

Decision Notice

Decisions 38/2024: Customs Department

Customs duty paid for imported vehicles

Reference no: 2021039

Decision date: 31 December 2024

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Customs Department (**Department**) for records related to customs duty paid on vehicles that arrived in a specific shipment. The Department released some information and denied other parts of the PATI request under the exemptions for personal information, commercial information and information received in confidence.

During the Information Commissioner's review, the parties engaged in a facilitated resolution, through which the Applicant narrowed their request, the Department provided all non-exempt information, and the Applicant raised no further challenges to the additional disclosures. Considering the parties' final revised positions, this Decision finds that no issue remains for the Information Commissioner to review. The Information Commissioner does not require the Department to take any further steps concerning this PATI request.

Background

1. As background, the [Customs Tariff Act 1970](#)¹ (**the Act**) is the legislation that guides the registration and appropriate duty rate to be applied when an individual imports goods into Bermuda.
2. When an individual is importing goods, they must declare those goods in a Bermuda customs declaration form (**BCD**). The BCD contains all the necessary information needed to determine the appropriate duty rate that is to be paid by the importer, including the relevant codes that determine the amount of duty owed. For the purposes of this review, the two relevant codes were:
 - a. the customs procedure code (**CPC**), which is the code assigned by the Collector of Customs for goods of a particular description for the purpose of determining the rate of duty for those goods; and
 - b. the tariff code, which is a numerical code that specifies the class or description of the goods. The tariff codes are provided in the First Schedule of the Act.
3. Relevant to this review is Chapter 87 of the [First Schedule of the Act](#), which provides the duty rate to be paid for motor cars and other motor vehicles principally designed for the

¹ The Department explained that the Act is updated on the first of April each year with new rates, new classifications and new customs procedure codes.

transport of persons (rather than for the transport of goods),² including station wagons and racing cars. Specifically, Chapter 8703.238 speaks to “other vehicles valued in excess of \$10,000”. The duty rate for this tariff code is 75% on the \$10,000 and 150% on the value in excess of \$10,000.

4. This review relates to the Applicant’s importation of a particular vehicle by their company. The Applicant disputed the calculation of the importation duty for this vehicle. The duty rate paid was 75% on the first \$10,000 and 150% on the remaining value. The Applicant maintained that the duty rate, which should have been applied, was 35%, not 75%, as the motor vehicle should have been registered with the Transport Control Department (TCD) as a “light truck”, not as a “light passenger truck”.
5. The Department explained to the Applicant that the correct classification of the motor vehicle imported by the Applicant was determined by the information provided by the Applicant.³ Based on the information submitted to the Department, the motor vehicle was classified under Heading 87.03 of the First Schedule because it was principally designed for the transport of persons. It was specifically classified under 8703.238 because it was a 1600cc gas-powered passenger vehicle valued over \$10,000. It was not, therefore, classified under Heading 87.04 of the First Schedule which covers motor vehicles for the transport of goods.
6. The Applicant disagreed.
7. On 14 April 2023, the Applicant made a PATI request to the Department seeking:
 - a. the number of business cars that came on the same boat as the Applicant’s vehicle, including the name of the company/importer and the individual BCD (**item 1**);
 - b. the TCD registration, make and model of all the second-hand business cars that came on the same boat as the Applicant’s vehicle, which should have been contained in the BCD (**item 2**); and

² The Fifth Schedule of the Act provides for ‘End-Use Reliefs’, whereby an importer may apply to the Collector of Customs for relief from duty on eligible goods. In the table on end-use reliefs in the Fifth Schedule, ‘passenger motor cars licensed as trucks’ are eligible for relief from duty (i.e. a duty rate of 35% applies) where the vehicle is “registered as a light truck, intermediate truck, or heavy truck, with [the Transport Control Department]”, and is not a “passenger truck” and where the vehicle is being used for the transport of goods. The relief from duty depends on the registration status of the vehicle with the Transport Control Department.

³ The Applicant provided the Department with a supplier’s invoice, export certificate, bill of landing and a picture of the motor vehicle.

- c. the duty rate paid for all second-hand business cars that came on the same boat as the Applicant's vehicle, including the legislation to support said duty rate (**item 3**).
8. On 28 April 2023, the Department issued its initial decision. The Department disclosed the number of vehicles for item 1 (as 95 vehicles) and the relevant legislation for item 3. The Department further explained that it denied the remainder of the request under section 23(1) (personal information) and sections 25(1)(a), (b) and (c) (commercial interest) of the PATI Act.
9. On 1 May 2023, the Applicant asked for an internal review.
10. On 22 May 2023, the Department issued an internal review decision upholding the initial decision, based on the exemptions for personal information and commercial information, and further relying on section 26(1) (information received in confidence) of the PATI Act.
11. On 29 May 2023, the Applicant asked for an independent review.

