Canada Border Services Agency
Agence des services frontaliers du Canada

Evaluation of the Duties Relief and Duty Drawback Programs

Internal Audit and Program Evaluation Directorate

PROTECTION • SERVICE • INTEGRITY

Canada

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Note: [redacted] A redacted note appears where sensitive information has been removed in accordance with the Access to Information Act and the Privacy Act.

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Acronyms and Abbreviations

BARKS	Batch Accounting and Reporting System
CBSA	Canada Border Services Agency
CCS	Customs Commercial System
CF	Culpability Framework
DFC	Department of Finance Canada
DRP	Duties Relief Program
FTE	Full time equivalent
GAC	Global Affairs Canada
HQ	Headquarters
OAG	Office of the Auditor General
SMG	Supply managed goods
SOTC	Senior Officer Trade Compliance
SOPS	Standard operating procedures
TB	Treasury Board
TCMS	Trade Compliance Management System
U.S.	United States of America

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Executive Summary

About the Evaluation

This report presents the findings of a mid-term evaluation on progress made by the Duties Relief Program (DRP) and Duty Drawback Program [redacted]. The evaluation period covered fiscal years (FYs) 2018-2019 to 2020-2021. The report also provides a summary of the findings of an internal audit of the CBSA's response to recommendation 2.63 of the 2017 Office of the Auditor General (OAG) report on Customs Duties.

The evaluation was conducted using qualitative and quantitative research methods. Data was collected from multiple data sources, including legislative and program-related documents, administrative and program data, human resources data, and semi-structured interviews with Headquarter (HQ) and Regional staff involved in the Programs.

Program Description

The DRP is a regulatory, licence-based program allowing Canadian companies to import goods without paying duties and/or surtaxes on the condition that imported goods are subsequently exported. The program has two key activities: issuing licences to importers, and processing claims for relief of duties against licences. The Drawback Program has the same conditions and obligations as the DRP, but Canadian companies must pay the import duties first and, once the goods are subsequently exported, a drawback claim (refund) can be made. Senior officers, Trade Compliance (SOTCs) in the regions conduct compliance verifications, ensuring correct information has been provided by importers and that duties are relieved or refunded accurately and in accordance with current legislation. The DRP and Drawback Program contribute to the CBSA's mandate to provide integrated border services and support trade facilitation.

Environmental Factors

[redacted] there were a number of significant events affecting the DRP and Drawback Program, including the transition of supply-managed goods (SMGs)[1] into the Programs beginning in 2011; an OAG audit on Customs Duties in 2017 that found insufficient controls to ensure DRP duties were paid; and, the imposition of tariffs on steel, aluminum and other products by the United States (U.S.) in 2018. [redacted] there have been a number of major environmental changes affecting the Programs, including the end of the U.S.-Canada steel and aluminum trade dispute, the new approach to managing compliance risk across all trade incentives programs via the Culpability Framework, a significant increase in court challenges as a result of DRP verifications of SMG importers, and the Covid-19 pandemic. The external factors affecting the programs are important to bear in mind when considering the CBSA's progress [redacted].

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[1] Dairy, chicken, turkey, and specific types of eggs.

Findings

The report contains three major findings:

- Just under 60% of anticipated staffing was completed by the [redacted] target date of April 1, 2019; as of the end of last fiscal, three-quarters of positions had been filled. Staffing still lags in the key region of Ontario, and there has been very high staff turnover at HQ and in some regions.
- Challenges were encountered [redacted] to demonstrate progress towards realizing expected program outcomes, in particular augmenting compliance activities. None of the [redacted] indicators were considered adequate in this regard. Further, some [redacted] indicators have lost relevance as a result of the changing external environment, as well as due to the implementation of the Culpability Framework, which is built around incremental compliance interventions rather than relying on the full trade compliance verification.
- The CBSA responded to the OAG's recommendation 2.63 to explore the possibility of making licences renewable and requiring financial deposits.

Conclusion and Recommendations

In conclusion, the evaluation team found evidence that the CBSA has improved compliance. Sixteen verifications on high-risk SMG DRP importers have been completed since FY 2018-2019, covering hundreds of millions of dollars' worth of duties and taxes assessments, and resulting in five DRP participants having their licences suspended or cancelled. The evaluation could not, however, demonstrate that program compliance has improved and that expected results are being achieved using the existing set of [redacted] indicators.

In response, the evaluation proposed the following three recommendations:

- *Recommendation 1* - A new set of [redacted] indicators should be developed for the DRP and Drawback Program. The FY 2017-2018 baselines and the values for FY 2018-2019 to 2020-2021 should be established, validated by the Program Evaluation Division of the Internal Audit and Program Evaluation Directorate, and published. The target date for completion is February 28, 2022.

- *Recommendation 2* - A new PMF should be put in place for the DRP and Drawback Program, which includes the following activities:

  a. Revising the logic model and developing performance indicators in addition to the [redacted];
  b. Developing SOPs on how all performance indicators are calculated and reported on;
  c. Instituting a process to regularly track and report on all performance indicators; and,
  d. Developing a plan, and beginning to implement improvements to the quality and consistency of data entered into systems.

  The target date for completion is March 31, 2023.

- *Recommendation 3* - Given the significant changes in the external environment [redacted] and the implementation challenges that the program faces, it is recommended that the program develop an action plan (roadmap) to optimize the use of [redacted] funding in support of strengthened program compliance. The target date for completion of the action plan is July 31, 2022.

1. Introduction

1.1. Evaluation purpose and scope

The Evaluation of the Duties Relief Program (DRP) and Duty Drawback Program (Drawback Program) was included in the Canada Border Service Agency's (CBSA) 2021 Risk-Based Audit and Evaluation Plan. The evaluation stems from [redacted] In addition, [redacted] that the CBSA provide a follow-up on the findings and recommendations from the 2017 Office of the Auditor General (OAG) report on Customs Duties, which encompassed the DRP.

The evaluation assessed progress towards the expected results [redacted] during FY 2018-2019 to 2020-2021. An auditor was contracted to assess the CBSA's actions taken in response to Recommendation 2.63 of the *2017 OAG report on Customs Duties*.

