

**MEMORANDUM D7-4-3**

Ottawa, April 12, 1996

**SUBJECT**

**NAFTA REQUIREMENTS FOR DRAWBACK  
AND DUTY DEFERRAL**

This Memorandum outlines and explains the effects of Article 303 of the North American Free Trade Agreement (NAFTA) on the drawback and duty deferral programs.

**Drawback and Duty Deferral**

NAFTA affects most non-originating goods used as materials in the manufacture of products exported to another NAFTA country. Memorandum D7-4-1, *Duty Deferral Program*, outlines the conditions and circumstances under which duties may be deferred at the time of importation through the Duties Deferral Program or the Bonded Warehouse Program. Memorandum D7-4-2, *Duty Drawback Program*, outlines the conditions and circumstances under which a refund (drawback) of duties may be claimed. **These Memoranda should be reviewed before reading this Memorandum.**

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## **GUIDELINES AND GENERAL INFORMATION**

### **The North American Free Trade Agreement (NAFTA)**

1. Article 303 of NAFTA requires Canada to implement specific changes to its drawback and duty deferral programs for goods exported to the other NAFTA countries. The changes may affect the amount of customs duties refundable via drawback, or the amount of customs duties deferrable under a duty deferral program, on non-NAFTA originating goods used in the production of a good exported to another NAFTA country.

#### **Effective Dates**

2. The changes apply to goods exported to:
- (a) the United States on and after January 1, 1996;
  - (b) Mexico on and after January 1, 2001.

#### **NAFTA Restrictions**

3. Article 303 of NAFTA places limits on the amount of customs duties and anti-dumping and countervailing duties – *Special Import Measures Act* (SIMA) duties – refundable by way of drawback or deferrable under duty deferral programs for goods exported from one NAFTA country to another. Article 303 of NAFTA does not effect GST relief, GST deferral, or GST Input Tax Credit refund processes.

#### **Goods Affected by the NAFTA Limitations**

4. Only certain goods are affected by the limitations on drawback and duty deferral. The NAFTA changes affect imported non-NAFTA originating goods (or goods substituted with identical or similar goods) that are used in the production of another good that is exported to a NAFTA country.

#### **Limitations on Customs Duties**

5. For exported goods affected by the limitations, drawback, or deferral of customs duties cannot exceed:

- (a) the lesser of the total amount of customs duties paid or owed on the goods imported into Canada; and
- (b) the total amount of customs duties paid on the exported good in the NAFTA country where the good was imported.

This is known as the “lesser of the two duties” concept.

### **The Lesser of the Two Duties Concept**

6. To determine the amount of customs duties subject to claim under the drawback program or to determine the amount of customs duties deferrable under a duty deferral program, companies must establish two duty amounts:

- (a) the amount of customs duties paid or owed on imported goods entering Canada;

**Note:** To determine the amount of customs duties paid on imported goods that have been exported, companies may continue to use existing methods including quantitative tracking methods, duty cost systems, value out-turn systems, sales/production ratio systems, etc.

- (b) the amount of customs duties paid on the goods entering the other NAFTA country.

**Note:** The duties paid on the goods entering the other NAFTA country must be determined from that country’s customs documentation and be converted to Canadian dollars (refer to section, “Satisfactory Evidence”).

Examples of the calculations required for drawbacks and duty deferral are contained in Appendix A.

### **Limitations on SIMA Duties**

- 7. NAFTA may have an effect on the amount of SIMA duties subject to drawback or deferral.
- 8. For goods subject to the NAFTA restrictions, SIMA duties may not be claimed via drawback. SIMA duties deferred on entry into Canada must be paid within 60 days following the date of export of the goods.

### **Goods Not Affected by the NAFTA Limitations**

9. Not all goods exported to a NAFTA country are affected by limitations on drawback and duty deferral. The changes do not affect goods meeting the following criteria (i.e. full drawback may be obtained or full deferral of duties is allowed):

- (a) goods exported in the same condition as imported;
- (b) goods originating in a NAFTA country;

**Note:** The NAFTA limitations for drawback and duty deferral do not apply to NAFTA originating goods. Originating for the purposes of NAFTA means: qualifying under the rules of origin set out in Chapter 4 (Rules of Origin) of the Agreement. Memorandum D11-4-2, *Proof of Origin*, outlines the guidelines for proof of origin requirements for preferential tariff treatment accorded under NAFTA.

