



Ottawa, December 16, 2008

MEMORANDUM D4-3-7

In Brief

DUTY-FREE SHOP – CONTRAVENTIONS AND PENALTIES

1. This memorandum replaces Memorandum D4-3-7, dated September 9, 2008.
2. This memorandum is revised as a result of the Paper Burden Reduction Initiative, the revisions are aimed at eliminating obsolete and duplicated requirements, streamlining certain commercial processes and modifying complex policies and forms.
3. In accordance with the above, among major realignment between the D4-3 series of Customs Memorandum (D4-3-2 to D4-3-7), the guidelines and general information of licensee evaluation and monitoring system from Memorandum D4-3-7 have been deleted and abolished.



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Ottawa, December 16, 2008

MEMORANDUM D4-3-7

DUTY-FREE SHOP – CONTRAVENTIONS AND PENALTIES

This memorandum outlines the contraventions and possible enforcement actions that may result from a duty-free shop licensee's failure to comply with the legislative provisions governing the operation of a duty-free shop.

LEGISLATION

For the regulations governing the guidelines and general information in this directive, refer to the *Duty Free Shop Regulations*.

GUIDELINES AND GENERAL INFORMATION

1. Failure of the duty-free shop licensee to adhere to the provisions of the *Customs Act* or the *Duty Free Shop Regulations* may result in the imposition of a monetary penalty under the Administrative Monetary Penalty System (AMPS) and/or the suspension or cancellation of the licence. This memorandum only provides information and guidelines on the application of AMPS penalties and licence suspension or cancellation. **Note that other penalties not listed in this memorandum could also be applied.** For more information, refer to Memorandum D22-1-1, *Administrative Monetary Penalty System*, and Memorandum D4-3-2, *Duty Free Shop – Licensing* or to link: www.cbsa.gc.ca.

2. AMPS is a civil penalty regime that secures compliance with customs legislation through the application of monetary penalties. AMPS penalties apply to contraventions of the *Customs Act*, the *Customs Tariff*, the *Special Import Measures Act* and the Regulations, as well as contraventions of the terms and conditions of licensing agreements and undertakings.

Contraventions

3. The AMPS Master Penalty Document lists a number of contraventions that relate to the Duty Free Shop Program. It should be kept in mind that licensees may also be required to comply with other Canada Border Services Agency (CBSA) requirements than those discussed here, depending on the nature of their business. The following are examples of AMPS contraventions that may apply to the Duty Free Shop Program's licensees. These examples **do not** supersede any description or prescription of the penalties as enumerated in the AMPS Master Penalty Document.

4. Contravention **C005** may apply to a person who provided to an officer late, incorrect, not true, accurate or complete information required in any permit, certificate, licence, document or declaration in respect of imported or exported goods. For a person who intentionally provided untrue or false information in documentation, see contravention C348.

5. Contravention **C046** may apply when the operator of a duty-free shop fails to allow an officer free access to the duty-free shop or other premises that form part of the shop, including an off-site storage facility. This contravention may occur after a request by the officer to enter the premises has been refused or prevented by the person in charge of the facility.

6. Contravention **C047** may apply when the licensee of a duty-free shop fails to open any package or container of goods in the shop or remove any covering from them to allow free access to the goods. This contravention may occur after a detailed request has been made by the officer to make the goods available for examination.

7. Contravention **C051** may apply when the licensee of a duty-free shop fails to ensure that goods are stored and marked in the manner prescribed in the *Duty Free Shop Regulations*. This contravention may occur when goods are found to be improperly inventoried (stored and identified) during an examination or during an inventory audit.

8. Contravention **C052** may apply when the licensee of a duty-free shop fails to ensure that goods received are held in an area designated by the CBSA until they have been accounted for through the use of e-mail or other approved reporting method. This contravention may occur if no designated holding area is found to exist in the shop and/or off-site storage facility, if goods do not remain in the designated holding area until a release from the holding area has been given, or if goods do not remain in the warehouse until the documentation is stamped by the CBSA and the goods are approved for entry into the duty-free shop inventory.

9. Contravention **C053** may apply when the licensee of a duty-free shop fails to ensure that the shop was locked and sealed when requested by a border services officer or other officer as prescribed in the Regulations. This contravention may occur when a licensee is required to lock and seal the shop for the purposes of a complete inventory to be undertaken by the CBSA. It may also occur when the licensee has failed to renew his or her licence or when the licence has been suspended or cancelled, in which case authorization to lock and seal the shop has been given by the Duty Free Shop Program office.

10. Contravention **C054** may apply when the licensee of a duty-free shop fails to ensure that the shop is kept suitable for the safekeeping of the goods stored in the shop and/or off-site storage facility. This contravention may occur when the licensee fails to meet any specified measure intended to ensure the physical security of the goods.

11. Contravention **C055** may apply when the licensee of a duty-free shop fails to acknowledge receipt of goods as prescribed by the Regulations. This contravention may occur when the licensee fails to endorse a bill of lading, waybill or similar document presented by the carrier.

