



Ottawa, March 16, 2015

# Memorandum D7-2-3

## Obsolete or Surplus Goods

### In Brief

The editing revisions made in this memorandum do not affect or change any of the existing policies or procedures

This memorandum outlines and explains the legislative requirements in order to obtain a drawback (i.e., refund) of the duties and excise taxes paid on goods that are deemed obsolete or surplus goods and have been destroyed in Canada.

## Guidelines and General Information

### Definitions

1. For the purposes of the Obsolete or Surplus Goods Program, the following definitions apply:

**Damaged** – refers to goods that have been subject to a loss or deterioration that has changed the original state of the goods making them less effective, usable, or valuable. Examples of damage to goods includes scratches, dents, blemishes, breakage, rips, tears, mutilations, defects, imperfections, and other impairments that have diminished the strength, quality, value or utility of the goods. For example, clothing store customer-returned apparel that has suffered fading, broken zippers, defects, rips or shrinkage would be considered damaged goods and therefore not eligible for a drawback.

**Destroyed** – refers to goods that are completely destroyed so that they are fully ruined or rendered useless and therefore cannot be considered to be an article of commerce. This applies equally to any remains of the imported good following destruction. Examples of destruction include incineration or entering environmentally-friendly obsolete or surplus goods into the landfill of a dump. Alteration processes that change the characteristics of the goods such as further processing, manufacturing, recycling, conversion and transformation do not qualify as destruction, as the resulting goods constitute articles of commerce. For example, melting jewelry to produce bullion or ingots does not constitute destruction, as it is simply a transformation of the precious metal.

**Obsolete** – refers to goods that are no longer useful or are antiquated. Examples include unfashionable, outdated, archaic or superseded goods. Typically, obsolescence is preceded by a gradual decline in popularity. Examples of obsolete goods include eight track cassettes, typewriters, black and white televisions, and expired medication.

**Surplus** – refers to goods that are more than, or in excess of, what is needed or required. Typically, surplus goods include excess purchases that have not been sold. Examples of surplus goods include seasonal items remaining in inventory after the season has ended or a souvenir remaining in inventory after an event has concluded.

**Used** – refers to imported goods that have been entered into commerce. In order to qualify under the Obsolete or Surplus Goods Program, the imported goods must not have been used and must be in the exact same physical state from the time of entry to the time of destruction. Retail and wholesale items remaining in inventory that have not been sold at the consumer level may qualify. Used goods that do not qualify as obsolete or surplus, include rentals and customer- returned items, as those goods have been entered into commerce. The only usage permitted under the Obsolete or Surplus Goods Program is the manufacture of products from imported raw materials.

2. The purpose of the Obsolete or Surplus Goods Program is to assist Canadian industry in competing internationally by reducing exportation costs on valueless goods that will not enter the domestic market. By allowing the destruction of obsolete or surplus goods, the necessity to export the imported goods in order to qualify for a drawback is removed. This eliminates the shipping costs associated with exporting valueless goods.
3. There is no provision for the refund of the Goods and Services Tax (GST), Provincial Sales Tax (PST) or the Harmonized Sales Tax (HST) under this program.
4. In order for obsolete or surplus goods to qualify for a refund of duties, **all** of the following conditions must be met in accordance with section 109 of the [Customs Tariff](#):
  - (a) the goods must be found to be obsolete or surplus
    - (i) in the case of imported goods, by their importer or owner, or
    - (ii) in any other case, by their manufacturer, producer or owner;
  - (b) the goods cannot have been used in Canada;
  - (c) the goods must be destroyed; and
  - (d) the goods cannot be damaged prior to their destruction.
5. The Obsolete or Surplus Goods Program does not apply to wipers or rags that remain in the commerce of Canada as a result of a manufacturing process of imported used clothing. These wipers or rags can be considered to be a diversion to a conditional relief tariff item and a re-determination of tariff classification may occur. These types of goods may be eligible for a refund of duties under paragraph 74(1)(f) of the [Customs Act](#) by filing a Form [B2, Canada Customs – Adjustment Request](#).

### **How to Apply for a Refund Under the Obsolete or Surplus Goods Program**

6. A claimant must complete a Form [K32, Drawback Claim](#), and submit it, together with supporting documentation, to the nearest [Canada Border Services Agency \(CBSA\) regional office](#). Completion instructions are on the back of the form.

### **Supporting Documentation**

7. The following documents must accompany the drawback claim:
  - (a) a certified copy of Form [E15, Certificate of Destruction/Exportation](#) or third party documentation;
  - (b) the original of any Form [K32A, Certificate of Importation, Sale, or Transfer](#), when the claimant is not the importer of record; and
  - (c) copies of all related Form [B3-3, Canada Customs Coding Form](#) or a detailed listing of the associated import transaction numbers.
8. All supporting documentation must contain a complete and detailed description of the obsolete or surplus goods.
9. The obsolete or surplus goods being declared on the drawback claim must match the original importation documents. The Form [E15, Certificate of Destruction/Exportation](#) must describe the goods in sufficient detail and state any applicable serial, model, or part numbers, or other identifying marks to enable the CBSA officers to verify that the goods being destroyed are the same as the imported goods.
10. Substantiating import documentation must be available to support all claims.
11. Additional information or documents may be required in order to establish the validity of the claim and must be provided to the CBSA upon request.

### **Filing Time Limits**

12. A Form [K32, Drawback Claim](#), must be filed within five years of the date that the related imported goods were released by the CBSA.

## **Destruction of Goods**

13. The destruction of the goods may be substantiated by means of a Form [E15, Certificate of Destruction/Exportation](#), witnessed by a CBSA officer or by third party documentation that contains similar information.

14. Acceptable methods of destruction will vary depending upon the nature of the goods being destroyed. Any questions regarding how goods may be destroyed should be addressed to the CBSA Border Information Service noted in paragraph 17 prior to destruction.

15. In all cases, if the obsolete or surplus goods are not destroyed in their entirety, the value of the good (including any associated duties) remaining in Canada must be deducted from the declared value on the drawback claim. For example, if beer beyond its shelf life is destroyed, then the value of the empty kegs or bottles remaining in Canada must be deducted from the value (including all associated duties) of the imported goods being declared on the drawback claim.

## **Non-compliance**

16. If a drawback is paid on goods thought to be destroyed that are then found to have not been destroyed, the amount of the drawback will be recovered including interest paid. Interest will be charged at the specified rate beginning on the first day after the refund or drawback was granted in error and ending on the day the amount is recovered in full.

## **Additional Information**

17. 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**.

<b>References</b>	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	6550-0
<b>Legislative References</b>	<a href="#">Customs Tariff</a> <a href="#">Customs Act</a> <a href="#">Refund of Duties on Obsolete or Surplus Goods Regulations</a>
<b>Other References</b>	Memoranda <a href="#">D7-4-1</a> , <a href="#">D7-4-3</a> Forms <a href="#">B2</a> , <a href="#">B3-3</a> , <a href="#">E15</a> , <a href="#">K32</a> , <a href="#">K32A</a>
<b>Superseded Memorandum D</b>	D7-2-3 dated October 21, 2009