1.2. Evaluation methodology

Qualitative and quantitative data was collected using common evaluation research methods from multiple sources. These included legislative and program-related documents; administrative and program data; human resources (HR) data; and semi-structured interviews with Headquarter (HQ) and Regional CBSA staff involved in the Programs. Details on the evaluation methods used are provided in Appendix B.

The main challenges encountered during the evaluation were:

- Quality of the performance indicators [redacted];
- Lack of methodology/standard operating procedures (SOPs) on how the indicators were calculated [redacted]
- Quality of the data in the systems housing the program's data, particularly for the Drawback Program.

1.3. Program description

The DRP and Duty Drawback Program contribute to the CBSA's mandate to provide integrated border services and support trade facilitation. The CBSA administers the Programs on behalf of the Department of Finance Canada (DFC). The Programs help Canadian companies to be more competitive on the international trade stage, and have existed in their current form in Canada since 1996.

1.3.1. Duties Relief Program

The DRP is a regulatory, licence-based program allowing Canadian companies to import goods without paying duties and/or surtaxes on the condition that the imported goods are subsequently exported. There are two key activities related to the DRP: issuing licences to importers, and processing claims for relief of duties against licences. Senior officers, Trade Compliance (SOTCs) conduct verifications on both activities, ensuring correct information has been provided by importers and that duties are relieved accurately and in accordance with current legislation.

1.3.2. Duty Drawback Program

The Drawback Program has the same conditions and obligations as the DRP. However, Canadian companies must pay the import duties first and, once the goods are subsequently exported, a drawback claim (refund) can be made. Refund claims submitted by importers are subject to verifications by regional SOTCs.

2. External environmental influences [redacted]

Prior to 2018, there were a number of significant events that affected the Programs, including the transition of supply-managed goods (SMGs)[2] into the Programs beginning in 2011; the OAG audit on Customs Duties in 2017; and, the imposition of tariffs on steel, aluminum and other products by the United States (U.S.) in 2018. All these changes impacted program performance, which will be examined later in the report.

2.1. Transition of supply-managed goods

According to the program, the DRP and Drawback Program were originally designed for use by the manufacturing industry. Importers and supply chain partners of SMGs began transitioning into the Programs in 2011. The use of the DRP accelerated in 2017, when SMG importers switched from the Import for Re-Export Program (IREP) administered by Global Affairs Canada (GAC) to the DRP, as it was considered a more straightforward and accessible program. The increased use of the DRP by some SMG importers required adjustments in program delivery.

2.2. 2017 OAG Audit on Customs Duties

The 2017 OAG audit found weaknesses in the control framework for the DRP, which allowed some SMGs to be diverted into the Canadian market without the applicable duties being paid. The OAG determined that:

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[2] Supply-managed goods – Dairy, chicken, turkey, and specific types of eggs. Supply management is the production and marketing system under which these goods are produced in Canada. The principle behind supply management is to ensure domestic demand is met while ensuring revenues for producers and stable prices for consumers. The system is based on three pillars: production controls, import controls, and price controls. (The 2017 Spring Report of the OAG on Customs Duties).

- The CBSA had few controls to ensure that goods imported duty-free under the DRP were, if not subsequently exported, reported to the Agency and that applicable duties were paid within 90 days of the date of diversion into the Canadian market, as required by the program; and,
- The Agency did not use some controls – such as requiring a financial deposit to participate in the program and having renewable licences for importers – to create more incentives for the importers to comply with rules.

2.3. U.S. imposition of tariffs in 2018

In June 2018, the U.S. government imposed tariffs on steel (25%) and aluminum (10%) imported from Canada in accordance with Section 232 of the *Trade Expansion Act*. In response, in July 2018, Canada imposed retaliatory tariffs by levying surtaxes on steel, aluminum and other products imported from the U.S. This led to an increase in the use of the DRP by Canadian importers for goods subject to surtaxes that were previously duty-free.

3. External environmental influences [redacted]

There have been a number of significant changes affecting the Programs [redacted], which have impacted the ability of the Programs to report progress on the expected results committed to in 2018. These are: the end of the U.S. Canada trade dispute, the approval of the Culpability Framework, litigation as a result of DRP verifications of SMG importers, and the Covid-19 pandemic.

3.1. End of the U.S. Canada trade dispute

In May 2019, the Canadian and U.S. governments announced an agreement to lift tariffs on steel and aluminum, which may have reduced the demand for the DRP and Drawback Program. This is difficult to assess, as some claims for drawbacks prior to the lifting of tariffs and surtaxes continue to be eligible up until May 2023 (or May 2024 for destroyed goods).

While the surtaxes were short-lived, there was a consensus among program stakeholders that investments in the programs were long overdue and should be continued, as the DRP and Drawback Program play an important role in helping companies maintain a competitive edge via relieving duties. The Programs are likely to remain important in the near term, as they will support Canada's economic recovery following the Covid-19 pandemic.

3.2. Culpability framework

In 2019, the CBSA's senior management endorsed the Culpability Framework (CF), which represents a fundamental new approach to strengthening compliance within all trade incentives programs, including the DRP and Drawback Program. Once operationalized through the CBSA Assessment and Revenue

Management (CARM)[3], the CF will drive enhanced compliance performance and program oversight across all Trade programs, including the DRP. It will be the chief means by which compliance performance information will be generated and used to consider licence renewals as per the OAG's recommendation.

The CF is designed to facilitate early corrective action for non-compliance and seeks to promote a nationally consistent, coherent approach to managing compliance risk. The framework provides operational guidance on how SOTCs should respond to claimants and is centred on the relative risk presented by importers and their goods. The CF is based on incremental compliance interventions, whereas previously, there had only been the full trade compliance verification as a compliance tool. This is important, because the [redacted] indicators are focussed on the completion of full compliance verifications, which the CBSA has been moving away from.

