

MEMORANDUM D7-4-2

Ottawa, January 31, 1996

SUBJECT

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.

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**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, or
- (d) exported without having been used in Canada for any purpose other than for (a), (b), or (c),

you may apply for a drawback of the duties paid on the imported goods. This means you may apply for a return of the customs duties, anti-dumping and countervailing duties, or excise taxes, other than the Goods and Services Tax (GST), that were paid at the time of importation.

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 exportation.

Claiming the GST

4. If you are a GST non-registrant, did not use the imported goods for any purpose, and exported the goods within 60 days of their importation, you may apply for a GST rebate on a drawback claim. Once the Department processes your claim, the GST Rebate Processing Centre will be advised on your behalf. Claims for GST only must be claimed on Form 189, *General Application for Rebate of Goods and Services Tax*, and submitted directly to the GST Processing Centre.

Who May Apply

5. If you are the importer, exporter, processor, owner, or producer of goods that were exported from Canada and for which duty was paid on importation, you may file a drawback claim. Where more than one person is eligible to file a claim, you must secure a waiver from all other eligible claimants waiving their rights to claim. If you are not sure you require a waiver, please contact your local Revenue Canada Trade Administration Services (TAS) office listed in Appendix C.

How to Apply

6. To apply for a drawback, you must complete, in duplicate, a Form K 32 or K 32-1, *Drawback Claim*, and file it, together with supporting documentation, at the nearest TAS office. The claim should be typed or written legibly in ink. Completion instructions are on the back of the form and a sample claim can be found in Appendix B.

Supporting Documentation

7. The following documents must accompany the claim:

- (a) a copy of any export sales invoice;
- (b) a bill of lading or other shipping document;
- (c) a waiver on commercial documentation or the original and one copy of any Form K 32A, *Certificate of Importation, Sale or Transfer*, when the claimant is not the importer;

(d) a waiver on commercial documentation or the original and one copy of any Form K 32B, *Drawback Certificate of Sale for Exportation*, when the claimant is not the exporter.

(e) satisfactory evidence, if your exports are affected by NAFTA. "Satisfactory Evidence" is explained in Memorandum D7-4-3, *NAFTA Requirements for Drawback and Duty Deferral*.

8. Computer printouts or other suitable computer media can be used when the claim is lengthy.
9. The documents shall contain a complete description of the goods invoiced in the transaction.
10. Additional information or documents may be required in order to establish the validity of the claim. They must be provided upon request.
11. When a supporting document is not available, a claim may be accompanied by a document containing information equivalent to that which would be found in the missing document.

Certificates and Waivers

12. A waiver, is required from all other eligible claimants waiving their rights to claim a drawback, and must be filed with the claim. You cannot file a claim if such a waiver is required but not included. It should be noted that the GST is not transferable by the importer.

13. To assist you, the Department has created two types of waiver certificates. Form K 32A is used to waive the duties to someone other than the importer. Form K 32B is used when the claimant is not the exporter. Copies of these waiver forms are available from your nearest TAS office.

14. If you wish to use commercial documentation instead, it must contain the same information available on departmental forms, and must be signed. It must also contain the statement shown below, along with the amount of duties waived, the transaction number, the date of release, the quantity and description of the goods.

15. The following statement must be placed on commercial documentation, and be signed where the rights to claim a drawback are being waived to another party.

I hereby certify that the information contained herein is correct and hereby waive the right to claim the specified duties to:
--

Company Name: _____

Address: _____

Signature

Date

Filing Time Limits

16. A claim for drawback must be filed within four years of the date the goods were released from customs. 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.

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

18. Drawback claims filed at any Revenue Canada office will be date-stamped immediately on receipt and forwarded to the appropriate Revenue Canada TAS office.

19. The stamped date or, if the claim is sent by registered mail, the date of registration will be the date used for calculating the time limit for the submission of the claim.

20. In instances where the claim is forwarded to the TAS office by regular mail or courier, the date that the claim is received in the TAS office will be the date of filing.

Deemed Exportation

21. Subsection 80(3) of the *Customs Tariff* contains a list of when goods are deemed to be exported. In other words, though the goods may not actually have left Canada, they are intended for export. Examples might include goods placed in a bonded warehouse or in a duty-free shop.