- (c) goods exported to non-NAFTA countries;
- (d) goods deemed exported by way of:
  - (1) delivery to a duty-free shop,
  - (2) delivery as ships’ stores or supplies for ships and aircraft, or
  - (3) delivery for use in joint undertakings of two or more of the NAFTA countries and that will subsequently become the property of the country into whose territory the good was deemed to be exported;

(e) orange or grapefruit concentrates used in the production of orange or grapefruit products exported to the United States;

(f) imported goods (or substituted by an identical or similar good) used as a material in the production of:

- (1) quilted cotton piece goods (US tariff 5811.00.20, Canadian tariff 5811.00.10),
- (2) quilted man-made piece goods (US tariff 5811.00.30, Canadian tariff 5811.00.20),
- (3) furniture moving pads (US. tariff 6307.90.99, Canadian tariff 6307.90.30),

when those goods are exported to the territory of the United States, and subject to the Most-Favoured-Nation (MFN) tariff on entry to the territory of the United States;

(g) an imported good used as a material in the production of, or substituted by an identical or similar good used as a material in the production of, apparel that is subject to the MFN rate of duty when exported to the territory of the United States. (This provision covers only apparel, as provided for in Chapters 61 and 62, Schedule 1 of the *Customs Tariff*.)

### **Same Condition Processes**

10. NAFTA allows full drawback or deferral of customs duties on goods exported in the same condition in which they were imported. Imported goods may undergo certain operations in Canada and still be considered to be exported in the same condition.

11. The following are examples of minor operations that are permissible provided the operation **does not materially alter the characteristics of the good**. Such operations include:

- (a) mere dilution with water or another substance;
- (b) cleaning, including removal of rust, grease, paint, or other coatings;
- (c) the application of a preservative, including lubricants, protective encapsulation, or preservation paint;
- (d) trimming, filing, slitting, or cutting;
- (e) putting up in measured doses, or packing, repacking, packaging, or repackaging; or
- (f) testing, marking, labeling, sorting, or grading.

12. Goods may be used in an operation in many different ways. The determination of whether any operation qualifies as a same condition process or results in the material alteration of the goods must be addressed individually.

13. Appendix C contains a list of examples for the same condition processes and material alteration.

### **Rulings for Same Condition Processes**

14. Clients may write to the regional Trade Administration Services (TAS) offices requesting advice on whether or not specific goods may be considered “same condition” for the purposes of Article 303 of NAFTA. A list of TAS offices may be found in Appendix F.

15. Requests for rulings should contain the following information:

- (a) company name, address, telephone, and fax number;
- (b) contact names;
- (c) supplier name and address;
- (d) product name for both imported and exported goods;

- (e) description of goods imported and exported;
- (f) description of the processes occurring in Canada;
- (g) Harmonized System (HS) classification of the imported good;
- (h) HS classification of the exported good.

16. Requests must include details that address the following:

- (a) **Imported good** – Provide detailed description giving both the generic and trade name (and/or chemical name if applicable). Include a description of the purpose and use of the imported good as well as the product monograph or other specification literature available.
- (b) **Process** – Provide details of the nature and extent as well as the physical operations/processes performed on the good from entry to export. Explain the purpose and nature of any changes and additions to the good or any new physical, chemical, or functional characteristics.
- (c) **Use** – Describe the purpose and use of the goods after processing including any change in functionality and/or marketability.

17. Insufficient detail may result in the return of the applicant's request.

### **Deemed Exports**

18. Drawback may be paid or deferral allowed in respect of goods deemed exported. This applies to all goods whether or not the actual export will be to a NAFTA country. Certain deemed exports are not affected by the NAFTA restriction, (for example, sales to duty-free shops, goods delivered as ships' stores or supplies for ships and aircraft, and joint undertakings between two or more NAFTA countries). Where a drawback is paid or customs duties are deferred on goods deemed exported because they were delivered to a bonded warehouse and such goods are later exported to a NAFTA country, the amount of drawback paid or customs duties deferred may be subject to a NAFTA restriction.

19. For goods subject to the NAFTA limitations, exporters must obtain satisfactory evidence and pay any customs duty owing within 60 days of the date of export to the NAFTA country. The amount owing must be established using the lesser of the two duties formula. SIMA duties must be repaid in full.

