



# Memorandum D9-1-15

Ottawa, July 12, 2017

## Canada Border Services Agency's Policy on the Classification of Hate Propaganda, Seditious and Treasonous

### In Brief

This memorandum has been revised to reflect legislative amendments, particularly the expanded definition of "identifiable group" to include "gender identity or expression" in reference to suspect hate propaganda as per Tariff Item 9899.00.00 of the Schedule to the [Customs Tariff](#).

This memorandum outlines and explains the interpretation of tariff item 9899.00.00, paragraphs (b), (c) and (d) of the Schedule to the [Customs Tariff](#).

### Legislation

[Customs Tariff](#) – Tariff Item 9899.00.00

[Canadian Charter of Rights and Freedoms](#) – section 1 and subsection 2(b)

[Criminal Code](#) – subsections 46(2), 59(4), and 320(8)

[Customs Act](#) – sections 36, 58, 60 and 142 and subsection 152(3)

### Guidelines and General Information

#### The Uniqueness of Hate Propaganda, Seditious and Treasonous Decisions in the Canada Border Services Agency's (CBSA) Mandate

1. In the course of administering the many laws of Parliament that regulate, control or prohibit the importation of goods into Canada, CBSA officials deal with a wide range of goods.
2. Importation of certain categories of goods is prohibited under [Customs Tariff](#) item 9899.00.00. One category under tariff item 9899.00.00 involves material that is suspected of constituting hate propaganda, seditious or treasonous as defined in subsections 46(2), 59(4) and 320(8) of the [Criminal Code](#). The [Customs Tariff](#) prohibits the importation of such material into Canada, including written, visual and audio materials.
3. Unlike many other goods routinely dealt with by CBSA officials, expressive materials have been found by the courts to be protected by the freedom of expression guarantee set out in subsection 2(b) of the [Canadian Charter of Rights and Freedoms](#). Although not specifically tested in the courts to date, it is believed that, in respect to hate propaganda, seditious and treasonous, as with obscenity, the infringement of section 2(b) of the Charter is justified under its own section 1, because the overriding objective of the law is the avoidance of harm to society and that is a sufficiently substantial concern to warrant a restriction on freedom of expression.
4. As a result the handling of suspect hate propaganda, seditious and treasonous, and the decision-making process for classifying material as hate propaganda under tariff item 9899.00.00, have different repercussions for the CBSA and for importers than do comparable decisions made in relation to other goods that do not involve Charter issues.

## Service Standard

5. Decisions concerning the classification of goods detained as suspect hate propaganda, sedition and treason must be made in a timely manner. The CBSA provides a 30-day service standard at both the determination and re-determination levels. This means that, in general, suspect goods must be classified within 30 days of the date of detention, and that the importer must be promptly notified of the decision. Where an importer makes a request for a re-determination of the classification, pursuant to Section 60 of the [Customs Act](#), the decision must also be made within 30 days of the receipt of the importer's request. If a determination or re-determination is not rendered within the 30-day period, those specific goods should be allowed importation. It should be noted that the size and complexity of the shipment might have an impact on meeting the service standard.

## Determining Whether Goods are Hate Propaganda

6. Goods that constitute hate propaganda under the [Criminal Code](#) are those that contain depictions and/or descriptions that advocate or promote genocide or that publicly incite or willfully promote hatred against an identifiable group, distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.
7. Goods may be prohibited as hate propaganda if they advocate or promote the genocide of an identifiable group. Genocide is defined as acts committed with the intent to destroy, in whole or in part, an identifiable group, either by killing members of the group or by deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.
8. Goods that incite or promote hatred against an identifiable group, by incorporating some or all of the following allegations, may be prohibited as hate propaganda:
- (a) allegations that an identifiable group is to blame for serious economic or social problems;
  - (b) allegations that an identifiable group manipulates media, trade, finance, government or world politics to the detriment of society;
  - (c) allegations that an identifiable group is inferior or superior to another group; and/or
  - (d) allegations that an identifiable group weakens or threatens society, in whole or in part.

## Determining Whether Goods are Seditious

9. Goods that are of a seditious character are, for example, goods that contain depictions and/or descriptions that advocate the use of force, without the authority of law, as a means of accomplishing governmental change within Canada.

## Determining Whether Goods are Treasonable

10. Goods that are of a treasonable character are, for example, goods that contain depictions and/or descriptions that advocate the use of force or violence to overthrow the Government of Canada or a province, or which communicate or make available to an agent of a state other than Canada, without lawful authority, any military or scientific information that may be used by the state for a purpose prejudicial to the safety or defence of Canada.

