indicate their names and titles.
- 10. Enter the surety's or financial institution's name and address.
- 11. Affix the signature(s) of authorized individual(s) of the surety or financial institution. Indicate their names and titles and impress the customs bond with the corporate seal.
- 12. In field 8, if required, affix the name, signature and the seal of the witnesses.
- 13. In field 9, the surety or financial institution is to enter the date the bond is completed.

Customs Broker Bond Sample

		lelp	Restore		
Canada Border Agence des services frontaliers du Canada		Bond No	D.		
cu	ISTOMS BOND				
n accordance with the Acts, Regulations and other authorities governin severally bind ourselves, our respective heirs, executors, administrators Canada, her heirs and successors. We, the principal, further acknowled	s, successors and assigns in	the amount stat	ed below unto Her Majesty in right of		
Activity to be secured Remittance to the CBSA, within the delay relevant legislative authority for the r all monies that the principal, as agent remit on account of duties.	elease of goods p	rior to t	he payment of duties, of		
Relevant legislative authority <u>Accounting for Imported</u>	Goods and Paymen	t of Duti	es Requlations		
Bondamount Is to be written in words (examp	le: five thousand	dollars)			
	Ge	ollars (\$ _X,XXX			
2. Legislative authorities Customs Brokers Licensing Regulations Transportation of Goods Regulations Customs Bonded Warehouse Regulation Customs Sufferance Warehouse Regulation	Duty Free Shop Regult Temporary Importation Accounting for Importe Other authorities may It	(Tariff Item No. 98 d Goods and Payr	993.00.00) Regulations ment of Duties Regulations		
The condition of the above written obligation is such that, if the obligation impose effect, but, otherwise, shall be and remain in full force, virtue and effect. Notwiths shall be limited to the amount stated herein and shall not be cumulative during th	tanding the foregoing, it is under				
3. Specify the period of validity of this bond as determined by the relevant Regula a) ☑ Continuous bond — Effective date:(example: January)					
b) Bond for a specified period — Starting on the	day of		year		
and terminating on the	day of		year		
4. It is understood that the above-written obligation shall apply to activities condu	cted at All CBSA of	fices in C	Canada OR Local Office		
 a) Provided that the surety gives the CBSA office <u>holding the security</u> 30 da and all liability shall cease insofar as any act or dealing by the principal sub. b) The liability of the principal and of the surety hereunder, shall arise upon recontaining relevant documentation to substantiate the claim. However, if the claim, then such liability, if any, arises on the date of the notice confirm following the date of termination of this bond. 	esequent to the termination date eccipt by the surety of a written d e principal or the surety provides	is concerned, but, emand from the C s, within 60 days o	otherwise, shall remain in full force and effect. anada Border Services Agency (CBSA) f the date of such demand, evidence to disprove		
6. Notwithstanding this bond, it is understood that the CBSA may, at any time, as	it sees fit, refuse the privileges :	associated with thi	is bond.		
7. In witness whereof, the principal has hereunto set his hand and seal and the si of its duly authorized officials, the day and year written below. We the principal authorities indicated herein, and hereby undertake to be strictly governed by th	I further testify that we have read	to be sealed with it and understand t	ts corporate seal, attested to be the signature he relevant. Acts, Regulations and other		
Principal (name and address) XX Customs Brokers	Signature and seal				
Address	President's name				
City, Province	Signature				
Postal Code	Secretary or treasurer's	s name			
Business number	Name				
123456789 Surety (name and address)	Signature and seal				
Name of Surety/Financial Institution					
Address	Name and title Name + Titl	e			
City, Province	Signature				
Postale	Name and title Name + Titl	e			
Signed, sealed, and delivered in the presence of	(witness for principal, notary publi		elli se ku a fannasi		
	witness for principal, notary publi	u, commissioner of o	aution by a lawyer)		
9. Dated this day of	year				

Appendix C

Direct Security Letter

Date

(Name of importer) has posted security for the release of goods prior to the payment of duties and taxes privilege, and has been given the account security number A/S (number).

