Blaney McMurtry LLP

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Customs Laws Applicable to Temporary Importations Made By Non-Residents

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Introduction

Foreign workers, international students, and visitors who travel to Canada often encounter a number of Customs issues relating to the temporary importation of their personal belongings, vehicles, or commercial goods. However, many individuals will not be aware of these issues until they actually arrive at the border. This article is intended to provide a brief overview of Canadian customs laws as they apply to the temporary importation of goods by non-residents.

Temporary Importations of Baggage and Personal Conveyances

The rules applicable to workers, students, and visitors who wish to *temporarily* import baggage and vehicles into Canada *for personal use* appear in the *Non-residents' Temporary Importation of Baggage and Conveyances Regulations*[1] (the "Baggage and Conveyances Regulations"); additional guidance on this topic appears in Memorandum D2-1-1, which is issued by the Canadian Border Services Agency ("CBSA"). Baggage and personal conveyances admitted under these circumstances are admitted under tariff item No. 9803.00.00 of the *Customs Tariff*[2].

According to Section 3 of the Baggage and Conveyances Regulations, a person who is not a resident may temporarily import baggage or conveyances under tariff item No. 9803.00.00 for the personal use of that person in Canada, if the conditions described in that section are satisfied. If eligible, such baggage or conveyances are admitted free of both customs duty and Goods and Services Tax/Harmonized Sales Tax ("GST/ HST"). Usually, the importer verbally declares these items and no formal documentation is required.

Section 4 of the Baggage and Conveyances Regulations states that the baggage that a temporary resident or visitor may temporarily import under tariff item No. 9803.00.00 includes goods that the person imports for his or her personal use, are appropriate for his or her needs, and are consistent with the purpose, nature and duration of his or her intended stay in Canada.

However, Section 4 limits the amount of alcohol, tobacco, and ammunition that may be temporarily imported.

CBSA Memorandum D2-1-1 provides that articles such as tape recorders, typewriters, personal computers, and similar items commonly carried by travellers for their own use while on business trips are admissible as personal baggage. However, goods for demonstration or exhibition, commercial samples, or articles associated with commercial lectures or presentations to be given in Canada are not admissible as personal baggage.

Memorandum D2-1-1 specifies that non-residents who enter Canada on a temporary basis to carry out work on behalf of a Canadian or foreign-based employer may be able to temporarily import professional and commercial goods without payment of duties based on "various special provisions" if certain conditions are met. This implies that professional tools and equipment should not be admitted as personal baggage under tariff item No. 9803.00.00. However, in practice, CBSA officers occasionally disregard this rule.

Section 2 of the Baggage and Conveyances Regulations defines the term "conveyance" as any vehicle, aircraft, water-borne craft or other contrivance that is used to move persons or goods but does not include a mobile home trailer that is more than 2.6 metres (9 feet) in width. Section 3 imposes additional limitations on the temporary importation of conveyances by workers, students, and visitors; it states that such conveyances may not be used in Canada for:

a) Moving passengers or goods for compensation or for transporting goods for sale, or

b) Soliciting sales or subscriptions on behalf of the Canadian office of a business or on behalf of a business based in Canada.

Section 3 clearly excludes residents of Canada. The term "resident" is defined in Section 2 as "a person who, in the settled routine of that person's life, makes his home, resides and is ordinarily present in Canada."

Section 3 instead applies to "temporary residents" and "visitors." Both of these terms are defined in Section 2, in a manner that differs slightly from how they are used in the *Immigration and Refugee Protection Regulations*[3]. The definition of "temporary resident" includes a person who is not a resident of Canada and who resides temporarily in Canada for the purpose of:

a) Studying at an educational institution;

b) Employment for a period not exceeding 36 months; or

c) Performing preclearance activities on behalf of the Government of the United States.

The above definition also includes the spouse or common-law partner or any dependent of a person described above. However, it does not include "visitors," which are defined separately as a person who is not a resident or a temporary resident and who enters Canada for a period not exceeding 12 months.

Time limits for temporary importations under tariff item No. 9803.00.00 are described in Section 5; the applicable time limit depends on whether the importer is a worker, student, or visitor:

a) Goods imported by a visitor (or the spouse, common-law partner, or dependent of that person) may remain in Canada until the earlier of:

1) The expiration of the date that the visitor has declared that he or she intends to leave Canada; and

2) 12 months after the date of importation.

b) Goods imported by a student (or the spouse, common-law partner, or dependent of that person) may remain in Canada until the day on which that person completes his or her studies at an educational institution.

c) Goods imported by a temporary foreign worker (or the spouse, common-law partner, or dependent of that person) may remain in Canada until the earlier of:

1) The day on which that person completes his or her employment in Canada; and

2) 36 months after the day on which that person arrives in Canada.

Where it is impossible or impracticable for a visitor or temporary resident to comply with the above time limits, the Minister may extend the length of time during which any imported baggage or conveyances that are classified under tariff item No. 9803.00.00 may remain in Canada. In the case of a visitor, the time limit may be extended to a maximum of 18 months. In the case of a student or worker, the time limit may be extended to a maximum of 6 months beyond the termination of studies or employment.

Temporary Importations of Professional and Commercial Goods

Commercial goods that are temporarily imported into Canada normally fall under tariff item No. 9993.00.00. As mentioned above, professional tools and equipment, goods for demonstration or exhibition, commercial samples, or articles associated with commercial lectures or presentations to be given in Canada are generally considered commercial goods and must be classified under tariff item No. 9993.00.00, rather than as personal baggage under tariff item No. 9803.00.00. Guidance relating to tariff item No. 9993.00.00 appears in CBSA Memorandum D8-1-1.

