Memorandum D10-14-61: Tariff Item 9937.00.00 and the Recognition of an Ethno-cultural Group

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This memorandum outlines the policy and procedures of the Canada Border Services Agency (CBSA) in respect of the administration of tariff item 9937.00.00 and the recognition of an ethno-cultural group.

Plain language summary

Target audience: Importers (ethno-cultural groups)

Key content: When to claim duty relief; eligible uses of goods that qualify; rulings; contesting a decision; compliance verification and penalties.
Keywords: Tariff item 9937.00.00, imports, ethno-cultural group, CARM

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Updates made to this D-memo

This memorandum has been amended to:

- allow an application to be recognized as an ethno-cultural group for the purposes of tariff item 9937.00.00 to be sent by e-mail
- delete old Appendix 1 and replace with the new Appendix regarding the procedure when submitting an application by e-mail
- reduce the quantity of information requested in the application
- inform importers of the possibility to register their businesses in the CARM Client Portal (CCP) and delegate a business account manager
- include a link to Onboarding to the CARM Client Portal under the Related links section
- include a link to the CARM webpage under the Related links section
- provide updated information

Definitions

This memorandum outlines the policy and procedures of the Canada Border Services Agency (CBSA) in respect of the administration of tariff item 9937.00.00 and the recognition of an ethno-cultural group.

Legislation

Customs Tariff

Section 88

A group desiring to be recognized as an ethno-cultural group for the purposes of tariff item 9937.00.00 shall submit an application to the Minister of Public Safety and Emergency Preparedness supported by evidence that the group satisfies the criteria set out in that tariff item.

Tariff Item 9937.00.00

Costumes, and parts and accessories thereof, designed or decorated in a manner reflecting a specific ethno-cultural heritage when for the use of an ethno-cultural group that requires the costumes for the public manifestation of its heritage.

"Goods" does not include goods that are sold or otherwise disposed of within 12 months after importation.

For the purpose of this tariff item, upon receipt of an application pursuant to section 88 of this Act, the Minister of Public Safety and Emergency Preparedness shall have regard for the following criteria in deciding whether to recognize a group as an ethno-cultural group:

(a) whether the group consists of at least five persons each of whom is at least 18 years old of age and is a Canadian citizen or a permanent resident within the meaning of the *Immigration and Refugee Protection Act* (formerly the *Immigration Act, 1976*);

(b) whether the group is a voluntary, non-profit group constituted for the purpose of preserving its ethno-cultural heritage and sharing that heritage with Canadians; and

(c) whether the group is supported by, and is a representative of, the ethnic community to which it belongs.

Guidelines

1. Tariff item 9937.00.00 applies only to costumes, parts and accessories to those costumes, and does not include other items that may be identified with an ethno-cultural group, such as banners, flags, musical instruments, art work or other ceremonial items, etc. Eligible costumes must be for use in a public display that manifests or illustrates the heritage of the ethno-cultural group.

2. As noted in the terms of tariff item 9937.00.00, eligible "goods" do not include goods that are sold or otherwise disposed of within 12 months after importation. For more information, refer to *Memorandum D11-8-5: Conditional Relief Tariff Items* which provides further information on diversion of goods that were granted relief of duty.

3. Upon receipt of a completed application, a determination will be made by the Minister of Public Safety and Emergency Preparedness (the Minister) on whether the ethno-cultural group meets the three criteria mentioned below, pursuant to section 88 of the *Customs Tariff*:

(a) the group consists of at least five persons, each of whom is at least 18 years of age and is a Canadian citizen or a permanent resident within the meaning of the *Immigration and Refugee Protection Act* (formerly the *Immigration Act, 1976*);

(b) the group is a voluntary, non-profit group constituted for the purpose of preserving its ethno-cultural heritage and sharing that heritage with Canadians; and

(c) the group is supported by, and representative of, the ethnic community to which it belongs.

Applications to be recognized as an ethno-cultural group for the purposes of tariff item 9937.00.00

4. The application, pursuant to section 88 of the *Customs Tariff*, to be recognized as an ethno-cultural group for the purposes of tariff item 9937.00.00, which may take the form of a letter or an e-mail with supporting documentation, should contain the following information:

(a) the name, address, email address and telephone number of the group;

(b) the name, title, and contact information of a signing officer authorized by the group;

(c) the number of registered members in the group;

(d) The number of members who are 18 years of age or older, who are Canadian citizens or permanent residents;

(e) a statement confirming that the group is a voluntary, non-profit group constituted for the purpose of preserving its ethno-cultural heritage and sharing that heritage with Canadians;

(f) a statement outlining how the group is representative of the ethno-cultural community with which it is associated;

(g) a brief description, including the ethno-cultural names of the specific types of costumes, parts, and accessories, that the group wishes to import under the provisions of tariff item 9937.00.00; and

(h) certification by a signing officer authorized by the group that all of the information submitted is accurate and complete.