3.3. Litigation from DRP verifications of SMG importers

The Agency has ramped up trade compliance verifications of DRP participants importing SMGs over the past five years. In 2016, the CBSA completed six compliance verifications of DRP participants that imported SMGs and suspended the licences in all cases, because goods had been diverted into the domestic market without the applicable duties being paid[4]. [redacted] an additional 16 high-risk SMG DRP compliance verifications have been completed, covering duties and taxes assessments estimated to total hundreds of millions of dollars[5]. A further seven verifications are in process, meaning that trade compliance verifications have now been launched on all DRP participants who import SMGs[6]. The Quebec region, in particular, has conducted a number of verifications of poultry and dairy companies using the DRP, involving high dollar value duties and taxes assessments. Issues with compliance have persisted. Since April 1, 2018, five SMG importers have had their DRP licences cancelled or suspended due to non-compliance[7]. In addition, the Programs committed to further strengthening performance and compliance assurance via a series of new measures, endorsed in March 2020 [redacted] .8

Non-compliance is reflected in the litigation trends over the past five years. While court challenges are nothing new, the value of the CBSA's assessment decisions being challenged has risen exponentially.

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[3] To strengthen trade compliance, the CARM project will automate the processes required to assess, collect, manage and report on revenue, and will further enable importers to self-assess and comply with Canada's trade requirements. (CBSA Departmental Plan 2020-21).
[4] 2017 OAG audit on Customs Duties.
[5] Refers to SMG DRP verifications completed from FY 2018-2019 to date. The amount of duties and taxes assessed from DRP SMG verifications was not available at the time of writing this report; estimates provided from the Program were not consistent with previously published data.
[6] In all, 39 DRP SMG trade compliance verifications have been launched or completed since 2016.
[7] To date, the CBSA has cancelled or suspended the DRP licence of 17 of 27 SMG importers who were found to be non-compliant from a trade complication verification.
[8] "Strengthening the Duties Relief Program and the Drawback Program", Executive Policy Committee presentation, March 11, 2020.

[redacted] 18 appeals of CBSA's decisions relating to DRP and Drawback Program were in the inventory[9], which were challenging $23.6 million worth of assessment decisions. [redacted] an additional 14 court cases have been launched, challenging assessment decisions amounting to $205.4 million[10]. One assessment decision alone, worth $109.2 million, was challenged via two court appeals launched in fall 2018 and is still in process. The fact that the CBSA's recent trade compliance verifications are being challenged (and successfully defended[11]) in court, and that the duties and taxes assessment amounts being challenged are very high, indicate that the Programs have made progress towards ensuring industry compliance. [redacted]

The litigation has had a significant downstream impact on regional operations, especially as it has affected one region in particular - Quebec[12]. Given the high dollar value of assessment decisions being disputed and the possibility of precedent setting, the CBSA has had to divert significant program resources to respond to the court challenges. Up until now, the burden of supporting the response to court challenges has fallen on the regions, because HQ has had neither the personnel nor expertise to establish its functional management role. The Quebec region indicated that much time, energy and focus has been taken up by litigation, and that this had adversely affected their ability to conduct other activities in the programs, particularly compliance verification activities.

3.4. Covid-19 Pandemic

On March 16, 2020, federal government employees, including CBSA employees not working in critical or frontline service positions, were required to start to work from home immediately because of the Covid-19 pandemic[13]. Aside from the inherent challenges with shifting to a virtual workforce overnight, the pandemic posed some particular challenges for the DRP and Drawback Program.

Recruiting and on-boarding new staff proved more difficult in a virtual environment. Given the highly technical nature of the programs, training up new staff was deemed particularly challenging, as new staff typically learn through in-person mentoring. For this to be successful, good interpersonal relationships need to be established among experienced and new SOTCs, which can be challenging in a virtual environment. HQ training that would otherwise have been given in-person has been delivered in a virtual format since March 2020. In addition, as a result of the pandemic, Ontario region piloted the e-

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[9] Refers to those filed in FY 2016-2017 and 2017-2018.
[10] Refers to those filed in FY 2018-2019 to date. 6 of these court challenges are still on-going; 9 are in process in total.
[11] The CBSA has been able to effectively defend its decisions thus far - 78% of DRP and Drawback court challenges resolved in the past five years were settled in the CBSA's favour (i.e. resolved by the claimant discontinuing the case or were dismissed); most of the rest had a neutral outcome.
[12] 80% of court challenges over the past five years were filed in Quebec region; the rest were filed in Ontario.
[13] Treasury Board Secretariat of Canada, *Federal Public Servants to telework whenever and wherever possible,* March 16, 2020, retrieved from: https://www.canada.ca/en/treasury-board-secretariat/news/2020/03/federal-public-servants-to-telework-wherever-and-whenever-possible.html

claim, which required an already limited number of regional SOTCs to quickly shift from a paper-based program to an e-submission program[14].

Data analysis shows that the pandemic reduced the demand for the Programs. In FY 2020-2021, significantly fewer Drawback claims were finalized and only a small number of DRP licence applications were issued compared to previous years. In terms of operations, the CBSA temporarily suspended trade compliance activity interactions on March 25, 2020; some were permitted to re-start in July 2020, and all activities had resumed by September 14, 2020. However, no site visits were reportedly conducted for the Drawback Program in FY 2020-2021.

In summary, due to many reasons discussed above, the Covid-19 pandemic affected the ability of the program to meet the TB submission targets related to increasing the number of DRP licence applications and Drawback claims finalized, as well as increasing the number of trade compliance verifications (the latter, which had specific targets to be achieved by FY 2020-2021).

4. Progress against [redacted]targets

4.1. Assessment of progress towards staffing targets

Finding 1: Recruitment of additional staff took longer than anticipated. To date, three-quarters of positions in the DRP and Drawback Program have been filled, but the key region of Ontario still lacks SOTCs.

[redacted] funding for a total of 26.6 incremental FTEs to be added on an ongoing basis, 23 of whom would be directly involved in improving the administration of the DRP and Drawback Program. The projection was to staff all 23 HQ and regional positions by April 1, 2019, but the risk of not being able to recruit and train up all staff was assessed as highly probable.

As is shown in Table 1, as of April 1, 2019, 58% of all positions in the DRP and Drawback Program were filled. As of April 1, 2021, three-quarters of all positions were filled, including nine of the 11 HQ positions. Of note, 40% of DRP/Drawback positions were still vacant in the Ontario region at this time. This is important, because over the past three years, Ontario region finalized almost two-thirds of all DRP licence applications and 43% of all Drawback claims, but conducted only 14% of all DRP verifications. As a mitigation measure, Ontario region assigned DRP and Drawback work to experienced Trade staff in other areas until new staff joined the Programs following the creation of a FB-04 pool in fall 2020.

