



Ottawa, January 14, 2011

MEMORANDUM D7-4-2

In Brief

DUTY DRAWBACK PROGRAM

1. This In Brief page has been revised to denote changes made as a result of the Government of Canada's Paperwork Burden Reduction Initiative. The revisions are aimed at eliminating obsolete and duplicated requirements. This revision replaces Memorandum D7-4-2 dated January 31, 1996.
2. In accordance with the above, the following changes were made:
 - (a) All information regarding the North American Free Trade Agreement can be found by referencing D7-4-3, *NAFTA Requirements for Drawback and Duty Deferral*.
 - (b) All links to forms and reference material, including the *Goods Imported and Exported Refund and Drawback Regulations*, are located under the heading Additional Information of this memorandum.





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DUTY DRAWBACK PROGRAM

This memorandum outlines and explains the procedures and conditions that must be respected when filing a claim for a drawback of duties paid.

GUIDELINES AND GENERAL INFORMATION

1. This program will be of benefit to persons who presently, or will
 - (a) import goods into Canada,
 - (b) receive goods imported into Canada, or
 - (c) export the imported goods from Canada,and wish to file a claim for a drawback (refund) of the duties paid.
2. When imported goods which are subsequently exported from Canada were
 - (a) further processed,
 - (b) displayed or demonstrated in Canada,
 - (c) used for the development or production in Canada of goods for subsequent export, and
 - (d) exported without having been used in Canada for any purpose other than for (a), (b), or (c),a drawback may be filed to claim the duties paid on the imported goods. This means a refund of the customs duties, anti-dumping and countervailing duties, or excise taxes, other than the Goods and Services Tax (GST)/Harmonized Sales Tax (HST), that were paid at the time of importation, may be claimed.
3. For the purposes of paragraph 2(a), "further processed" includes imported goods, other than fuel or plant equipment, directly consumed or expended in the manufacture or production in Canada of goods for export.

Claiming the GST

4. Goods and Services Tax (GST)/Harmonized Sales Tax (HST) cannot be refunded by drawback. For information regarding GST/HST, please visit the Canada Revenue Agency (CRA) Web site at www.cra.gc.ca or contact the CRA Business Information Services (BIS) line at **1-800-959-8287**.

Who May Apply

5. The importer, exporter, processor, owner, or producer of goods that were exported from Canada and for which duty was paid on importation, may file a drawback claim. Where more than one person is eligible to file a claim, the claimant must secure a waiver from all other eligible claimants waiving their rights to claim.

How to Apply

6. Complete Form K32, *Drawback Claim*, to apply for a drawback and submit it, together with supporting documentation, to the nearest CBSA office. Completion instructions are on the back of the form. A sample of the Form K32 can be found on the CBSA Web site at www.cbsa.gc.ca.

Supporting Documentation

7. The drawback claim must include supporting documentation demonstrating that the conditions under the legislation and regulations have been met. This documentation could include but is not exclusive to a copy of the export sales invoice together with evidence of export.
8. Satisfactory evidence must be provided if the exports are affected by NAFTA. "Satisfactory Evidence" is explained in Memorandum D7-4-3, *NAFTA Requirements for Drawback and Duty Deferral*.
9. Company computer printouts or other company computer media describing the goods invoiced in the transaction may be provided when the claim is lengthy.
10. Additional information or documents may be required in order to establish the validity of the claim. They must be provided upon request.

Certificates and Waivers

11. A waiver is required from all other eligible claimants waiving their rights to claim a drawback. A claim will not be accepted if such a waiver is required but not included.
12. CBSA has created two types of waiver certificates. Form K32A, *Certificate of Importation, Sale or Transfer* is used to waive the duties to someone other than the importer. Form K32B, *Drawback Certificate of Sale for Exportation* is used when the claimant is not the exporter. Copies of these waiver forms are available on the CBSA Web site at www.cbsa.gc.ca or through the CBSA office.

Filing Time Limits

13. A claim for drawback must be filed within four years of the date the imported goods were released. In the case of spirits used in the manufacture of exported distilled spirits, a claim must be filed within five years of the release date.

14. Before a claim may be filed, the goods must be exported, or deemed exported.

15. Drawback claims may be filed at any CBSA office and will be date-stamped upon receipt

16. If the claim is sent by registered mail or courier, the date of registration will be the date used for calculating the time limit for the submission of the claim.

17. In instances where the claim is forwarded to CBSA by regular mail or hand delivered, the date that the claim is received in the CBSA office will be the date of filing.

Deemed Exportation

18. Subsection 89(3) of the *Customs Tariff* identifies goods deemed to be exported. In other words, though the goods may not actually have left Canada, they are considered to be exported.

Consumable and Expendable Goods

19. Goods, other than fuel or plant equipment, consumed or expended in the direct manufacture of other goods which are subsequently exported from Canada, may be eligible for drawback.