22. In the case where goods are delivered to a bonded warehouse or duty-free shop for exportation, supporting documentation must include a copy of Form B 3, *Canada Customs Coding Form*, or form B 116, *Canada Customs Duty Free Shop Accounting Document*.

Consumable and Expendable Goods

23. Goods, other than fuel or plant equipment, consumed or expended in the direct manufacture of other goods which are subsequently exported from Canada, are subject to drawback.

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

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

Equivalence

26. "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 plant producing the exported products. The finished product (using domestic goods) must be exported within two years of the date of release of the imported goods.

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

28. 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 the regulations. Fabrics composed of fibres of different classes will be considered equivalent only if they meet the weight requirements of the regulations. Production of the textile goods using the imported and domestic fabrics may take place at different plants.

29. The following are examples of the application of section 11(2) of the Regulations.

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

30. You can normally include in your claim any scrap or waste resulting from a processing operation. However, you cannot claim your scrap or waste if similar scrap or waste would be subject to duty, if it was imported and the scrap or waste has a merchantable (sales) value.

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

NAFTA

32. If you are a processor and you export goods to the United States or Mexico, you should be aware that the *North American Free Trade Agreement* (NAFTA) may have an effect on the amount of customs duties you may claim by drawback. The provisions of Article 303 of NAFTA, Restriction on Drawback and Duty Deferral Programs, apply to processed goods exported to the United States on or after January 1, 1996, and processed goods exported to Mexico on or after January 1, 2001.

33. In general, NAFTA affects goods imported from non-NAFTA countries and used in the production of another product that is subsequently exported to a NAFTA country. There are exceptions to this:

(a) Goods are not affected by NAFTA if their condition is the same at export as it was upon import; as well, these goods may undergo certain minor processing operations in Canada, and still be considered to be in an unchanged condition for purposes of NAFTA;

(b) NAFTA originating imports (whether or not they are used in the production of another exported good) are not affected by NAFTA; and

(c) NAFTA also does not affect certain specifically named products.

Full drawback of customs duties may apply in these instances.

34. For products manufactured or processed in Canada using non-NAFTA originating goods, drawback may be claimed in an amount equal to the lesser of the amount of customs duties paid on the goods imported into Canada, or of the amount of customs duties paid on the end products when they enter the United States or Mexico (converted to Canadian funds). This means you may claim customs duties in an amount which is the lesser of these two amounts. This is commonly referred to as the “lesser of” concept.

35. In order to compare the two amounts, you will need evidence of the amount of customs duties paid on your exports when they enter a NAFTA country. You must obtain proof of such payment in order to calculate the amount of customs duties you may claim. Proof of the amount of customs duties paid must accompany the claim you submit to Revenue Canada. A copy of a US customs entry is an example of suitable proof. This is referred to as “satisfactory evidence.”

36. NAFTA also limits drawback of anti-dumping and countervailing *Special Import Measures Act* (SIMA) duties. You may not claim drawback of SIMA duties on goods that are subject to Article 303 of NAFTA. However, goods that are an exception to NAFTA will be allowed to claim a drawback of SIMA duties.

37. NAFTA does not affect drawback of customs duties on products exported to non-NAFTA countries. The “lesser of” concept **does not apply** to such exports, and full drawback will be allowed.

38. Additional information concerning the application of Article 303 of NAFTA may be found in memorandum D7-4-3, *NAFTA Requirements for Drawback and Duty Deferral*.

Drawback Repayment

39. 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.

40. 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 B 3. Refer to example No. 23 in Appendix B of memorandum D17-1-10, *Coding of Customs Accounting Documents*.

Interest

41. 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 Revenue Canada, and ending on the day the drawback is granted.

42. 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 Revenue Canada, and ending on the day the drawback is granted.

Non-compliance

43. For the purposes of this program, where a drawback is paid on goods which are deemed exported, and the goods are not subsequently exported, the amount of the drawback must be repaid. Any occurrences of diversions resulting in duties owing should be repaid within 90 days of the date of diversion.