## Defences and Exceptions

11. Goods that may constitute hate propaganda, through their willful promotion of hatred, will not be classified under tariff item 9899.00.00 if the goods are found to:

- (a) communicate statements that are established to be true;
- (b) predominately express, in good faith, an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c) be relevant to any subject of public interest, the discussion of which is for the public benefit and, on reasonable grounds, are believed to be true; or

(d) be intended, in good faith, to point out, for the purposes of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

12. Similarly, goods that may constitute sedition will not be classified under tariff item 9899.00.00 if the goods are found to have only the intention, in good faith to:

(a) show that Her Majesty has been misled or mistaken in her measures;

(b) point out errors or defects in the government or constitution of Canada or a province, in the Parliament or the legislature or a province, or in the administration of justice in Canada;

(c) procure, by lawful means, the alteration of any matter of government in Canada; or

(d) point out, for the purposes of removal, matters that produce or tend to produce feelings of hostility or ill-will between different classes of persons in Canada.

### **Other Considerations**

13. It should be emphasized that every suspect item is to be assessed in its entirety, with full recognition given to freedom of expression. Each item is to be considered as a whole and its overall nature and dominant characteristics assessed. A section of work that is found to contain areas of concern, as outlined in this memorandum, must be assessed as part of the entire work and in the context of the entire work's theme. However, goods essentially made up of many individual elements are not to be treated as a whole and may be prohibited on the basis of any one of the elements that falls within the provisions of tariff item 9899.00.00. For example, a magazine or newspaper may be considered on a segment-by-segment basis.

**Note:** For the purposes of tariff item 9899.00.00, goods that are made (manufactured, printed, purchased, etc.) in Canada and subsequently exported are considered to constitute an importation on their return to Canada.

### **Additional Information**

14. 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**.

## Appendix

### Advance Reviews and Importers' Rights

#### Advance Reviews

1. Individuals or commercial importers who encounter difficulty in determining whether goods are in compliance with these guidelines may submit a sample of the goods, prior to importation, to the Prohibited Importations Unit (PIU), at Headquarters, for review. An official from the Unit will then provide an opinion regarding the admissibility of the goods into Canada. This service is designed to promote voluntary compliance with the legislation in cases where the classification of specific materials is not immediately clear. Importers can arrange for an advance review by contacting the PIU in Ottawa, at 613-954-7049. It should be noted that any sample goods submitted to the PIU for the purposes of an advance review will **not** be returned.

#### Importers' Rights

##### When Suspected Goods are Detained – Notification

2. An importer, whose goods are suspected of being hate propaganda according to the legislation, will be provided with a written notice of detention containing the following information: a brief description of the goods detained as suspected hate propaganda; the port of entry where the goods are detained; the date of detention; and a contact name and telephone number. This information will be provided in the top portion of the Form K27, *Notice of Detention/Determination*.
3. Once a full review of the goods has been conducted, generally within 30 days of the date of detention, the importer will be notified of the determination in writing (i.e. whether the goods are prohibited or released).
4. If the goods are found to be admissible, the importer will receive a written notice of determination containing a brief description of the goods and the date of determination. This information will be provided by way of Part B of the Form K27. The goods will then be released to the importer, subject to the payment of any applicable duties and/or taxes.
5. If the goods are prohibited as hate propaganda, the importer will receive a written notice of determination containing the following information: a brief description of the goods; the date of determination; the reasons for prohibition; and a list of options available to the importer, including instructions for appeal. This information will be provided by way of Part B of the Form K27.
6. If a shipment contains more than one prohibited title, the Form K27A, *Continuation Sheet*, will be used by CBSA officials to indicate to the importer the specific reasons for which each title was prohibited. A completed Form K27A will then accompany the completed Form K27.

##### When Goods are Prohibited – Importers' Rights

7. When goods are deemed to be hate propaganda, and are therefore prohibited, the importer may exercise any one of the following options, as set out on the reverse of the Form K27, *Notice of Detention/Determination*:
  - (a) the decision may be appealed by writing to the Prohibited Importations Unit - Recourse, within 90 days of the date of the determination, referring to the title of the material, the applicable Form K27 control number, and any other applicable information;
  - (b) the goods may be exported, under customs control and at the importer's expense and arrangement; or
  - (c) the goods may be abandoned to the Crown, pursuant to section 36 of the [Customs Act](#), in which case the material will be destroyed, pursuant to section 142.
8. If the importer fails to appeal or to provide instructions either to export or to abandon the goods within 90 days of the date of decision, the goods will be considered forfeit and will be destroyed.

<b>References</b>	
<b>Issuing Office</b>	Prohibited Importations Unit – Traveller Compliance Unit Program Compliance and Outreach Division Programs Branch
<b>Headquarters File</b>	5905-7-2
<b>Legislative References</b>	<a href="#"><u>Customs Tariff</u></a> <a href="#"><u>Canadian Charter of Rights and Freedoms</u></a> <a href="#"><u>Criminal Code</u></a> <a href="#"><u>Customs Act</u></a>
<b>Other References</b>	
<b>Superseded Memorandum D</b>	D9-1-15 dated June 19, 2017