**Bas du formulaire**

**Request under Section 60 of the *Customs Act* for a Re-determination by the President of the Canada Border Services Agency in Respect of Prohibited Goods of Tariff Item 9898.00.00**

**Memorandum D11-6-X**

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Ottawa, July 4, 2024

This document is also available in [PDF (1.1 MB)](https://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-7-eng.pdf) [[help with PDF files](https://www.cbsa-asfc.gc.ca/help-aide/dimf-dodf-eng.html)

This memorandum explains the process pursuant to section 60 of the *Customs Act* (the Act) for a request to the President of the Canada Border Services Agency (CBSA) for a re-determination of tariff classification in respect of goods that have been determined to be prohibited goods classified under tariff item 9898.00.00 of the Schedule to the *Customs Tariff* and prohibited from importation into Canada in accordance with subsection 136(1) of the *Customs Tariff*.

Legislation

[*Customs Act*](https://laws-lois.justice.gc.ca/eng/acts/c-52.6/index.html)

Section 58 (Determination by Officer)

Section 60 (Request for re-determination or further re-determination)

[*Customs Tariff*](https://laws-lois.justice.gc.ca/eng/acts/C-54.011/)

Section 136 (Prohibited imports)

[Schedule](https://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2024/menu-eng.html) to the *Customs Tariff*

Tariff Item 9898.00.00

Definition

1. For the purposes of this memorandum, the following definitions shall apply:

**Controlled goods**

Goods listed in the [Import Control List](https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C_c._604/index.html) (ICL) that can only be imported under the authority of and in accordance with an import permit issued by Global Affairs Canada (GAC) under the [Export and Import Permits Act](http://laws-lois.justice.gc.ca/eng/acts/E-19/) (refer to [Import Controls and Import Permits](https://www.international.gc.ca/controls-controles/about-a_propos/impor/permits-licences.aspx?lang=eng)).

**Prohibited goods**

Goods listed in tariff item 9898.00.00 of the Schedule to the *Customs Tariff*, which includes firearms, prohibited weapons, restricted weapons, prohibited devices, prohibited ammunition and components or parts designed exclusively for use in the manufacture of or assembly into automatic firearms.

**Request for a re-determination**

In this memorandum, the term “**a request**” refers to a request to the President of the CBSA under section 60 of the Actspecific to a re-determination of tariff classification of goods that have been determined by an Officer to be classified as prohibited goods under tariff item 9898.00.00 of the Schedule to the *Customs Tariff*.

Guidelines and general information

Types of decisions eligible for a re-determination

2. The following types of notice issued under subsection 59(2) of the Act are eligible for a re-determination under section 60 of the Act:

1. Notice of Determination: A decision by letter or on Form BSF929 – *Notice of Determination Prohibited Good(s) of Tariff Item 9898.00.00* indicating that the goods you are attempting to import are prohibited goods classified under tariff item no. 9898.00.00 of the Schedule to the *Customs Tariff.* It can also include controlled goods that have been determined inadmissible for importation into Canada for failure to present a valid import permit issued under the [*Export and Import Permits Act*](http://laws-lois.justice.gc.ca/eng/acts/E-19/);
2. Form K26 – *Notice of Detention* or BSF241 – *Non-Monetary General Receipt* indicating that the goods are prohibited goods;
3. Form K19 – *Seizure Receipt* issued by an Officer for seized prohibited goods.

Who can file a request under section 60 of the Act

3. A person, to whom an Officer has given one of the above types of notice, may file a request. These persons include:

1. The importer of the goods;
2. The owner of the goods at the time of release;
3. Any person liable for payment of duties on the goods at the time of release; and
4. The person who accounted for the goods under subsection 32(1),(3), or (5) of the Act.

4. In addition, requests may be submitted by a representative or agent of an eligible person if accompanied by a written statement or general agency agreement authorizing the representative or agent to act on behalf of the person for the purpose of the request.

Requirements to submit a valid request under section 60 of the Act

5. A request will only be accepted if the following conditions are met:

1. You received a notice from the CBSA of the types listed in paragraph 2 of this memorandum indicating that the goods are classified as prohibited under tariff item 9898.00.00;
2. The person making the request must be one of those identified in paragraphs 3 through 4 of this memorandum;
3. You believe that the CBSA has misunderstood the facts or has applied the law incorrectly; and
4. Your request was made within 90 days of the notice. Please note that when the last day of the 90 day-time limit falls on a day the CBSA Recourse Directorate is not open for business, the final day for filing the request is the next business day. If time limits are exceeded, in exceptional circumstances, the Act allows a person to make an application for an extension of time to make a request. For more information, consult [Memorandum D11-6-9, Applications to the President for an Extension of Time to File a request under Section 60 of the Customs Act](https://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-9-eng.html).