Investigation summary

12. The Information Commissioner's Office (**ICO**) accepted the application as valid on 20 June 2023, on the basis that the Applicant had made a PATI request to a public authority and had asked that public authority for an internal review. The ICO also confirmed the issues the Applicant wanted the Information Commissioner to review.
13. During validation, the Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate for this application because examining the withheld records was required to evaluate the public authority's reliance on the provisions.
14. The ICO notified the Department of the valid application on 23 June 2023 and asked for the responsive records. The Department submitted its records on 6 July 2023.
15. On 25 January 2024, the ICO asked the Department to clarify the exemptions relied on in the internal review decision and what the Department had listed for the ICO in the record schedule. On 29 January 2024, the Department confirmed that the exemptions relied on were sections 23(1) and 25(1)(c).
16. As required by section 47(4) of the PATI Act, the ICO invited the parties to make representations. The Applicant made written submissions on 19 February 2024. The Department made verbal submissions on 22 July 2024, some of which were summarised in the ICO's letter of 11 October 2024.

Facilitated resolution

17. During this review, the ICO facilitated separate meetings with the Applicant and the Department seeking to resolve or narrow the issues under review.
18. On 22 August 2024, the ICO met with the Applicant. During the meeting, it was explained to the Applicant that, to obtain information involving third parties, the Applicant (or the Department) would need written consent from every person affected by the disclosure, to avoid the records being withheld under an exemption in the PATI Act. The Applicant expressly confirmed that they would narrow their request to receive only anonymised information from the Department. Specifically, the Applicant agreed to accept the CPC and TCD classification, the make and model of the car, and the duty rate paid based on the BCD completed by each third party for the 95 vehicles.
19. After discussions with both the Department and the Applicant, the ICO obtained agreement from the parties to participate in a facilitated resolution.
20. As part of this process, on 13 November 2024, the Department provided the Applicant with a spreadsheet containing anonymised information about the vehicles on the same boat as the Applicant's vehicle, which the Department compiled from the BCDs submitted by the importer or agent. The Applicant was provided with the vehicle make and model, the duty rate paid, the CPC used and the relevant provision of the Act from the submitted BCDs. The Department advised the Applicant that the TCD classifications and whether the vehicle was second-hand was not information held by the Department.
21. The Applicant acknowledged receipt of the information provided and raised no objections to the disclosure. The Applicant asked several follow-up questions related to the Department's importation of vehicles and duty calculations. The Department subsequently responded to the questions asked.
22. On 22 November 2024, the ICO confirmed that the Department had provided the Applicant with the information responsive to the narrowed issues in the review. The ICO highlighted that the Department had disclosed a spreadsheet listing 43 anonymised importers (item 1), including the duty rate paid and the legislation used to support the calculated duty rate (item 3), and had indicated that the TCD registration and information on whether the vehicle was second-hand was not held by the Department (item 2).
23. The Applicant was invited to withdraw their application because the issues were fully resolved. The Applicant was also advised that they could exercise their right to a decision by the Information Commissioner. The Applicant did not withdraw their application.

Information Commissioner's analysis and findings

24. The Information Commissioner has considered all relevant information, being satisfied that no matter of relevance has been overlooked.
25. Considering the parties' revised positions and resolution of the issues as described above, the Information Commissioner finds that no issue remains for her to consider in this Decision.

Decision

The Information Commissioner finds that the Customs Department (**Department**) has provided all non-exempt information in response to the narrowed issues in this independent review, leaving no matter for the Information Commissioner to consider. In accordance with section 48 of the Public Access to Information Act 2010, the Information Commissioner does not require the Department to take any further action in response to this request.

Judicial Review

The Applicant, the Customs Department, or any person aggrieved by this Decision has the right to seek and apply for judicial review to the Supreme Court in accordance with section 49 of the PATI Act. Any such application must be made within six months of this Decision.

Gitanjali S. Gutierrez
Information Commissioner
31 December 2024

**Information Commissioner for Bermuda
Maxwell Roberts Building
4th Floor
One Church Street
Hamilton, HM 11
ico.bm
441-543-3700**