5. The application and all the required information must be sent either by e-mail to the CBSA at Tariff_Files-Fichiers_du_Tarif@cbsa-asfc.gc.ca as per the procedures outlined in Appendix of this memorandum, or by mail to:

Trade Policy Division, Commercial and Trade Branch
Canada Border Services Agency
L'Esplanade Laurier (LEL), 21st floor
300 Laurier Avenue W.
Ottawa, ON, K1A 1E4

Importation of goods under tariff item 9937.00.00

6. Imported goods declared under tariff item 9937.00.00 are treated as commercial goods and cannot be imported under the casual importation provisions. All relevant regulations and requirements regarding commercial importations, including the accounting and release provisions, are applicable. For more information refer to *Importing commercial goods into Canada*; Memorandum D17-1-5, *Registration, Accounting and Payment for Commercial Goods*; and *Memorandum D10-13-1, Classification of Goods*.

7. For importations of goods made under tariff item 9937.00.00:
   a) the recognized ethno-cultural group must be the importer of record, i.e. identified as the importer on customs declaration when goods are accounted for, by citing their business number during the CBSA release and accounting processes; and
   b) the imported goods should normally be directed to the address specified in the authorization letter recognizing the ethno-cultural group.

8. Importers must register their businesses in the CARM Client Portal (CCP) and delegate a business account manager. For more information, refer to *CARM: Assess and pay duties and taxes on imported commercial goods* and to *User Guide - Onboarding to the CARM Client Portal.*

Rulings

9. Procedures for obtaining a ruling to confirm the origin, tariff classification or value for duty of goods are outlined in *Memorandum D11-11-1 - National Customs Rulings*, *Memorandum D11-11-3: Advance Rulings for Tariff Classification* and *Memorandum D11-4-16 - Advance rulings for origin under Free Trade Agreements*.

Reason to believe and corrections

10. As per section 32.2 of the *Customs Act* *(The Act)*, an importer or owner shall make a correction to a declaration within 90 days after the importer has reason to believe that the declaration is incorrect, including the diversion of goods, and when the adjustment request would result in either an amount payable to the CBSA or would be revenue neutral. For more information, refer to *Memorandum D11-6-6: Reason to Believe and Corrections to the Declaration of Origin, Tariff Classification or Value for Duty*.

Refund for duties

11. There is no legal obligation to apply for a refund of duties under section 74 of the *Act*. That section is the legislative authority under which a person who paid duties on imported goods may submit an adjustment request to an accounting declaration that would result in a refund of duties. For more information, refer to *Memorandum D6-2-3 - Refund of Duties*.

Contesting a decision

12. When, following the reception of an application, the Minister declines to recognize the importer as an ethno-cultural group for the purposes of tariff item 9937.00.00, the importer can ask for a judicial review pursuant to section 18.1 of the *Federal Courts Act.* In addition, rights to ask for a review or appeal other types of decisions may apply in other circumstances as per below.

13. When a notice has been given under subsection 59(2) of the *Act*, an importer may file a request for a re-determination or further re-determination under subsection 60(1) of the *Act* within 90 days of the officer's decision. For more information, refer to Memorandum *Memorandum D11-6-7: Request under Section 60 of the Customs Act for a Re-determination, a further Re-determination or a Review by the President of the Canada Border Services Agency* .

14. If no request for further re-determination is filed under subsection 60(1) of the *Act* within the 90-day period, an importer may submit an application to the President of the CBSA for an extension of the time within which the request must be made pursuant to section 60.1 of the *Act*. The President may extend the time for filing the request. For more information, refer to *Memorandum D11-6-9: Applications to the President for an Extension of Time to File a Request under Section 60 of the Customs Act* .

Maintenance of records and trade compliance verifications

15. As the importer of record of the goods, it is the responsibility of a recognized ethno-cultural group to ensure that all of the import requirements are met, and appropriate records maintained, as the importations may be subject to post-importation trade compliance verification. For more information, refer to *Memorandum D17-1-21: Maintenance of Records in Canada by Importers* and to *Memorandum D11-6-10: Reassessment Policy.*

Penalty and interest provisions

16. An importer or owner who has reason to believe that the declaration is incorrect, and who does not make required corrections within the prescribed 90-day period under section 32.2 of the *Act*, may be subject to interest and penalty provisions. For more information on interest, refer to *Memorandum D11-6-5 - Interest and Penalty Provisions: Determinations/Re-determinations, Appraisals/Re-appraisals, and Duty Relief* . For more information on penalties, refer to *Memorandum D22-2-1 - Personal Administrative Monetary Penalties for Cannabis-Related Contraventions of the Customs Act*.

Voluntary Disclosures Program

17. The Voluntary Disclosures Program promotes compliance with the accounting and payment provisions of *the Customs Act*, *Customs tariff*, *Excise Tax Act* and *Excise Act, 2001* by encouraging importers to come forward and correct deficiencies in order to comply with their legal obligations.