20. Consumables are goods that virtually disappear in the manufacturing process and do not form part of the finished product.

21. Expendables are goods that retain some of their physical characteristics after use, but have become useless or de-vitalized and do not form part of the finished product.

Equivalence

22. "Equivalence" is the term used in cases where both imported and domestic goods of the same class are used interchangeably in the processing of end products, some of which are exported. The imported goods must be in sufficient quantities to produce the goods exported, and be used in production prior to the domestic goods. The imported goods must be used in the different manufacturing facilities producing the exported products. The finished product, when incorporating domestic goods must be exported within two years of the date of release of the imported goods.

23. Equivalence can only be applied to goods which are further manufactured, including "consumable" or "expendable" goods.

24. In order for domestic and imported textile fabrics composed of different fibres to be considered equivalent for purposes of a drawback, the fabrics must be made from fibres that fall within the same class, as listed in Subsection 11(2) of the *Goods Imported and Exported Refund and Drawback Regulations*. Fabrics composed of fibres of different classes will be considered equivalent only if they meet the weight requirements of the regulations.

Examples:

Eligible Equivalent Blends or Mixtures

Polyester/Cotton 65/35 and 50/50

Polyester/Cotton 80/20 and 50/50

Wool/Viscose 70/30 and 40/60

Nylon/Cotton 15/85 and 40/60

Nylon 100 per cent and Nylon/Acetate 96/4

Ineligible Equivalent Blends or Mixtures

Polyester/Cotton 45/55 and 80/20

Nylon/Cotton 50/50 and 15/85

Scrap or Waste

25. Scrap or waste resulting from a processing operation can normally be included in a claim. However, the scrap or waste cannot be claimed if similar scrap or waste would be subject to duty, if it was imported and the scrap or waste has a merchantable (sales) value.

26. If the scrap has a sales value and would be subject to duty if it is imported as such, it can only be claimed on a drawback if the scrap is exported. Otherwise, the claim must be reduced by the amount of duty that would be applicable to the sales value of the scrap.

Drawback Repayment

27. One of the conditions that must be met in order for goods to qualify as Canadian Goods Returned (CGR) under Harmonized System (HS) heading 9813 or 9814, is that you repay the amount, including interest, of any drawback that was granted.

28. To repay the drawback at the time of re-importation, you must classify the goods under HS heading 9813 or 9814 and insert 50-0000 in the special authority field (No. 26) of Form B3-3, *Canada Customs Coding Form*. Refer to example No. 21 in Appendix B of Memorandum D17-1-10, *Coding of Customs Accounting Documents*, at www.cbsa.gc.ca.

Interest

29. Any person who receives a drawback of duties other than those levied under SIMA, shall receive, in addition to the drawback, interest at the prescribed rate, starting on the ninety-first day after the application for the drawback is received by CBSA, and ending on the day the drawback is granted.

30. Any person granted a drawback of duties levied under SIMA will be granted interest at the prescribed rate for each month or fraction of a month beginning on the ninety-first day after an application is received by CBSA, and ending on the day the drawback is granted.

Non-compliance

31. CBSA will recover any amount exceeding the amount for which the person is eligible which it overpays, including interest. Interest will be collected on the overpayment from the time the drawback was paid until such time as the full amount is repaid.

Sanctions

32. The *Customs Act* provides for penalties to be applied under the Administrative Monetary Penalty System (AMPS) when duties owing are not paid within legislated time limits.

Additional Information

33. To view the *Goods Imported and Exported Refund and Drawback Regulations* (SOR/96-42) please visit the following Department of Justice Canada Web site at <http://laws-lois.justice.gc.ca>.

34. For a listing of your Regional CBSA Trade Compliance Division (TCD) offices, please visit the CBSA Web site at www.cbsa.gc.ca.

35. For more information regarding CBSA programs, within Canada call the Border Information Service at **1-800-461-9999** for service in English or 1-800-959-2036 for service in French. TTY is also available within Canada: **1-866-335-3237**. Long distance charges will apply to calls from outside Canada using 204-983-3500 or 506-636-5064. Agents are available from 08:00 to 16:00, Monday to Friday, except holidays.

REFERENCES

<p>ISSUING OFFICE –</p> <p>Tariff Division Post-Border Programs Directorate Programs Branch</p>	<p>HEADQUARTERS FILE –</p> <p>6500-1</p>
<p>LEGISLATIVE REFERENCES –</p> <p><i>Customs Tariff</i>, sections 113 and 114 P.C. 1995-2250, Dated December 28, 1995 <i>Goods Imported and Exported Refund and Drawback Regulations (SOR/96-42)</i></p>	<p>OTHER REFERENCES –</p> <p>D7-4-1, D7-4-3</p>
<p>SUPERSEDED MEMORANDA “D” –</p> <p>D7-4-2, January 31, 1996</p>	

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