### **NAFTA and the Bonded Warehouse Program**

20. Customs bonded warehouses are departmentally licensed and regulated facilities operated by the private sector. Goods entered into a bonded warehouse may undergo certain alterations or minor operations. For further information on the types of processes that may occur, please refer to Memorandum D7-4-1, *Duty Deferral Program*.

21. The operations that may be performed on a good in a bonded warehouse are limited to those operations listed in paragraph 20 of the *Customs Bonded Warehouses Regulations* (refer to Appendix D of Memorandum D7-4-1). Where any operations including those approved within a bonded warehouse, materially alter the characteristics of a good, operators are reminded that the lesser of the two duties concept applies to goods exported to another NAFTA country.

### **Satisfactory Evidence**

22. Companies filing drawback claims or authorized under a duty deferral program and wishing to take advantage of the lesser of the two duties calculations for a NAFTA affected good must obtain satisfactory evidence of the customs duties paid on the exported good entering another NAFTA country.

23. This information is necessary to determine how much customs duty may be claimed via drawback, or may be deferred under a duty deferral program.

24. The information may take the form of a copy of a foreign customs accounting document, a foreign customs accounting adjustment document, an affidavit, or other documentation as approved by TAS.

25. Satisfactory evidence information must contain all the following five data elements:

- (a) foreign import entry number,
- (b) date of importation,
- (c) tariff classification number,
- (d) rate of duty, and
- (e) amount of duties paid.

26. The five data elements may also be supplied in affidavit form. The affidavit may be completed by a drawback claimant or duty deferral participant based on information supplied by the importer/customer in the NAFTA country where the goods were exported.

27. The affidavit is a statement or summary document that contains, at minimum, the five data elements for each export. The affidavit must be completed in a logical, concise fashion. There is no requirement for notarization. In the case of exports to the US from Canada, the five data elements are subject to verification and monitoring by both countries.

### **Reporting Requirements for Satisfactory Evidence**

28. Companies filing drawback claims or authorized under a duty deferral program must provide Revenue Canada with satisfactory evidence information where drawback or deferral of duties is based on the lesser of the two duties concept. Companies may submit this information in the form of a summary report rather than filing actual copies of foreign entry documents.

29. Companies filing drawback claims for goods affected by the NAFTA restriction should submit satisfactory evidence in the form of summary information with the claim.

30. Where exports are affected by the NAFTA restriction on drawback and duty deferral, and a company is taking advantage of the lesser of the two duties formula, they must pay any customs duties owed within 60 days after export.

31. Companies authorized under a duty deferral program must submit satisfactory evidence information to Revenue Canada. A summary of the five satisfactory evidence data elements must be submitted, at minimum, quarterly.

### **NAFTA Drawbacks/Duty Deferral System (NDDDS)**

32. The Department has developed a DOS-based application to assist drawback claimants and duty deferral participants with the compilation and summarization of the five data elements required for each export. The application is available to the public on diskette free of charge.

33. This application is a database that provides, for the organization, summarization, and printing of satisfactory evidence data. The data may also be exported to more sophisticated spreadsheet programs for further manipulation. The program should prove beneficial to companies that either submit drawback claims on a regular basis or companies authorized for a duty deferral program that have exports affected by the lesser of the two duties concept.

34. The system is for NAFTA-affected exports only. Satisfactory evidence is not required if:

- (a) the goods qualify as an exception to the NAFTA restriction;
- (b) affected exports are not claimed; or
- (c) deferred duties are repaid in full.

35. A diskette containing compiled satisfactory evidence data should be submitted with each claim, or for duty deferral on a quarterly basis. The TAS office should be contacted for assistance and further information.

36. Companies submitting satisfactory evidence information should be aware that NAFTA obligations require both the United States and Canada to confirm and monitor the information. Companies should also be aware that incorrect foreign entry data could result in the immediate assessment of any customs duties deferred or of any customs duties that have been refunded on a drawback claim.

### **Exports to Duty Deferral Programs in Another NAFTA Country**

37. Each NAFTA country has duty deferral programs. NAFTA defines duty deferral programs as including such measures as those governing foreign-trade zones, temporary importation under bond, bonded warehouses, *maquiladoras*, and inward processing programs.

38. In order to complete the lesser of the two duties calculations on goods affected by Article 303 of NAFTA, companies must obtain satisfactory evidence of the **customs duties paid** when the exported goods enter another NAFTA country. Since no customs duties are paid when goods enter under a duty deferral program, satisfactory evidence cannot be obtained at that time.