[14] The e-claim was launched for Ontario region in December 2020: https://www.cbsa-asfc.gc.ca/publications/cn-ad/cn20-37-eng.html.

Table 1: Distribution of FTEs [redacted] and completed staffing

	NCR	Quebec	Ontario	Western	Total (Regions)	**Grand Total**
New	9	5	7	2	14	**23**
Renewed (existing)	2	14	23	11	48	**50**
Total	11	19	30	13	62	**73**
% filled as of 1 Apr 2019	18.2%	68.4%	53.3%	88.5%	65.3%	**58.2%**
% filled as of 1 Apr 2021	72.7%	94.7%	60.0%	84.6%	75.8%	**75.3%**

Source: CAS, plus self-reported data by the regions and HQ

Underlying the recruitment trends are some complicated realities. First and foremost, the DRP and Drawback Program are highly technical, and new staff require one to two years to gain the necessary skills and experience to undertake trade compliance verifications. Such verifications are often technically complex and sensitive where SMGs are involved. In addition, SOTCs are highly specialized officers who are in demand across the CBSA, making recruitment and retention inherently challenging. There has been very high staff turnover at HQ and in some regions [redacted]. For example, while the Quebec region is now close to its recruitment target number of SOTCs, the addition of 15 FTEs over the past three years translated into only a net gain of five FTEs, due to departures. Ontario region has an ageing workforce[15], a high attrition rate and indicates that Trade more broadly has experienced challenges attracting and retaining staff. Finally, onboarding new employees during the Covid-19 pandemic has been an additional challenge. Given the complex and technical nature of the program, new SOTCs are typically mentored one-on-one, the opportunities for which have been limited over the past 18 months.

4.2. Assessment of progress towards expected results

Finding 2: Progress towards intended outcomes could not be determined, [redacted], and the low quality of the available data.

4.2.1. General observations

It was very challenging to demonstrate progress in realizing expected outcomes using the indicators [redacted]. The evaluation team determined that none of the [redacted] indicators were adequate to demonstrate progress the program has made in the last three years. This was deemed the case as some of the indicators are outside the control of the CBSA and therefore should not be used as measures of performance; other indicators are so broad or general that they can offer little insight into real performance gains; and, for other indicators still, the CBSA's efforts to strengthen program

[15] In 2017-2018, over 50% of staff were eligible to retire in 5 years. In 2020-2021, 30% of staff were eligible to retire, although many delayed their retirement plans due to the pandemic.

administration and oversight is actually working in opposite direction of the established targets, which were only based on a straight-line projection. [redacted] indicators have lost relevance as a result of the changing external environment and the implementation of the CF, which is built around incremental compliance interventions rather than a reliance on the full trade compliance verification. Under the CF, the CBSA may well conduct more smaller-scale verifications and fewer full verifications; however, the latter will cover the highest-risk areas.

4.2.2. Mid-point reporting challenges

Both the evaluation team and program experts endeavoured to re-create the [redacted] baselines from existing data and, by extension, determine if progress had been made [redacted]. However, for most of the indicators, it was not possible to recreate the original baselines and, thus determine whether associated targets had been met. Some indicators could not be reported on at all. [redacted], no SOPs have been developed. This has led to a situation whereby internal reporting on the number of DRP applications and drawback claims finalized does not match data published elsewhere, even when using the same methodology[16].

The storage and management of data for the DRP and Drawback Program is unwieldy and cumbersome. Data used for performance reporting has to be cleaned and collated manually, and is, therefore, difficult to validate. The Trade Compliance Management System (TCMS) is the working database into which officers enter data as they undertake trade compliance verifications, and it is the main source of DRP data in general. Data on processing drawback claims is entered into the Batch Accounting Reporting K32 System (BARKS). In addition, officers maintain paper files for all claims/applications. Given that the Programs are administered in the regions, there are regional inconsistencies in how data is recorded in the systems. Due to the challenges with systems, one key region keeps data in local databases and periodically uploads the data into TCMS/BARKS, which can cause data gaps and errors.

Given the poor quality of the original [redacted]indicators, the inability to replicate [redacted] baselines, data quality issues, and changes in the external environment, there was little utility in using the original indicators to demonstrate the Programs' performance over the past three years. At this mid-point, the evaluation team recommends that a full review of the Performance Measurement Framework be conducted and a new set of indicators be put in place (see section 6.2 Recommendations).

4.2.3. Indicator reporting

Table 2 below provides the outcomes and indicators [redacted]. A complete table of the Expected Results [redacted] is contained in Appendix C. Of note, the immediate results indicators had a target to

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[16] Namely, this is data included in the CBSA's Service Standards Reporting and in the Agency Performance Summary on Trade, as well as other data in internal reports/documents produced on the programs.

increase the number of applications/claims finalized and verifications conducted by 50%, which stems from the 45% increase in staffing based on the expected volume of work resulting from the surtaxes.

Table 2: Expected Results, Outcomes and Indicators [redacted]

Expected Results	Outcomes	Indicators
Immediate Results (short-term): New reviews of Duties Relief applications, reviews of Drawback claims, and compliance verification activities for both programs are conducted, decisions are made in a timely manner and program measures are actively enforced. Development and enhancement of oversight structure and activities along with revised policies and procedures.	Result 1 - Increased number of Duties Relief Program applications are reviewed	Number of applications finalized
	Result 2 - Increased number of compliance verifications are conducted for the Duties Relief Program	Number of trade compliance verification for the Duties Relief Program completed
	Result 3 - Increased number of Drawback claims are reviewed	Number of Drawback Program claims finalized
	Result 4 - Increased number of compliance verifications are conducted for Drawback program claims	Number of trade compliance verifications for the Drawback Program completed
Intermediate Results (medium-term): The CBSA conducts its Duties Relief Program and Duty Drawback Program compliance activities in a fair, transparent and timely manner.	Result 1 - Stakeholders have access to up-to-date program information on the CBSA's public web site, including how to access program services.	Percentage of public policies and program information (D-Memoranda) relating to the Duties Relief Program and the Duty Drawback Program available on the CBSA's public web site that are developed or revised in 2022-2023 over same in 2017-2018
	Result 2 - CBSA administers the Duties Relief Program and Duty Drawback Program in a fair and consistent manner on a national basis with respect to decisions based on the legislative framework	Percentage of program decisions which are under appeal in fiscal 2022-2023 over same in 2017-2018. The number of decisions appealed is used to measure the perceived fairness and consistency of program administration
Ultimate Results (long-term): Canadian industry is protected through the CBSA's administration of the Duties Relief Program and Duty Drawback Program.	Result 1 - To what extent is Canadian industry protected through the CBSA's administration of the DRP and Drawback Program	Percentage of number of verifications for the DRP & Drawback Program in FY 2023-2024 resulting in assessments greater than $1M
	Result 2 - Canadian jobs and production are protected	Percentage of the total amount of assessments resulting from verifications for DRP & Drawback Program in FT 2023-2024 over the total amounts of duties relieved and refunded for the DRP % Drawback Program in FY 2023-2024

