



Memorandum D7-4-3

Ottawa, May 27, 2015

NAFTA Requirements for the Duty Drawback and the Duties Relief Programs

In Brief

This document contains editing revisions that do not affect or change existing policies or procedures, including changes to the Canada Border Services Agency organizational structure.

This memorandum outlines and explains the effects of Article 303 of the [North American Free Trade Agreement](#) (NAFTA) on the Duty Drawback and Duties Relief Programs

Duty Drawback and Duties Relief Programs

NAFTA affects most non-originating goods used as materials in the manufacture of products exported to a NAFTA country (United States or Mexico). [Memorandum D7-4-2, Duty Drawback Program](#), outlines the conditions and circumstances under which a refund (drawback) of duties may be claimed. [Memorandum D7-4-1, Duties Relief Program](#) outlines the conditions and circumstances under which duties may be deferred at the time of importation. These memoranda should be reviewed prior to reading this Memorandum.

Guidelines and General Information

NAFTA Restrictions

1. 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 the Duties Relief Program for goods exported from one NAFTA country to another. Article 303 of NAFTA does not affect GST relief, GST deferral, or GST Input Tax Credit refund processes.

Goods Affected by the NAFTA Limitations

2. Only certain goods are affected by the limitations on the Duty Drawback and Duties Relief programs. 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

3. For exported goods affected by the limitations, drawback, or relief 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”

4. To determine the amount of customs duties subject to claim under the Drawback Program or to determine the amount of customs duties deferrable under the Duties Relief Program, companies must establish two duty amounts:

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

(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 duties relief are contained in Appendix A.

Limitations on SIMA Duties

5. NAFTA may have an effect on the amount of SIMA duties subject to drawback or deferral.
6. 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

7. Not all goods exported to a NAFTA country are affected by limitations on drawback and duties relief. 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 duties relief 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:

(i) delivery to a duty-free shop,

(ii) delivery as ships' stores or supplies for ships and aircraft, or

(iii) 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:

(i) quilted cotton piece goods (US tariff 5811.00.20, Canadian tariff 5811.00.10),

(ii) quilted man-made piece goods (US tariff 5811.00.30, Canadian tariff 5811.00.20),

(iii) 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

8. 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.

9. 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.

10. 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.

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

Rulings for Same Condition Processes

12. Clients may write to the regional [Trade Operations Division offices](#) requesting advice on whether or not specific goods may be considered “same condition” for the purposes of Article 303 of NAFTA.

13. 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.

14. Requests must include details that address the following:

- (a) Imported good – Provide detailed description giving 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.

Note: All requests for rulings for same condition process must be signed by an executive officer of the company submitting the request.

15. Insufficient detail may result in the return of the applicant’s request.

Deemed Exports

16. A 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 Customs 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.

17. 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.” SIMA duties must be repaid in full.

Satisfactory Evidence

18. Companies filing drawback claims or authorized under the Duties Relief Program and wishing to take advantage of the “lesser of the two duties” for a NAFTA affected good must obtain satisfactory evidence of the customs duties paid on the exported good entering another NAFTA country.

19. This information is necessary to determine how much customs duty may be claimed via drawback, or may be deferred under the Duties Relief Program.

20. This information may be in 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 the Trade Compliance Division.

21. 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.

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

23. 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

24. Companies filing drawback claims or authorized under the Duties Relief Program must provide the CBSA with satisfactory evidence information where drawback or deferral of duties is based on the “lesser of the two duties”. Companies may submit this information in the form of a summary report rather than filing actual copies of foreign entry documents.

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

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

27. Companies authorized under the Duties Relief Program must submit satisfactory evidence information to the CBSA. A summary of the five satisfactory evidence data elements must be submitted, at minimum, quarterly.

28. In order to complete the “lesser of the two duties” 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 the Duties Relief Program, satisfactory evidence cannot be obtained at that time.

29. If companies are authorized under the Duties Relief Program and are unable to obtain satisfactory evidence within 60 days of the date of export that company must pay any duties deferred.
30. 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.
31. Satisfactory evidence and “lesser of the two duties” requirements apply to any goods affected by Article 303 of NAFTA.
32. 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 duty drawback and duties relief. 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 K32A, Certificate of Importation, Sale, or Transfer

33. 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 [K32A](#). Purchasers may request that vendors identify originating goods separately on a certificate to allow them to take full advantage of potential drawback.

Form K 32B, Drawback Certificate of Sale for Exportation

34. Exports to other NAFTA parties that are listed on form [K32B](#) and are subject to the NAFTA restrictions must be supported by satisfactory evidence information as described in the section, “Satisfactory Evidence.”
35. 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

36. 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**.

Appendix A

NAFTA Drawback and Duties Relief Calculations

Notes for NAFTA “Lesser of the Two Duties” 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 the Trade Compliance Division.
- 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”.

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

Duties Relief

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” 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”)	
for a total of:	CAN\$9.00

Duties Relief

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”, 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

Duties Relief - 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 CBSA 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.

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.

Penalties – Drawback and Duties Relief

Failure to comply with the conditions of both programs will result in penalties under the [Customs Act](#) and detailed under [The Administrative Monetary Penalty System](#) (AMPS).

Note: SIMA duties are not subject to penalties under the AMPS.

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

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.

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	6612-2/6614-2
Legislative References	<i>Special Import Measures Act</i> <i>Customs Tariff</i> <i>North American Free Trade Agreement</i>
Other References	D7-4-1 , D7-4-2 , D11-4-2 K32A , K32B AMPS Program
Superseded Memorandum D	D7-4-3 dated April 12, 1996