39. Companies authorized under duty deferral unable to obtain satisfactory evidence within 60 days of the date of export must pay any duties deferred.

40. A drawback claim may be made for qualified goods that have entered a foreign NAFTA country under a duty deferral program and are subsequently imported into the territory of a country. Claims must be filed within four years of the release date of the goods entering the commerce of Canada.

41. Satisfactory evidence and lesser of the two duties requirements apply to any goods affected by Article 303 of NAFTA.

42. Goods entering a foreign NAFTA duty deferral program and subsequently re-exported to a non-NAFTA country are not subject to the NAFTA restriction on drawback and duty deferral. Documentation must be provided that both establishes the disposition of the goods from the time of export from Canada and establishes their export to the non-NAFTA country.

### **Form K 32A, *Certificate of Importation, Sale or Transfer***

43. The NAFTA restrictions do not apply to NAFTA originating goods. To assist with the identification of NAFTA originating goods, companies may wish to identify or “break out” duty related to NAFTA originating goods when completing the form K 32A certificates. Purchasers may request that vendors identify originating goods separately on a certificate to allow them to take full advantage of potential drawback. The K 32A form has spaces allowing the vendor to indicate the origin of the goods for NAFTA purposes.

### **Form K 32B, *Drawback Certificate of Sale for Exportation***

44. Exports to the United States that are listed on K 32B certificates and are subject to the NAFTA restrictions must be supported by satisfactory evidence information as described in the section, “Satisfactory Evidence.” The K 32B certificate has been modified for the NAFTA requirements to identify the country of destination of the exported goods.

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## APPENDIX A

### NAFTA DRAWBACK AND DUTY DEFERRAL CALCULATIONS

#### Notes for NAFTA “Lesser of the Two Duties Formula” Calculations:

- Compare actual duty dollars rather than duty rates.
- Convert duty amounts to Canadian dollars for comparison and calculation purposes.
- Use the rate of exchange corresponding to the foreign entry date. Companies may use an average rate of exchange with the approval of TAS.
- Duty dollars for any of the NAFTA exceptions (e.g. originating goods) should be excluded or backed out of any calculations for the lesser of two duties formula.

#### EXAMPLES

##### EXAMPLE 1

This example illustrates a simple calculation for a single imported material. In this example Canadian and US dollars are at par.

##### Drawback

Duty paid on non-originating material imported into Canada	CAN\$9.00
Duty paid on manufactured product imported into the United States	CAN\$6.00
Duty eligible by way of drawback	CAN\$6.00

##### Duty Deferral

Duties deferred on non-originating material imported into Canada	CAN\$9.00
Duties paid on manufactured product imported into the United States	CAN\$6.00
Canadian duties that may be deferred	CAN\$6.00
Canadian duties repayable to the Receiver General within 60 days of export	CAN\$3.00

##### EXAMPLE 2

This example illustrates the lesser of two duties calculations for an exported good that contains imported materials subject to the NAFTA restriction as well as imported material that is an exception.



## BACKGROUND

### Duties paid on materials imported into Canada:

Material A (NAFTA originating)	CAN\$3.00
Material B (Non-originating)	CAN\$6.00
Total	CAN\$9.00
Duties paid on manufactured product imported into the United States	US\$6.77
Rate of exchange at time of import into the United States	1.33
United States duties (Canadian equivalent)	CAN\$9.00

### Drawback

Full drawback allowed on Material A (NAFTA originating)	CAN\$3.00
Material B (Non-originating) (CAN\$6) is compared to the Canadian equivalent US duties paid (CAN\$9)	
The lesser of the two amounts is:	CAN\$6.00
Drawback of duties allowed is \$3 (NAFTA originating) plus \$6 (lesser of the two duties calculation)	
for a total of:	CAN\$9.00

### Duty Deferral

A similar process is followed. The difference in this case is that duties were deferred at time of entry and no drawback claim would be filed. The calculations must be carried out to determine if any duties are payable.