- **Immediate Result 1 -** Number of DRP applications finalized
- **Immediate Result 3** - Number of Drawback claims finalized

The number of DRP applications finalized and the number of Drawback claims finalized are supposed to demonstrate progress in outcomes that are almost identically worded, and which are not outcomes per se, but are measurements of workload. The incoming volume of applications and claims is not controlled by the CBSA. The use of the DRP and Drawback program fluctuates as external environmental factors change. For example, there was a spike in applications for DRP licences in FY 2018-2019 as a result of the surtaxes, but this was short-lived as the tariffs and countermeasures were removed within the year.[17] For this reason, applications and claims finalized are measures of program activity and should not be used as indicators of program performance.

The Agency's responsibility with regards to applications and claims submitted is to process them promptly, and to grant DRP licences to companies meeting the eligibility requirements. There are internal service standards related to the processing of DRP applications and Drawback claims - to process them no later than 90 calendar days from the date of receipt of a correctly completed and supported application/claim. For DRP applications, the CBSA met this service standard at all times for FY 2018-2019 to 2020-2021. For Drawback claims, the service standard was met 82% of the time in FY 2018-2019 and 88% of the time in FY 2019-2020 and 2020-2021. Timeliness of processing applications and claims is a better indication of the Agency's support to Canadian Industry, rather than absolute numbers of claims and applications processed.

There was a general consensus at HQ and in the regions that more rigour is now being applied in issuing DRP licences. Anecdotally, the evaluation team heard instances of where licence applications had been denied, which had previously not occurred. While no data was available to substantiate this, the CBSA has taken specific steps to apply more rigour to application processing.[18] This is important, because if the CBSA is being more judicious in approving licences and is denying licences in some cases, better program performance [redacted], which is to increase the number of DRP applications finalized.

In addition, as different figures exist on the number of DRP applications and Drawback claims finalized for the same fiscal year[19], the program should ensure consistency in reporting on its key metrics.

- **Immediate Result 2 -** Number of trade compliance verifications for the DRP completed
- **Immediate Result 4 -** Number of trade compliance verifications for the Drawback Program completed

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[17] [redacted] there was "unprecedented demand for the DRP and Drawback Program as a result of the surtaxes", an increase in the number of drawback claims since 2018 has yet to be recorded. The evaluation did note a spike in applications for DRP licences in FY 2018-2019 (92), which was a direct result of the surtaxes, but subsequently, DRP applications were below average in FY 2019-2020 (18) and well below average in FY 2020-2021 (6). Data on applications for relief under DRP licences was not available.

[18] Upfront controls to the DRP were strengthened by updating the DRP Application Form (K90) and Letter of Authorization to support risk assessment and the CF. The CBSA also changed the DRP application process for SMGs, whereby all DRP applications specifically for SMGs must be sent to HQ for review and approval before regional processing.

[19] For example, three different figures exist on the number of drawback claims finalized for FY 2018-2019.

The indicators on the completion of trade compliance verifications are intended to demonstrate increased compliance activities conducted for the Programs. However, as an absolute number, rather than a percentage of claims or applications for relief that are subject to a verification, they do not account for the incoming volume of claims or applications for relief. They also do not indicate if the verifications are being conducted in a timely manner. Furthermore, in the case of the DRP, the global number of trade compliance verifications is too broad to be meaningful, as there are different types of verifications carried out at different times and for different reasons. In addition, an arbitrary target number of verifications completed puts focus on quantity over quality. Presumably the goal should be to conduct the most meaningful verifications (i.e., highest risk and/or covering the greatest dollar value). As these are likely to be more complex and take longer to complete, putting emphasis here means a smaller number of compliance verifications are likely to be conducted overall. Finally, the absolute number of verifications becomes an even less meaningful measure with the advent of the CF, which is a move towards a targeted, risk-based approach to compliance assurance, relying less on the full trade verification to ensure compliance.

The evaluation team recommends these indicators be discontinued and replaced by much more precise and up-to-date indicators that reflect the new approach to promoting compliance in the CF.

- **Intermediate Result 1** - Percentage of public policies and program information (D-Memoranda) relating to the DRP and the Duty Drawback Program available on the CBSA's public web site that are developed or revised in 2022-2023 over same in 2017-2018

The indicator on the availability of D-Memoranda on the public website is supposed to measure the outcome of stakeholders having access to up-to-date program information. However, the existence of new or updated D-Memoranda on the public website does necessarily mean that stakeholders have access to the information they need on the Programs. The clarity and completeness of the program information contained in the D-Memoranda is important and whether any information is missing, is best assessed by the recipients of the information (such as via periodic stakeholder surveys).

The evaluation team recommends that the program still track this indicator at the activity level. However, a new outcome-focussed indicator (or indicators) is required, which is centred on soliciting stakeholders' views as to whether they have access to the information they need.

- **Intermediate Result 2** - Percentage of program decisions, which are under appeal in fiscal 2022-2023 over same in 2017-2018

This indicator is inadequate to measure its associated outcome, which centres on the CBSA's ability to administer the Programs in a fair and consistent manner on a national basis with respect to decisions based on the legislative framework. The number of appeals launched against CBSA decisions is outside the Agency's control. A company may appeal a CBSA DRP or Drawback decision for any reason;

conversely, a company may not launch an appeal even if it feels it has not been treated fairly or consistently, for example due to the costs involved.