The business number of (name of importer) is xxxxxxxxx.

(Name of broker) will release and account for imports by (name of importer) under the broker's account security number A/S (number).

(Name of broker) and (name of importer) agree that:

(Name of importer) will provide payment for the full amount of duties and taxes owing on imported goods;

(Name of importer) agrees to pay the Canada Border Services Agency (CBSA) directly by the last business day of the month, or to provide (name of broker) with a cheque made payable to the Receiver General for Canada each month, for the full amount of duties and taxes owing. The cheque is to be made available to (name of broker) for remittance to the CBSA, by the last business day of the month;

(Name of importer) accepts responsibility and liability for the payment of penalties and interest applied by the CBSA resulting from any late payment of duties and taxes. Failure to provide payment to the CBSA by the due date will result in the application of penalties and interest to (name of importer) on any amounts owing. Importers who are late paying 3 times in a one-year period may be removed from this option. (Name of importer) may benefit once again from the option program after one year from the date of suspension.

(Name of importer) is reminded that although they may choose to use the services of a licensed customs broker to transact business with the CBSA on their behalf, the importer is ultimately responsible for the accounting documentation, payment of all duties and taxes, and subsequent corrections;

(Name of importer) authorizes (name of broker) to communicate with the Canada Revenue Agency (CRA) regarding collections activity related to amounts owing on imported goods released under this agreement, and to release information on these transactions to the CRA;

(Name of importer) authorizes the disclosure of information pertaining to their Account Security Profile by officers of the Commercial Registration (HQ), CBSA, to (name of broker).

All queries regarding this letter and the payment of duties and taxes on imported goods by (name of importer) should be directed to:

Contact name Title Address Telephone Fax number

Signed (Importer)

Signed (Broker)

Appendix D

GST Letter

Date

(Name of importer) is a resident of Canada.

The business number of (name of importer) is xxxxxxxxx.

(Name of broker) will release and account for imports by (name of importer) under the broker's account security number A/S (number).

(Name of broker) and (name of importer) agree that:

(Name of importer) will provide payment for the full amount of the goods and services tax (GST) levied on imported goods under the *Excise Tax Act*;

(Name of importer) agrees to pay the Canada Border Services Agency (CBSA) directly by the last business day of the month, or to provide (name of broker) with a cheque made payable to the Receiver General for Canada each month, for the full amount of GST owing. The cheque must be made available to (name of broker) for remittance to the CBSA, by the last business day of the month;

(Name of importer) accepts responsibility and liability for the payment of penalties and interest applied by the CBSA resulting from any late payment of GST. Failure to provide payment to the CBSA by the due date will result in the application of penalties and interest to (name of importer) on any amounts owing. Importers who are late paying 3 times in a one-year period may be removed from this option. (Name of importer) may benefit once again from the option program after one year from the date of suspension;

(Name of importer) is reminded that although they may choose to use the services of a licensed customs broker to transact business with the CBSA on their behalf, the importer is ultimately responsible for the accounting documentation, payment of all duties and taxes, and subsequent corrections;

(Name of importer) authorizes (name of broker) to communicate with the Canada Revenue Agency (CRA) regarding collections activity related to amounts owing on imported goods released under this agreement, and to release information on these transactions to the CRA.

All queries regarding this letter and the payment of GST on imported goods by (name of importer) should be directed to:

Contact name Title Address Telephone Fax number

Signed (Importer)

Signed (Broker)

References			
Issuing Office	Trade and Anti-dumping Programs Directorate		
Headquarters File	7064		
Legislative References	Customs Act Excise Tax Act Accounting for Imported Goods and Payment of Duties Regulations		
Other References	D1-7-1, D1-8-1, D17-1-5, D22-1-1 Form D120		
Superseded Memorandum D	D17-1-8 dated April 11, 2012		