Prescribed form, manner and information to make a request

6. If all of the above requirements are met you can submit a request in the prescribed form and manner, with the prescribed information.

7. Requests must be submitted using one of the following **forms**:

1. A paper form: A letter containing the prescribed information; or
2. An approved form of electronic filing identified below including the prescribed information.

8. Requests must be submitted in one of the following **manners**:

1. **Paper** requests should be sent by regular or registered mail, or courier to ensure efficient processing:

Recourse Directorate
Canada Border Services Agency
333 North River Rd, 11th floor Tower A
Ottawa, ON K1L 8B9

1. **Electronic** requests must be submitted using the approved online [CBSA e-appeal form](https://www.cbsa-asfc.gc.ca/recourse-recours/eappealenf-appelexec-eng.html) provided on the CBSA Recourse website.

Once the Recourse Directorate has verified your request, you may be contacted to submit the required prescribed information and supporting documentation.

Submitting the online e-appeal form is considered to be the first step in making a request. Should you fail to later provide the prescribed information when requested by the Recourse Directorate, your request via the online e-appeal form will not be considered valid nor will your legislated time limits to submit a request to the CBSA be protected. Only once all legislated requirements, including the provision of prescribed information are met will your request be considered to be filed with the CBSA.

Please ensure that you keep a record of your submission.

9. Requests must include the following prescribed **information**:

1. **Name and address** of the person making the request, including contact email and phone number, and if applicable business number and Import – Export (RM) account number;
2. **Representative** or agent name, company and contact information (if applicable), accompanied by a written statement or general agency agreement authorizing the representative or agent to act on behalf of the person for the purpose of the request;
3. A **copy** of the **decision** under dispute and any additional documents received from the CBSA (*Notice of Determination* by letter or Form BSF929 and K26, BSF241, K19, K138, etc.);
4. An accurate identification of **the goods at issue** (product number, description, etc.);
5. A detailed **rationale** supporting your reasons for dispute;
6. **Documentation** that supports your position and a detailed explanation of how it applies to your case.

10. It is important that you explain your position as it relates to the legislation and the policy of the goods involved and that you provide documentation that supports your position. For additional information on prohibited goods and the applicable legislation please consult [Memorandum D19-13-2, Importing and Exporting Firearms, Weapons, and Devices](https://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-2-eng.html).

11. Requests that are not submitted in the prescribed form and manner and which do not include the prescribed information may be rejected. A rejected request may be re-submitted once any deficiencies have been addressed, provided all requirements for a valid request are met.

12. The complete prescription instrument can be found in Appendix A of [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](https://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-7-eng.html). Further details on how to request an appeal can be found on the CBSA website [Appeals/Reviews](https://www.cbsa-asfc.gc.ca/recourse-recours/menu-eng.html).

The re-determination process

13. Once your request is validated, you will be provided with the name and contact details of the Appeals Officer responsible for your appeal request. The Appeals Officer, who is delegated by the President of the CBSA to make the decision, will conduct a full and impartial review of your request.

14. The Appeals Officer will consider your position and the rationale for the decision under dispute. The Appeals Officer may contact you for additional information.

15. The Appeals Officer will consider the evidence, arguments provided, the relevant law, jurisprudence and policy, and any other additional research that is conducted.

16. Once a decision is made, the Appeals Officer will give you notice of the decision on behalf of the President, including a rationale and the legislation supporting the classification of the goods.

17. In the event that the determination is maintained and the goods remain prohibited from importation into Canada you will be provided with the opportunity to:

1. If you disagree with the decision of the President of the CBSA, further appeal the decision to the [Canadian International Trade Tribunal](https://www.citt-tcce.gc.ca/en/customs-and-excise-appeals) (CITT) pursuant to section 67 of the Act, within 90 days following the notice of the decision;
2. Export the prohibited goods at your expense;
3. Abandon the prohibited goods to the Crown (no action required).

18. In the event that the determination is overturned and the goods are deemed admissible for importation into Canada the goods will be released to you.

Customs Seizure

19. In addition to being prohibited from importation into Canada, the goods may be subject to a customs seizure where an Officer believed on reasonable grounds that the Act or the Regulations have been contravened in respect of the goods. If a seizure has been issued, you must submit a request for a Ministerial Review as the release of the goods is conditional upon receiving a favorable decision by the Minister.