Over the past five years, there have been mounting legal challenges, which are a direct result of the CBSA ramping up verifications of DRP SMG participants, as the SMG-related applications for relief involve very high monetary values[20]. These verifications have revealed significant non-compliance, resulting in companies losing access to large sums of duties relief, which has been challenged in court.[21] In this way, stronger program performance (e.g., uncovering non-compliance via verifications of high-risk SMG importers) [redacted] to reduce number of program decisions appealed. The outcome of the court cases is more indicative of whether or not the Programs are being administered in a fair and consistent manner, either in terms of companies withdrawing their court challenges, or via the court-of-law rulings made on the challenges.[22]

For the reasons discussed above, a more suitable indicator to capture fairness and consistency with respect to decisions based on the legislative framework should be developed.

- **Ultimate Result 1** – Percentage of number of verifications for the Duties Relief Program plus the Drawback Program in fiscal 2023-2024 resulting in assessments that are greater than $1M

This indicator is insufficient to measure its associated outcome, which is that the Program users are compliant. Firstly, the reason for the threshold being set at $1 million is unclear. It does not consider/capture participants who are non-compliant (possibly repeatedly) to the tune of hundreds of thousands of dollars. It also only captures compliance for a subset of program users, as the original baseline was calculated for high-risk verifications only (i.e., SMG-related DRP verifications); it does not take into account the compliance of all the other businesses which use the DRP (as well as the Drawback Program).

The evaluation team also determined that the original baseline was calculated incorrectly for this indicator. The denominator for the baseline was high-risk SMG verifications, and was stated as 40. However, while 40 SMG verifications had been initiated [redacted], only around 20 had concluded, and thus could have had their assessments included in the calculation of the baseline.

The evaluation team recommends this indicator be discontinued and replaced by a more easily understandable and inclusive indicator or indicators of compliance, which are tracked separately for the Programs.

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[20] According to the program, to date, the CBSA has launched compliance verifications on all DRP participants who import SMGs.
[21] One on-going DRP SMG court challenge is disputing $109.2 million worth of CBSA duty assessment decisions; another is disputing $27.8 million.
[22] See footnote 11 on the outcomes of recent court challenges.

- **Ultimate Result 2** - Percentage of the total amount of assessments resulting from verifications for the Duties Relief Program and the Drawback Program in fiscal 2023-2024 over the total amounts of duties relieved and refunded for the Duties Relief Program plus the Drawback Program in fiscal 2023-2024.

This indicator is not readily understandable. As with the other ultimate results indicator, it does not sufficiently measure its associated outcome - Canadian jobs and production are protected. It does not reflect the number and variety of business supported by the Programs. It also does not consider the efforts of the CBSA to protect businesses not participating in the Programs via compliance assurance on those who are benefitting.

The most basic measure of protecting Canadian Industry is the total amount of duties relieved/refunded under the Programs, but the program could explore an outcome of reducing barriers for industry (i.e., reductions of an unnecessary tax burden), with an indicator being the number of jobs impacted.

The evaluation team recommends this indicator be discontinued and replaced by a more easily understandable and inclusive indicator or indicators of compliance, which should be tracked separately for the Programs.

4.2.4. Performance reporting and CARM

In the near future, CARM is expected to be the system of record for processing drawback claims as well as for accepting submissions of licence applications. To this end, there has been significant involvement both at the HQ and regional level in CARM design activities over the past two years. It is anticipated that CARM will facilitate an improvement in performance reporting for the programs via its dedicated reporting functionality.

5. Actions in response to the OAG recommendation

Finding 3: The CBSA responded to the OAG's recommendation 2.63 to explore the possibility of making licences renewable and requiring financial deposits.

As part of the evaluation, an auditor was contracted to assess the extent to which the CBSA addressed the recommendation in *Report 2 - Customs Duties, 2017 Spring Reports of the Auditor General of Canada*.

In 2017, the OAG had found that the CBSA and GAC did not work together to adequately manage the limits on quota-controlled goods coming into Canada and that some goods, imported under the DRP, were diverted into the Canadian economy, rather than exported as required by the program. The OAG also found that the CBSA did not ensure that these diverted goods were reported and the applicable duties paid as required. The OAG did find that the CBSA ensured that importers were complying with their licences under the DRP by conducting periodic verifications at the importers' premises. However, the OAG report highlighted that the CBSA did not use some controls - such as requiring a financial deposit to participate in the program and having renewable licences for importers - to create more incentives for the importers to comply with rules.

The resulting recommendation 2.63 was:
In consultation with the Department of Finance Canada, the Canada Border Services Agency should improve the Duties Relief Program's compliance by considering

- *making licences renewable, conditional on an importer's compliance record, and*
- *requiring a financial deposit proportionate to the value of duties at risk.*

Audit level assurance was provided that the CBSA responded to the OAG's recommendation, as it explored the possibility of making DRP licences renewable and requiring financial deposits. The Agency conducted consultations with the DFC and key participants of the DRP, and provided recommendations to the policy-holder (DFC) and to the House of Commons Standing Committee on Public Accounts in September 2018. The consultation process included the following:

- The CBSA participated in DFC- and GAC-led consultations with key stakeholder and industry representatives for SMG program participants, including:
    - Canadian Association of Regulated Importers
    - Canadian Hatching Egg Producers
    - Canadian Poultry and Egg Processors Council
    - Chicken Farmers of Canada
    - Dairy Farmers of Canada
    - Dairy Processers Association of Canada
    - Further Poultry Processors Association of Canada
    - Turkey Farmers of Canada
- The CBSA launched additional consultations with 72 non-SMG DRP participants, representing 85% of non-SMG related duties.

Participants involved in the consultations were asked for their views on making licences renewable conditional on an importer's compliance record, and requiring a financial deposit proportionate to the value of duties at risk. Program participants were also canvassed for additional ideas to improve the CBSA's DRP control framework to better manage risk.

The findings of the consultation process indicated support for making licences renewable conditional upon an importer's compliance record, but there was opposition to requiring a financial deposit on the grounds that it would pose an administrative burden and would serve to remove an advantage of using the DRP.