Full deferral is allowed on Material A (NAFTA originating) (The \$3 is completely deferred as the materials are originating goods and therefore not subject to the NAFTA restriction.)	CAN\$3.00
Material B (Non-originating) (CAN\$6) is compared to the Canadian equivalent US duty-paid (CAN\$9).	
The lesser of the two amounts is:	CAN\$6.00
Amount eligible for deferral.	CAN\$9.00

### Special Notes

Where goods entered under the duty deferral program are affected by the lesser of two duties concept, a participant is allowed 60 days from the date of export of the goods to obtain satisfactory evidence and pay the duties even though any duties deferred are payable immediately upon export.

## **APPENDIX B**

### **INTEREST AND PENALTY UNDER NAFTA**

#### **Duty Deferral – Interest**

Where customs or SIMA duties are deferred on non-originating goods under a duty deferral program and the goods are subsequently exported to another NAFTA country, the export must be reported to the Department within 60 days after the date of exportation and any duties owed must be paid.

Although the duties are owing from the date of export, companies have 60 days after the date of export to obtain satisfactory evidence and pay any duties owing.

Outstanding duty amounts are subject to interest. The method of applying interest depends on whether the outstanding amount is customs duties or SIMA duties.

Should the outstanding amount be customs duties, and the amount is not paid within 60 days after the exportation date, interest will be assessed at the specified rate. Interest will begin on the 61st day after the exportation date and will end on the day the outstanding amount has been paid in full.

Where the outstanding amount is SIMA duties and the amount is not paid within 60 days after the exportation date, interest will be assessed at the prescribed rate. Interest will begin on the day after the export date and will end on the day the amount has been paid in full.

#### **Duty Deferral – Penalties**

Where exports to a NAFTA country and payment of customs duties owing is not made within 60 days of the date of export, penalties are assessable in addition to the interest described above on outstanding amounts. A penalty will be assessed in the amount of 5% of the duties owing plus 1% of the amount for every full month (not to exceed 12 months) until the amount is paid.

If a penalty has been assessed, the participant will be monitored for a period of three years. During the monitoring period, where a further failure to report exports to a NAFTA country occurs and customs duties are not paid within 60 days of the export date, the penalty is increased to 10% of the customs duties plus 2% of the customs duties and taxes for every full month (not to exceed 20 months) until the amount is paid.

SIMA duties are not subject to penalties.

#### **Drawback – Interest**

Where a drawback has been paid and where it is subsequently established that there was no entitlement to drawback, specified interest on the amount of overpayment will be assessed. Interest will be charged on the amount of overpayment from the day after the drawback was granted and ending the day the amount was paid in full.

Overpayments of SIMA duties on a drawback claim will be treated in the same way except that the prescribed interest rate will apply.

#### **Drawback – Penalties**

Penalties apply in certain cases where customs duties have been overpaid on drawback claims. For example, should drawback have been paid on goods that are deemed exported and the goods are not subsequently exported, the customs duties must be repaid. Should the repayment not occur within 90 days, a penalty will be assessed in addition to the interest owing.

Penalties will be assessed at a rate of 5% of the duties owing plus 1% of the amount for every full month (not to exceed 12 months) until the amount is paid.

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

Overpayments of SIMA duties on drawback claims are not subject to penalties.

## APPENDIX C

### SAME CONDITION PROCESS EXAMPLES

The following are examples that illustrate whether a good that has been subject to a minor process may be considered to be in the “same condition.” These examples are provided for purposes of illustration only.

#### **Dilution**

- (a) Adding water to juice concentrate creating an intermediate juice concentrate but not a juice would be considered to be same condition.
- (b) Adding water to a juice concentrate creating a juice would be considered to be both material alteration and a process.
- (c) Adding linseed oil to paint in liquid form for ease in mixing is considered to be same condition.
- (d) Adding linseed oil to a paint paste to create a liquid paint would be considered to be both material alteration and a process.

#### **Cleaning**

- (a) The removal of an oil preservative used for shipping purposes is not considered to materially alter a good. The good is considered to be in the same condition.

#### **Application of Preservative, Including Lubricants, Protective Encapsulation, or Preservation Paint**

- (a) Painting a metal object with primer paint which needs a subsequent application of finish coat of paint is considered to be same condition.
- (b) Coating steel coils with oil to prevent rust during transport is considered to be same condition.

#### **Trimming, Filing, Slitting, or Cutting**

- (a) Slitting a sheet of metal into two sheets, (neither of which is dedicated to a specific purpose) is considered to be same condition.
- (b) Cutting a coil of wire into 1 meter lengths from a 1000 meter spool for packaging into retail boxes is considered to be same condition.