44. The Department will recover any money which it overpays, including overpaid interest, and will charge interest on the overpayment from the time the drawback was paid until such time as the full amount is repaid.

Sanctions

45. The *Customs Act* now provides for monetary penalties to be applied when duties owing are not paid within legislated time limits.

46. If you fail to report diversions within 90 days, and do not pay the duties owing, the Department's sanction policy will be applied as follows:

(a) For each diversion that is unreported and unpaid, Revenue Canada will apply a penalty of 5% of the duties and taxes, plus 1% of the duties and taxes for every full month, not to exceed 12 months, until the diversion is paid;

(b) Where additional diversions occur within the next three years, the penalty increases to 10% of the duties and taxes, plus 2% of the duties and taxes for every full month, not to exceed 20 months, until the diversion is paid.

APPENDIX A

Regulations

REGULATIONS RESPECTING THE REFUND
AND DRAWBACK OF DUTIES PAID IN RESPECT
OF IMPORTED GOODS SUBSEQUENTLY
EXPORTED, IN RESPECT OF IMPORTED
GOODS PROCESSED IN CANADA AND
SUBSEQUENTLY EXPORTED AND IN
RESPECT OF IMPORTED GOODS USED,
CONSUMED OR EXPENDED IN THE
PROCESSING IN CANADA OF GOODS
SUBSEQUENTLY EXPORTED

Short Title

1. These Regulations may be cited as the *Goods Imported and Exported Refund and Drawback Regulations*.

Interpretation

2. In these Regulations,

“Act” means the *Customs Tariff*; (*Loi*)

“Crown corporation” means a corporation named in Schedule II or Schedule III to the *Financial Administration Act*; (*société d’État*)

“textile fabric” means textile fibre, glass fibre, textile fabric, glass fabric or other textile product that is of a stage between textile fibre and fabric that is composed exclusively of fibres that fall within a class set out in Schedule I. (*tissus textiles*)

PART I

DRAWBACK

Application

3. This Part applies in respect of the grant, under subsection 100(1) of the Act, of a drawback of the duties paid in respect of imported goods described in subsection 80(1) of the Act, other than goods in respect of which the *Exported Motor Vehicles Drawback Regulations* apply.

Circumstances in Which an Application for Drawback May Be Made

4. Subject to section 5, an application for a drawback may be made where

(a) in the case of goods described in paragraph 80(1)(a) of the Act, the goods were not damaged before being exported;

(b) in the case of exported goods described in any of paragraphs 80(1)(b) to (e) of the Act, the goods

- (i) were not used in Canada before being exported for any purpose other than display or demonstration, and
 - (ii) were not damaged before being exported;
- (c) in the case of imported goods described in paragraph 80(1)(d) of the Act, other than textile fabric, on which relief of duties would otherwise have been granted,
- (i) the imported goods are processed in the plant in Canada in which the same quantity of domestic or imported goods of the same class was processed and subsequently exported, and
 - (ii) the exported goods were exported within two years after the date the imported goods were released;
- (d) in the case of imported textile fabric described in paragraph 80(1)(d) of the Act on which relief of duties would otherwise have been granted,
- (i) the imported textile fabric is processed into textile goods in a plant in Canada by the processor of textile goods who processed the same quantity of domestic or imported textile fabric of the same class that was subsequently exported, and
 - (ii) the exported textile goods were exported within two years after the date the imported textile fabric was released; and
- (e) in the case of imported goods described in paragraph 80(1)(e) of the Act on which relief of duties would otherwise have been granted,
- (i) the imported goods are directly consumed or expended in the processing of goods in the plant in Canada in which the same quantity of domestic or imported goods of the same class was directly consumed or expended in the processing of the exported goods, and
 - (ii) the exported goods were exported within two years after the date the imported goods were released.
5. An application for a drawback under this Part may be made where
- (a) the goods were exported or deemed to have been exported before the application for drawback is made; and
 - (b) the applicant provides a waiver from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