18. Where the prescribed 90-day period (90 days from the day the importer has reason to believe) under *section 32.2* of the *Act* has elapsed, an importer who has not made the required correction to the declaration of origin, tariff classification or value for duty may request corrective measures under the Voluntary Disclosures Program. For more information, refer to *Memorandum D11-6-4: Relief of Interest and/or Penalties Including Voluntary Disclosure*.

Appendix

Submitting by e-mail an application to be recognized as an ethno-cultural group for the purposes of tariff item 9937.00.00

1. An applicant may submit an application to be recognized as an ethno-cultural group for the purposes of tariff item 9937.00.00 by encrypted or non-encrypted e-mail. If an applicant chooses to submit such a request by e-mail, they must indicate their choice between encrypted and non-encrypted e-mail in the request and meet the required conditions set by the CBSA. These conditions are described below.

2. If an applicant chooses to submit their application by e-mail, but does not clearly indicate in their request their choice between encrypted and non-encrypted e-mail, or their request does not meet the required conditions, CBSA will send a non-encrypted e-mail to the importer.

3. The applicant must complete and provide the consent statement below. An authorized person may submit the application by e-mail on behalf of their client. For more information, refer to *Memorandum D1-6-1, Authority to Act as an Agent*. The applicant also has the responsibility to inform the CBSA of any contact information changes (phone number, e-mail address, etc.)

4. The CBSA will seek to obtain an electronic delivery and read receipt from the importer for each e-mail exchanged during the processing of the request for an application to be recognized as an ethno-cultural group for the purposes of tariff item 9937.00.00. If it is not possible to obtain an electronic delivery and read receipt, other forms of acknowledgements will be accepted (e-mail, phone call, etc.)

5. The applicant who elects to use encrypted e-mail for processing their application is responsible for ensuring that compatible software (Winzip and others) is used.

6. When the request meets the required conditions, the CBSA will send all documents related to the application to the applicant by encrypted or non-encrypted e-mail, depending on the choice indicated.

7. The CBSA does not guarantee the security of electronic communications. By consenting to communicate by e-mail with the CBSA, the applicant accepts all inherent risks with this mode of communication and thus relieves the CBSA from all responsibility, present and future, related to the protection of the information while it is being exchanged by e-mail.

Consent statement

I choose to communicate by {Non-Encrypted / Encrypted **Please indicate your choice** } e-mail with the CBSA during the processing of the application to be recognized as an ethno-cultural group for the purposes of tariff item 9937.00.00. This includes the sending and reception of documents, as well as any other correspondence required, including for the purposes of any extension request. I authorize the communication by e-mail for all exchanges and I accept all inherent risks. I hereby relieve the CBSA from any responsibility, present and future, in relation to the protection of the information exchanged by e-mail. I have read and I accept the conditions.

Signature:
Date:
Name of the importer / authorized person:
Business Name:
Occupation/Title:
Telephone number:
E-mail address:

References

Consult these resources for further information.

Applicable legislation

- *Customs Tariff*
- *Customs Act*
- *Immigration and Refugee Protection Act*
- *Excise Tax Act*
- *Excise Act, 2001*
- *Federal Courts Act*

Related D memoranda

- *Memorandum D1-6-1, Authority to Act as an Agent*
- *Memorandum D6-2-3 - Refund of Duties*
- *Memorandum D10-13-1, Classification of Goods*
- *Memorandum D11-4-16 - Advance rulings for origin under Free Trade Agreements*
- *Memorandum D11-6-4: Relief of Interest and/or Penalties Including Voluntary Disclosure*
- *Memorandum D11-6-5 - Interest and Penalty Provisions: Determinations/Re-determinations, Appraisals/Re-appraisals, and Duty Relief*
- *Memorandum D11-6-6: Reason to Believe and Corrections to the Declaration of Origin, Tariff Classification or Value for Duty*
- *Memorandum D11-6-7: Request under Section 60 of the Customs Act for a Re-determination, a further Re-determination or a Review by the President of the Canada Border Services Agency*
- *Memorandum D11-6-9: Applications to the President for an Extension of Time to File a Request under Section 60 of the Customs Act*
- *Memorandum D11-6-10: Reassessment Policy*
- *Memorandum D11-8-5: Conditional Relief Tariff Items*
- *Memorandum D11-11-1 - National Customs Rulings*
- *Memorandum D11-11-3, Advance Rulings for Tariff Classification*
- *Memorandum D17-1-5, Registration, Accounting and Payment for Commercial Goods*
- *Memorandum D17-1-21: Maintenance of Records in Canada by Importers*
- *Memorandum D22-1-1: Administrative Monetary Penalty System*
- *Memorandum D22-2-1 - Personal Administrative Monetary Penalties for Cannabis-Related Contraventions of the Customs Act*

Superseded memoranda D

D10-14-61 dated April 6, 2016

Issuing office

Trade Policy Division
Trade Programs and Anti-dumping Directorate
Commercial and Trade Branch

Contact us

Contact border information services

Related links

- *Importing commercial goods into Canada*
- *CARM: Assess and pay duties and taxes on imported commercial goods*
- User Guide - *Onboarding to the CARM Client Portal*