As a result of the consultation process, the CBSA made three recommendations to the DFC and the House of Commons Standing Committee on Public Accounts. These were:

Recommendation #1 – Recommend that licences be renewable on a five-year basis, with renewal conditional upon compliance record.

Recommendation #2 – Recommend that a financial deposit not be required of DRP participants.

Recommendation #3 – Continue ongoing efforts to improve the compliance framework of the DRP.

6. Conclusion and recommendations

6.1. Conclusion

By relieving duties, the DRP and Drawback Programs are an important source of support for domestic importers, especially during the post-Covid-19 pandemic recovery period.

[redacted] for recruiting additional staff, which are taking longer than anticipated to be realized. Even as of the end of last fiscal, one-quarter of all positions remained vacant, including a large proportion of Ontario's positions. Staff turnover has been high and remains an on-going challenge, as does on-boarding and training of new staff in the Covid-19 pandemic in what are highly technical and complex programs.

The evaluation found evidence of increased compliance activities for the DRP [redacted], 16 verifications on high-risk SMG DRP importers have been completed, resulting in five DRP participants having their licences suspended or cancelled. Changes have been made to introduce more rigour when processing new DRP licence applications [redacted]. However, [redacted] at a time when surtaxes had caused a spike in DRP licence applications; however this was short-lived, and surtaxes were removed within the year. This, together with changes in the external environment, including the increase in high-value litigation and the Covid-19 pandemic, has greatly reduced the relevance of the indicators. In addition, the indicators themselves have not been systematically tracked over the past three years. Neither the evaluation team nor program experts were able to recreate the original baselines for the quantitative indicators, and some indicators could not be calculated at all.

An internal audit of the response to the 2017 OAG recommendation related to the DRP determined that the CBSA had considered making licences renewable and requiring financial deposits.

[redacted]. For this reason, the evaluation recommends developing a new PMF containing sound indicators of performance [redacted], which would help demonstrate progress that has been made.

6.2. Recommendations

Recommendation 1

A new set of [redacted] indicators should be developed for the DRP and Drawback Program. The FY 2017-2018 baselines and the values for FY 2018-2019 to 2020-2021 should be established, validated by the Program Evaluation Division of the Internal Audit and Program Evaluation Directorate, and published. The target date for completion is February 28, 2022.

Recommendation 2

A new PMF should be put in place for the DRP and Drawback Program, which includes the following activities:

a. Revising the logic model and developing performance indicators [redacted];
b. Developing SOPs on how all performance indicators are calculated and reported on;
c. Instituting a process to regularly track and report on all performance indicators; and
d. Developing a plan, and beginning to implement improvements to the quality and consistency of data entered into systems.

The target date for completion is March 31, 2023.

Recommendation 3

Given the significant changes in the external environment [redacted] and the implementation challenges that the program faces, it is recommended that the program develop an action plan (roadmap) to optimize the use of [redacted] funding in support of strengthened program compliance. The target date for completion of the action plan is July 31, 2022.

Appendix A: Management Response and Action Plan

RECOMMENDATION 1		
1. A new set of [redacted] indicators should be developed for the DRP and Drawback Program. The FY 2017-2018 baselines and the values for FY 2018-2019 to 2020-2021 should be established, validated by the Program Evaluation Division of the Internal Audit and Program Evaluation Directorate, and published. The target date is 28 February, 2022.		
Management response Commercial and Trade Branch (CTB) accepts the need to revise the performance framework [redacted]. Meeting these timeframes will have an impact on other trade related priorities, specifically CARM and User Acceptance Training – which is just underway and will continue to make significant demands on program staff over the winter. In order to meet this recommendation CTB will depend on expertise from the appropriate performance measurement expertise in Financial and Corporate Management Branch (FCMB). FCMB support is critical to ensuring that the proposed new metrics maximize our opportunity for success with regard to quality and consistency. As such, a workshop was held December 10, 2021 with representatives of IAPED and TAPD HQ. Regional engagement will occur in January, CARM UAT demands permitting. Performance measurement experts from FCMB have been consulted.		
Management action plan	**Completion date**	**Lead(s)**
Develop new indicators, in consultation with regional and HQ Subject Matter Experts and performance measurement professionals in IAPED and FCMB.	January 2022	Director, Regulatory Trade Programs
Develop and standardize methodology to report on indicators including reporting timeframes.	January 2022	
Report on progress based on the new indicators, with pre and post implementation data.	February 2022	

RECOMMENDATION 2

2. A new PMF should be put in place for the DRP and Drawback Program, which includes the following activities:

a. Revising the logic model and developing performance [redacted];
b. Developing SOPs on how all performance indicators are calculated and reported on;
c. Instituting a process to regularly track and report on all performance indicators; and
d. Developing a plan, and beginning to implement improvements to the quality and consistency of data entered into systems.

The target date for completion is 31 March, 2023

Management response

Commercial and Trade Branch agrees with this recommendation and will depend on performance measurement experts in FCMB to provide guidance and direction on how to deliver a new PMF in line with GOC best practices.

Management action plan	Completion date	Lead(s)
Engage branch performance measurement professionals to develop a roadmap to complete step a.	April 2022	Director, Regulatory Trade Programs
Provide input to branch and agency performance measurement professionals and support the development of the new logic model and indicators.	May 2022	
Develop a data reporting sheet on indicators and finalize SOPs.	September 2022	
Seek branch management team's approval on cyclical reporting on performance.	November 2022	
Review and prioritize the data issues including an assessment of CARM data reporting capabilities post release 2.	November 2022	
Develop a roadmap to improve data quality.	December 2022	

Begin implementation of the roadmap.	March 2023	

RECOMMENDATION 3

3. Given the significant changes in the external environment [redacted] and the implementation challenges that the program faces, it is recommended that the program develop an action plan (roadmap) to optimize the use of [redacted] funding in support of strengthened program compliance. The target date for completion of the action plan is July 31, 2022.