Prescribed Classes of Goods and Use

6. For the purposes of paragraph 80(3)(b) of the Act, the ships and aircraft described in Schedule II are prescribed as classes of ships and aircraft.
7. For the purposes of paragraph 80(3)(c) of the Act, the prescribed class of telegraph cable ships includes only those telegraph cable ships that are
- (a) registered in any country;
 - (b) used exclusively for the laying and repairing of oceanic telegraph cables outside Canada; and
 - (c) proceeding on an ocean voyage outside Canada.
8. For the purposes of paragraph 80(3)(g) of the Act, goods are used or destined for use where they
- (a) are purchased by the government of a NAFTA country or its authorized agent, by a department of the Government of Canada or by a Crown corporation acting on behalf of the government of a NAFTA country;
 - (b) are for use solely and exclusively in conjunction with

- (i) a project undertaken jointly by the Government of Canada and the government of a NAFTA country, or
 - (ii) an undertaking, located in Canada, of the government of a NAFTA country; and
- (c) are or will become the property of the government of a NAFTA country.

Persons Who May Claim a Drawback

9. (1) Subject to subsection (2), a drawback may be claimed by any person who is the importer or exporter of the imported or exported goods, or is the processor, owner or producer of those goods between the time of their direct shipment to Canada and their export or deemed export.

(2) In the case of the goods described in section 10, a drawback may be claimed only by the importer of the goods.

Time Limits for Applying for Drawback

10. In the case of imported spirits described in paragraph 80(1)(b) of the Act on which the relief of duties would otherwise have been granted, an application for drawback shall be made within 5 years after the date the imported spirits were released.

Goods of the Same Class

11. (1) Subject to subsection (2), for the purposes of paragraphs 80(1)(d) and (e) of the Act, domestic or imported goods shall be considered to be of the same class if the goods are so similar that they may be

- (a) used interchangeably in the processing of goods in Canada; or
- (b) directly consumed or expended interchangeably in the processing in Canada of goods.

(2) For the purposes of paragraphs 80(1)(d) and (e) of the Act, domestic and imported textile fabrics composed of different fibres shall be considered to be of the same class if the domestic and imported textile fabrics are composed of

- (a) fibres that fall within one class set out in Schedule I; or
- (b) fibres that do not fall within one class set out in Schedule I, if
 - (i) any particular class set out in that Schedule within which fall fibres of which the domestic textile fabric is composed
 - (A) is a class within which fall fibres of which the imported textile fabric is composed, or
 - (B) represents less than five per cent of the weight of the domestic textile fabric, and
 - (ii) the difference between the following proportions does not exceed 33 percentage points:
 - (A) the proportion, expressed as a percentage, that the aggregate weight of the fibres of which the domestic textile fabric is composed that fall within the particular class is of the weight of the domestic textile fabric, and
 - (B) the proportion, expressed as a percentage, that the aggregate weight of the fibres of which the imported textile fabric is composed that fall within that particular class is of the weight of the imported textile fabric.

Same Condition Uses and Operations

12. For the purposes of paragraph 80(1)(a) of the Act, imported goods will be considered to be in the same condition after they

(a) undergo any of the processes described in Article 303(6)(b) of NAFTA or any of the operations described in paragraph 8 of Article X of Section F of the *Uniform Regulations for the Interpretation, Application, and Administration of Chapters Three (National Treatment and Market Access for Goods) and Five (Customs Procedures) of the North American Free Trade Agreement*, if those processes or operations do not materially alter the characteristics of the goods;

(b) are used for

(i) the development or production, other than as plant equipment, of goods to be exported, or

(ii) display or demonstration; or

(c) in the case of reusable containers, are used in the international transportation of goods.

Portion of Duties that May Be Granted as a Drawback

13. Where the amount of duties paid in respect of imported textile fabric that is considered under section 11 to be of the same class as domestic textile fabric exceeds the amount of duties that would have been payable had the domestic textile fabric been imported, the portion of the duties so paid that may be granted as a drawback is the proportion that the amount that would have been so payable is of the amount that was so paid.