Subject to certain exceptions specifically mentioned in tariff item No. 9993.00.00, most commercial goods may be temporarily imported into Canada duty-free. Of course, some goods are already duty-free under a preferential tariff rate. If the goods are normally duty-free and would not be entitled to relief of the GST/HST even if they were temporarily imported, the importer should instead permanently import the goods under their applicable tariff item rather than temporarily import them under tariff item No. 9993.00.00, since there will be no savings on either duty or GST/HST.

Temporary importations under tariff item No. 9993.00.00 are subject to the following conditions:

a) The goods may not be sold or further manufactured or processed in Canada. The term “further manufacturing or processing” does not include “repair” but it does include “alteration.” A “repair” is defined as a corrective maintenance activity that restores a good to its “as-finished” condition. Therefore, where the goods will be subjected to a process that goes beyond repair, the goods do not qualify under tariff item No. 9993.00.00.

b) Goods imported for sale or as spare parts for repair services are not eligible under tariff item No. 9993.00.00, even when there is a reasonable expectation that some of the goods will not be sold and the unsold units will be exported or the parts will not be used and the unused parts will be exported (an exception exists for spare parts imported by a non-resident for the purpose of racing).

c) The goods may not be leased except where imported for use: (1) in an emergency or emergency response training exercise, (2) on loan pending delivery of new machinery or equipment on order, or (3) as temporary replacements for machines or other equipment previously accounted for and undergoing repairs. However, this condition only applies where the importer of the goods is the lessor (i.e., where the goods will be leased or sub-leased by the importer to another party) but not where the importer is the lessee (i.e., the goods are leased by the importer and imported for the importer’s own use).

d) The use of the goods must be specified by the importer at the time of reporting of the goods under the *Customs Act*[4], that use must not be limited or restricted by regulation, and the goods must be released for that specified use.

e) The goods must be imported in no greater quantity than is reasonable for the use specified. At the time of importation, a CBSA officer will review the intended use of the goods and decide whether the number of goods being imported is reasonable.

f) The goods must be accompanied by prescribed documents and by security of a nature and in an amount satisfactory to CBSA, unless otherwise provided by regulation:

1) To ensure that the goods being imported temporarily will be subsequently exported from Canada, the inspecting CBSA officer may require a security deposit. The maximum amount of the security deposit cannot exceed the duties (including the GST/HST and any other excise taxes) that would be payable if the goods were permanently imported.

2) Unlike personal baggage and conveyances, the temporary importation of commercial goods is not declared verbally. Instead, the goods must be formally declared on an E-29B temporary importation permit, a B3 Canada Customs Coding Form, an A.T.A. Carnet, or a Canada/China-Taiwan Carnet. The type of documentation that should be presented will depend on whether the good would normally be subject to customs duties and whether GST/HST would be fully-relieved, partially relieved, or fully payable.

g) The goods must not be diverted to a use that is limited or restricted by regulation, or to a use that would preclude the goods from being classified under this tariff item.

h) Within 18 months of the date of the reporting of the goods under the *Customs Act* or within any other period prescribed for those goods, the goods must be: (1) exported from Canada and satisfactory evidence of the exportation must be provided to CBSA, (2) destroyed and the destruction must be certified by a CBSA officer or other designated person, or (3) consumed or expended under prescribed circumstances. Although the maximum time limit permitted is 18 months, if the importer expects the goods to be in Canada for less than 18 months, the time limit actually applied will reflect that amount of time. For example, if the goods are imported for a sporting event, the duration of the temporary importation should be close to the date the event finishes. If the goods cannot be exported before the expiry date identified on the customs documentation, the importer may apply for an extension before the expiration date. If the total period of importation will remain within 18 months of the date of release, the request for an extension may be made at the nearest CBSA office. Otherwise, the application for an extension must be made in writing to the nearest regional CBSA office.

Commercial goods are not automatically exempt from GST/HST. Therefore, once it has been determined that the goods are considered duty-free under tariff item No. 9993.00.00, the next step is to decide whether they are fully or partially relieved of the GST/HST normally payable under Division III of Part IX of the *Excise Tax Act*[5], or of the excise duties payable under Sections 21.1 to 21.3 of the *Customs Tariff*.

CBSA Memorandum D8-1-1 also provides guidance on what goods will be entitled to full or partial relief of GST/HST when temporarily imported. A detailed list of the goods that are entitled to full or partial GST/HST relief appears in Appendix A to CBSA Memorandum D8-1-1. Even in cases where the temporary importation of a good is both duty-free and GST/HST free, the time limit on the temporary importation for GST/HST relief may differ from the time limit imposed under tariff item No. 9993.00.00. It is always advisable to carefully review the time limits for both duty and GST/HST relief.

Conclusion

In summary, it is a relatively simple process for a non-resident to temporarily import his or her personal baggage and conveyance into Canada, as long as they are for personal use. Normally, this type of temporary importation may be declared verbally and no customs duties or GST/HST will be payable. However, the situation becomes more complex in the case of commercial goods, which normally include professional tools and commercial equipment. Such importations must be formally declared and GST/HST may be payable. Non-residents who wish to temporarily import such goods should always seek legal advice before they appear at the Canadian border.

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1 SOR/87-720.
2 S.C. 1997, c. 36.
3 SOR/2002-227.
4 R.S.C., 1985, c. 1 (2nd Supp.).
5 R.S.C., 1985, c. E-15.