#### **Putting Up in Measured Doses, or Packing, Repacking, Packaging or Repackaging**

- (a) Packaging imported sugar in individual serving size packets is considered to be same condition.
- (b) Packing the sugar packets in lots of 100 is considered to be same condition.

## APPENDIX D

### NORTH AMERICAN FREE TRADE AGREEMENT

#### Article 303: Restriction on Drawback and Duty Deferral Programs

1. Except as otherwise provided in this Article, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, on condition that the good is:

- (a) subsequently exported to the territory of another Party,
- (b) used as a material in the production of another good that is subsequently exported to the territory of another Party, or
- (c) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party,

in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the good on importation into its territory and the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

2. No Party may, on condition of export, refund, waive or reduce:

- (a) an antidumping or countervailing duty that is applied pursuant to a Party's domestic law and that is not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);
- (b) a premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;
- (c) a fee applied pursuant to section 22 of the U.S. *Agricultural Adjustment Act*, subject to Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures); or
- (d) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.

3. Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported:

- (a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption; and
- (b) may waive or reduce such customs duties to the extent permitted under paragraph 1.

4. In determining the amount of customs duties that may be refunded, waived or reduced pursuant to paragraph 1 on a good imported into its territory, each Party shall require presentation of satisfactory evidence of the amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

5. Where satisfactory evidence of the customs duties paid to the Party to which a good is subsequently exported under a duty deferral program described in paragraph 3 is not presented within 60 days after the date of exportation, the Party from whose territory the good was exported:

- (a) shall collect customs duties as if the exported goods had been withdrawn for domestic consumption; and
- (b) may refund such customs duties to the extent permitted under paragraph 1 on the timely presentation of such evidence under its laws and regulations.

6. This article does not apply to:
- (a) a good entered under bond for transportation and exportation to the territory of another Party;
  - (b) a good exported to the territory of another Party in the same condition as when imported into the territory of the other Party from which the good was exported (processes such as testing, cleaning, repacking or inspecting the good, or preserving it in its same condition, shall not be considered to change a good's condition). Except as provided in Annex 703.2, Section A, paragraph 12, where such a good has been commingled with fungible goods and exported in the same condition, its origin for purposes of this subparagraph may be determined on the basis of the inventory methods provided for in the Uniform Regulations established under Article 511 (Uniform Regulations);
  - (c) a good imported into the territory of a Party that is deemed to be exported from its territory, or used as a material in the production of another good that is deemed to be exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is deemed to be exported to the territory of another Party, by reason of
    - (i) delivery to a duty-free shop,
    - (ii) delivery for ship's stores or supplies for ships or aircraft, or
    - (iii) delivery for use in joint undertakings of two or more of the Parties and that will subsequently become the property of the Party into whose territory the good was deemed to be exported;
  - (d) a refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of another Party, where that refund is granted by reason of the failure of such good to conform to sample or specification, or by reason of the shipment of such good without the consent of the consignee;
  - (e) an originating good that is imported into the territory of a Party and is subsequently exported to the territory of another Party, or used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party; or
  - (f) a good set out in Annex 303.6.

7. Except for paragraph 2(d), this Article shall apply as of the date set out in each Party's Section of Annex 303.7.

8. Notwithstanding any other provision of this Article and except as specifically provided in Annex 303.8, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a non-originating good provided for in item 8540.11.aa (color cathode-ray television picture tubes, including video monitor tubes, with a diagonal exceeding 14 inches) or 8540.11.cc (color cathode-ray television picture tubes for high definition television, with a diagonal exceeding 14 inches) that is imported into the Party's territory and subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to territory of another Party.

9. For the purposes of this Article:

**customs duties** are the customs duties that would be applicable to a good entered for consumption in the customs territory of a Party if the good were not exported to the territory of another Party;

**identical or similar goods** means "identical or similar goods" as defined in Article 415 (Rules of Origin – Definitions);

**material** means "material" as defined in Article 415;

**used** means "used" as defined in Article 415.

10. For the purposes of this Article:

Where a good referred to by a tariff number in this Article is described in parentheses following the tariff item number, the description is provided for the purposes of reference only.