12. Contravention **C056** may apply when the licensee of a duty-free shop fails to immediately notify the local CBSA chief of operations of the receipt of goods. While the term “immediately” may be subject to some latitude in interpretation by the local CBSA office, this contravention may occur when the licensee fails to notify the local CBSA office at the very least within 24 hours of the same business day the goods are received at the shop or off-site storage facility, based on the business hours of the local CBSA office.

13. Contravention **C057** may apply when the licensee of a duty-free shop fails to present required documents to the local CBSA chief of operations before any goods are taken into the duty-free shop.

14. Contravention **C061** may apply when the licensee of a duty-free shop fails to provide a summary of monthly sales on the prescribed Form B117, *Duty Free Shop Summary of Monthly Sales*, no later than 15 days after the last day of the month in which the sales described on the form were made.

15. Contravention **C064** may apply when the licensee of a duty-free shop sells, gives or in any manner conveys tobacco and/or alcohol products to a person deemed to be minor under the laws of the province in which the duty-free shop is located.

16. Contravention **C155** may apply when a person who imports commercial goods or causes commercial goods to be imported failed to keep, at his or her place of business in Canada or at a designated place, for six years following importation, records relating to the sale or the origin, marking, purchase, importation, costs and value of commercial goods in the prescribed manner. This applies when an audit, verification or examination determines that there are no records in existence. This contravention is subject to a flat penalty amount of \$25,000.

17. Contravention **C302** may apply when a person who imports commercial goods or causes commercial goods to be imported failed to keep, at his or her place of business in Canada or at a designated place, for six years following importation, records relating to the sale or the disposal of the goods in Canada when an audit, verification or examination determines that specific records of disposal

were formally requested by an officer in writing. The penalty is applied per written request.

18. Contravention **C348** may apply to a person who intentionally provided false information in any permit, certificate, licence, document or declaration required to be provided for imported or exported goods under the *Customs Act*, the *Customs Tariff* or the *Special Import Measures Act* or under any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods.

Penalties

19. Penalties will be issued for the contraventions listed above in the amounts specified in the AMPS Master Penalty Document.

20. Suspension of the duty-free shop licence may also be applied simultaneously with monetary penalties applicable for contraventions C046 and C047. However, the suspension of a licence will only be applied by the Duty Free Shop Program office acting on the instructions of the Minister of Public Safety.

21. Suspension or cancellation of the duty-free shop licence may be applied by the Minister of Public Safety in any instance where the licensee fails to comply with any Act of Parliament or regulation relating to the importation or exportation of goods, or that relates to the customs and excise, irrespective of any AMPS contravention that may or may not be applied.

Effect of Contravention History on the Renewal of an Existing Licence

22. The Regulations state that the Minister of Public Safety may renew an existing licence where no grounds exist to suspend or cancel the licence. The Regulations further explain that grounds to suspend or cancel the licence include a failure to comply with any Act of Parliament or regulation relating to the importation or exportation of goods, or that relates to customs and excise. As a result, the licensee’s AMPS contravention history will be taken into account at time of renewal.

23. The Duty Free Shop Program office could recommend to the Minister of Public Safety the non-renewal of a licence based on a history of non-compliance. It will take into account the types of contravention, the frequency of non-compliance and the severity of particular contraventions during the most recent licensing period. For example, should a licensee demonstrate a general disdain for CBSA requirements, which is reflected in numerous types of contraventions indicating a deliberate pattern of non-compliance, the licence may not be renewed. Similarly, should a licensee consistently commit the same infraction without applying the required corrective measures, indicating a deliberate defiance of specific CBSA requirements, the licence may not be renewed. As well,

should certain serious contraventions occur that clearly demonstrate deliberate dishonesty in dealing with the CBSA, the licence may not be renewed.

Effect of Contravention History on the Award of a New Licence

24. The Duty Free Shop Program office could recommend to the Minister of Public Safety not to award a new licence based on a history of non-compliance. It will take into account the types of contraventions, the frequency of non-compliance and the severity of particular contraventions that may exist in an applicant's AMPS compliance history as they may relate to another duty-free shop licence held by the applicant or to any other commercial dealings that the applicant may have with the CBSA.

ADDITIONAL INFORMATION

25. Any inquiries regarding this memorandum should be directed to the following:

Export Process and Duty Free Shop Program
Licensing, Export and Accounting Division
Border and Compliance Programs Directorate
Admissibility Branch
Canada Border Services Agency
Ottawa ON K1A 0L8

Telephone: 613-948-7117 or 613-954-7215
Fax: 613-946-0241

REFERENCES

ISSUING OFFICE – Export Process and Duty Free Shop Program Licensing, Export and Accounting Division Admissibility Branch	HEADQUARTERS FILE –
LEGISLATIVE REFERENCES – <i>Duty Free Shop Regulations</i>	OTHER REFERENCES –
SUPERSEDED MEMORANDA “D” – D4-3-7, September 9, 2008	

Services provided by the Canada Border Services Agency are available in both official languages.