Management response

Although the DRP and DDP were highlighted as top CBSA program integrity risks in the CBSA Sustainability Review, the evaluation rightly underscores the significant program compliance achievements realized since the 2017 Auditor General Report and the support expressed from supply management interests. The CBSA has completed 34 compliance verifications of Duties Relief Program participants that import supply-managed goods, 27 of these participants were found to be non-compliant, of which 17 had their DRP licence cancelled or suspended. The total amount of duties and taxes assessed from these verifications was approximately $431M. [redacted]. This recommendation serves to ensure program performance can be sustained and improved through an updated action plan that is reflective of program and industry changes [redacted].

CTB agrees with the intent of this recommendation – resource optimization and enhanced compliance. [redacted], the Agency has been managing a significant level of litigation. [redacted]

Management action plan	Completion date	Lead(s)
Identify salary and O&M usage, [redacted]	March 2022	Director, Regulatory Trade Programs
If needed based on the results of 3.1, in consultation with the regions, develop a proposal to re-allocate non-committed funds to NHQ.	May 2022	
Establish a pilot Centre for Compliance Protection to assist the regional trade operations in managing litigation cases before the Federal Court and defending outcomes of compliance activities.	September 2021	

Appendix B: Evaluation methodology and data limitations

Evaluation timeframe

The substantive work for the evaluation was carried out between March and November 2021.

Evaluation questions

The questions developed for the evaluation were based on [redacted]; these are listed below. An evaluation matrix was used to guide the evaluation, which included the evaluation indicators and sources of data.

[redacted]

Sources of data

Multiple data collection methods and sources were used to answer the evaluation questions, as described below:

- **Document review**

The document review took place throughout the evaluation project, from the planning to the examination phases. Over 50 documents were reviewed, [redacted], CBSA standard operational procedures, program performance reports, past audits, and performance measurement tools from the Trade Incentives Unit. Documents were reviewed systematically and, where appropriate, evidence was compiled and used to help answer the evaluation questions.

- **HR data**

A HR dataset was extracted from the Corporate Administrative System (CAS) by the Human Resources Branch (HRB). However, given that the SOTCs work across multiple programs in addition to the DRP and Drawback Program, and that SOTCs work across multiple divisions at HQ, the evaluation team had to rely on HQ to identify the exact numbers of staffing in the program in the past 3 years. For similar reasons, regional staffing numbers were also provided by the Regions.

- **Program data**

Program data for the DRP and Drawback Program is primarily contained in three separate databases: BARKS, TCMS and the Customs Commercial System (CCS). These databases track the processing of Drawback claims (BARKS), DRP licences (CCS) and claims against DRP licences (TCMS). The evaluation team also analyzed litigation data related to the Programs.

- **Semi-Structured interviews**

Semi-structured interviews were held with key stakeholders from HQ and all regions - Western region (Pacific & Prairie), Ontario and Quebec regions. In all, 11 interviews were conducted with 24 directors, managers and SOTCs.

Data limitations and challenges

The main challenges with the systems data are outlined in section *4.2.2. Mid-point reporting challenges*.

An additional challenge was having sufficient processing power to analyze the large Excel TCMS datasets, but this was overcome without any impact on the evaluation timeline.

Appendix C: Expected Results [redacted]

Expected Results	Outcomes	Indicators	Baselines	Targets
Immediate Results (short-term): New reviews of Duties Relief applications, reviews of Drawback claims, and compliance verification activities for both programs are conducted, decisions are made in a timely manner and program measures are actively enforced. Development and enhancement of oversight structure and activities along with revised policies and procedures.	Result 1 - Increased number of Duties Relief Program applications are reviewed	Number of applications finalized	20 annually.	30 annually.
	Result 2 - Increased number of compliance verifications are conducted for the Duties Relief Program	Number of trade compliance verification for the Duties Relief Program completed	CBSA completed on average 20 Duties Relief Program compliance verifications per year in the 5 previous years.	30 verifications completed annually as of fiscal 2020-2021.
	Result 3 - Increased number of Drawback claims are reviewed	Number of Drawback Program claims finalized	3,887 annually.	5,830 annually.
	Result 4 - Increased number of compliance verifications are conducted for Drawback program claims	Number of trade compliance verifications for the Drawback Program completed	CBSA completed on average 25 Drawback Program compliance verifications per year in the 5 previous years.	37 verifications completed annually as of fiscal 2020-2021.
Intermediate Results (medium-term): The CBSA conducts its Duties Relief Program and Duty Drawback Program compliance activities in a fair, transparent and timely manner.	Result 1 - Stakeholders have access to up-to-date program information on the CBSA's public web site, including how to access program services.	Percentage of public policies and program information (D-Memoranda) relating to the Duties Relief Program and the Duty Drawback Program available on the CBSA's public web site that are developed or revised in 2022-2023 over same in 2017-2018	Currently, 4 formal policy/program documents available (D-Memoranda) as of fiscal 2017-2018.	100%, meaning 5 in 2022-2023.
	Result 2 - CBSA administers the Duties Relief Program and Duty Drawback Program in a fair and consistent manner on a national basis with respect to decisions based on the legislative framework	Percentage of program decisions which are under appeal in fiscal 2022-2023 over same in 2017-2018. The number of decisions appealed is used to measure the perceived fairness and consistency of program administration	As of fiscal 2017-2018, 18 appeals of decisions are in inventory.	50%, meaning 9 in 2022-2023.
Ultimate Results (long-term): Canadian industry is protected through the CBSA's	Result 1 - To what extent is Canadian industry protected through the CBSA's administration of the DRP and Drawback Program	Percentage of number of verifications for the DRP & Drawback Program in FY 2023-2024 resulting in assessments greater than $1M	7 high risk verifications out of the most recent 40 (18%) have resulted in individual	5%, representing a minimal number of assessments over $1M.

administration of the Duties Relief Program and Duty Drawback Program.			assessments greater than $1M.	
	Result 2 - Canadian jobs and production are protected	Percentage of the total amount of assessments resulting from verifications for DRP & Drawback Program in FT 2023-2024 over the total amounts of duties relieved and refunded for the DRP % Drawback Program in FY 2023-2024	Overall historical financial risk level is less than 12%, although this has climbed to 76% as of Q1/2 of 2017-2018 due to an increase in compliance verifications and an increase in the use of the two programs by importers of high-risk commodities.	Overall financial risk level is relatively minimal, meaning less than 12% in 2023-2024.