## APPENDIX E

### SECTION F, ARTICLE X (DRAWBACK AND DUTY DEFERRAL PROGRAMS) 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

#### Section F – Drawback and Duty Deferral Programs

#### Article X: Drawback and Duty Deferral Programs

1. For purposes of Article 303 of the Agreement, “identical or similar” means “identical” and “similar” as defined in Article 15, subsections 2(a) and (b) of the Customs Valuation Code, and as further defined in Annex IX.1.
2. For purposes of Article 303(1) of the Agreement, “the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of the other Party” means the customs duties that are paid in respect of the entry for consumption of the good in the customs territory of a Party, including any change referred to under paragraph 7(b).
3. For purposes of Article 303(1) of the Agreement, where a good is exported from the territory of a Party to the territory of another Party and entered into a duty deferral program in that other Party:
  - (a) the good shall not be considered to have been exported to the territory of that other Party unless and until such time as the good is withdrawn from the duty deferral program for consumption in the customs territory of that other Party, and
  - (b) where the good or another good incorporating that good is subsequently exported directly from the duty deferral program to a non-NAFTA country, Article 303 shall not apply to the good, and a refund waiver of reduction of duties may be granted upon presentation of satisfactory evidence of the exportation of the good or that other good to the non-NAFTA country.
4. In accordance with paragraph (d) of the definition of “satisfactory evidence” under Article 318, “satisfactory evidence” includes an affidavit from the person claiming, subject to Article 303 of the Agreement, a refund, waiver or reduction of customs duties, where such affidavit is based on information received from the importer of the good in the territory of the Party into which the good was subsequently exported.
5. Satisfactory evidence, in the form of one or more of the documents referred to in the definition in Article 318 of the Agreement and paragraph 4, shall contain:
  - (a) the import entry number,
  - (b) the date of importation,
  - (c) the tariff classification number,
  - (d) the rate of duty, and
  - (e) the amount of duties paid,

in respect of the importation of the good into the territory of the Party to which the good was subsequently exported.

6. The Party to whom a claim for refund of the amount of customs duties paid, or a waiver or reduction of the amount of customs duties owed is made, may request that the Party to whose territory the good was subsequently exported examine the information referred to under paragraph 5(a) through (e) that was provided in connection with that claim.

7. The Party to whom a request was made under paragraph 6 shall:
  - (a) where it determines that the information referred to under paragraph 5 is not correct at the time of the request, provide the requesting Party with the corrected information, and
  - (b) monitor the importations in respect of the goods that were the subject of a request and notify the requesting country of any change in respect of the duties paid in connection therewith.
8. For the purposes of Article 303.6(b) of the Agreement, the circumstances under which a good shall be considered to be in the same condition include the following:
  - (a) mere dilution with water or another substance;
  - (b) cleaning, including removal of rust, grease, paint or other coatings;
  - (c) application of preservative, including lubricants, protective encapsulation, or preservation paint;
  - (d) trimming, filing, slitting, or cutting;
  - (e) putting up in measured doses, or packing, repacking, packaging or repackaging; or
  - (f) testing, marking, labeling, sorting or grading,provided that such operations do not materially alter the characteristics of the good.



## **APPENDIX F**

### **LIST OF TRADE ADMINISTRATION SERVICES (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 1300  
Sherbrooke QC J1H 5L8

400 Youville Square  
Montréal QC H2Y 2C2

#### **NORTHERN ONTARIO REGION**

333 Laurier Avenue West  
Ottawa ON K1A 0L9

#### **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

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

26 Arrowsmith Road  
P.O. Box 2989  
Hamilton ON L8N 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 1B3

720 Harry Hays Building  
220 Fourth Avenue South East  
Calgary AB T2G 4X3

**PACIFIC**

333 Dunsmuir Street  
Vancouver BC V6B 5R4

**REFERENCES**

**ISSUING OFFICE —**

NAFTA Project Unit  
Duties Relief Programs Directorate

**LEGISLATIVE REFERENCES —**

*Customs Tariff*, sections 83, 83.01, 83.02, 83.03, 83.04, 83.05

**HEADQUARTERS FILE —**

6612-2, 6614-2

**SUPERSEDED MEMORANDA “D” —**

N/A

**OTHER REFERENCES —**

D7-4-1, D7-4-2, D11-4-18

SERVICES PROVIDED BY THE DEPARTMENT ARE AVAILABLE IN BOTH OFFICIAL LANGUAGES.

THIS MEMORANDUM IS ISSUED UNDER THE AUTHORITY OF THE DEPUTY MINISTER OF NATIONAL REVENUE.