No Drawback to Be Granted

14. A drawback shall not be granted in respect of

(a) imported goods described in paragraph 80(1)(d) of the Act on which relief of duties would otherwise have been granted, where the domestic goods referred to in subparagraph 4(c)(i) or (d)(i) are processed before those imported goods are processed;

(b) imported goods described in paragraph 80(1)(e) of the Act on which relief of duties would otherwise have been granted, where the domestic goods referred to in subparagraph 4(e)(i) are consumed or expended before those imported goods are consumed or expended;

(c) imported goods described in paragraph 80(1)(c) or (e) of the Act on which relief of duties would otherwise have been granted, if those goods are goods described in Schedule III; or

(d) imported goods described in paragraph 80(1)(d) of the Act on which relief of duties would otherwise have been granted, if those goods are spirits.

PART II

REFUND

Application

15. This Part applies in respect of the grant, under subsection 100(1) of the Act, of a refund of the duties paid on imported goods described in subsection 80(1) of the Act.

*Circumstances in Which an Application
for a Refund May Be Made*

16. An application for a refund under this Part may be made where the goods have not been exported or deemed to have been exported before the application for a refund is made.

Persons Who May Claim a Refund

17. A refund may be claimed by the person to whom the Minister has issued a certificate under subsection 80.1(1) of the Act in respect of the goods on which the duties were paid.

Time Limits for Applying for Refund

18. (1) Subject to subsection (2), for the purposes of paragraphs 77(2)(b) and 79.4(2)(b) of the Act, where the Deputy Minister makes a re-determination under paragraph 64(c.1) of the *Customs Act*, an application for refund must be made within the later of four years after the goods are accounted for under section 32 of that Act and one year after the date of that re-determination.

(2) Where an appeal from a re-determination referred to in subsection (1) is made and the Deputy Minister makes a re-determination under paragraph 64(d) of the *Customs Act*, an application for refund must be made within the later of four years after the goods are accounted for under section 32 of that Act and one year after that re-determination.

SCHEDULE I
(Sections 2 and 11)

CLASSES OF FIBRES

1. Natural textile fibres such as silk, wool, cotton, flax and sisal
2. Artificial fibres that are viscose or acetates
3. Synthetic fibres that are nylons or other polyamides, polyesters, acrylics, polyethylenes, polypropylenes or elastomers
4. Glass

SCHEDULE II
(Section 6)

CLASSES OF SHIPS AND AIRCRAFT

1. Ocean-going ships operating or being repaired or reconstructed to operate exclusively in international trade
2. Foreign warships, within the meaning of the *Ships' Stores Regulations*
3. Telegraph cable ships, within the meaning of the *Ships' Stores Regulations*
4. Ships registered in a country other than Canada that are used exclusively for pleasure purposes
5. Aircraft operating exclusively in international flights
6. International aircraft, within the meaning of the *Ships' Stores Regulations*

SCHEDULE III
(Section 14)

GOODS NOT SUBJECT TO DRAWBACK

1. Fuel
2. Plant equipment

**APPENDIX B
(FORM K 32)**

APPENDIX C

LISTING OF TAS OFFICES

ATLANTIC REGION

1557 Hollis Street
P.O. Box 3080
Halifax South Postal Station
Halifax NS B3J 3G6

QUEBEC REGION

130 Dalhousie Street
P.O. Box 2267
Quebec QC G1K 7P6
50 Place de la Cité
P.O. Box 127
Sherbrooke QC J1H 5H8

400 Youville Square
Montréal QC H2Y 2C2

NORTHERN ONTARIO REGION

2265 St. Laurent Boulevard
Ottawa ON K1G 4K3

SOUTHERN ONTARIO REGION

1 Front Street West
P.O. Box 10, Station "A"
Toronto ON M5W 1A3

310 Simcoe Street South
Oshawa ON L1H 4H7

Suite 204
Plaza II
350 Rutherford Road South
Brampton ON L6W 4N6

26 Arrowsmith Street
P.O. Box 2989
Hamilton ON L3N 3V8

451 Talbot Street
P.O. Box 5940, "Station A"
London ON N6A 4T9

Paul Martin Building
185 Ouellette Avenue
P.O. Box 1655
Windsor ON N9A 7G7

PRAIRIE REGION

Federal Building
269 Main Street
Winnipeg MB R3C 1B8

720-220 4th Avenue South-East
Calgary AB T2G 4X3

PACIFIC REGION

333 Dunsmuir Street
Vancouver BC V6S 5R4