20. The First Party identified on the seizure, that is, the person who received a **Form K19 –** ***Seizure Receipt***, should submit a request for a Minister’s decision under section 129 of the Act as indicated on the receiptto object to the seizure and request the Minister to decide whether there has been a contravention, and whether the terms and/or conditions assessed are correct.

21. The Third Party identified on the seizure, that is, the person who received a **Form K138 – *Notice of Seizure***,should submit a Third Party Claim under section 138 of the Act as indicated on the notice to obtain a Minister’s decision protecting their interest in the seized goods.

22. The tariff classification re-determination by the President of the CBSA and the Ministerial Review are separate processes under the Act and as such, will be handled by different delegated Officers. Please make sure to provide the seizure number in all submissions to the Recourse Directorate.

23. If you have not received one of the above forms (K19 or K138) the goods are not under seizure and a request to the President of the CBSA under section 60 of the Act is sufficient to dispute the prohibition of the goods.

24. For more information on the Ministerial Review process please consult the following webpages:

[How to file a review for: Seizures, ascertained forfeitures and Personal Administrative Monetary Penalties (AMPs) under the Customs Act](https://www.cbsa-asfc.gc.ca/recourse-recours/howto-commentfaire-1-eng.html); and

[Requesting a third-party review under the Customs Act.](https://www.cbsa-asfc.gc.ca/recourse-recours/thirdparty-tiersindependant-eng.html)

Service standards for requests

25. The CBSA endeavours to meet the service standards under normal operational conditions. However, standards may not be met when, for example:

1. The CBSA is waiting for a [CITT](https://www.citt-tcce.gc.ca/en) or court decision on identical goods, or on an issue sufficiently similar which might affect the decision under review;
2. The information or arguments submitted with the request are incomplete or require follow up (such as RCMP Inspections; consultations; or requests to the importer, manufacturer, or vendor for additional information);
3. The nature of the request is unusually complex or the request concerns a high number of goods which results in exceptionally large amount of information that must be reviewed.

26. For more details on service standards, please refer to the [Service Standards](https://www.cbsa-asfc.gc.ca/services/serving-servir/standards-normes-eng.html) page on the CBSA website.

Additional information

27. For more information, refer to [CBSA Website](https://www.cbsa-asfc.gc.ca/recourse-recours/menu-eng.html) or if within Canada contact the [Border Information Services](https://www.cbsa-asfc.gc.ca/contact/bis-sif-eng.html) at **1-800-461-9999**. From outside Canada contact (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**.

References

Applicable Legislation

[*Canada Border Services Agency Act*](http://laws-lois.justice.gc.ca/eng/acts/c-1.4/)

[*Criminal Code*](http://laws-lois.justice.gc.ca/eng/acts/C-46/)

[*Customs Act*](http://laws-lois.justice.gc.ca/eng/acts/C-52.6/index.html)

[*Customs Tariff*](https://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/menu-eng.html)

[*Export and Import Permits Act*](http://laws-lois.justice.gc.ca/eng/acts/e-19/)

[*Firearms Act*](http://laws-lois.justice.gc.ca/eng/acts/F-11.6/)

[Import Control List](https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C_c._604/index.html)

[*Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*](https://laws-lois.justice.gc.ca/eng/regulations/SOR-98-462/)

[Schedule to the Customs Tariff](https://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/menu-eng.html)

Related D-Memoranda

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| [Memorandum D11-6-7](https://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-7-eng.html) | 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 in Respect of Commercial Goods |
| [Memorandum D11-6-9](https://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-9-eng.html) | Applications to the President for an Extension of Time to File a Request under Section 60 of the *Customs Act* |
| [Memorandum D19-10-2](https://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-10-2-eng.html) | Administration of the *Export and Import Permits Act* (Importations) |
| [Memorandum D19-13-2](https://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-2-eng.html) | Importing and exporting firearms, weapons and devices  |

Related Links

[Import Controls and Import Permits (international.gc.ca)](https://www.international.gc.ca/controls-controles/about-a_propos/impor/permits-licences.aspx?lang=eng)

[Canadian International Trade Tribunal (citt-tcce.gc.ca)](https://citt-tcce.gc.ca/en)

Superseded D memorandum

D-11-6-7 dated February 16, 2023 (to be updated)

Issuing office

Trade Appeals and Litigation Division

Recourse Directorate

Finance and Corporate Management Branch

Headquarters file

4502-10-3

**Metadata table – Mandatory**

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