



# Memorandum D7-4-3: CUSMA Requirements for the Duty Drawback and the Duties Relief Programs

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This memorandum outlines and explains the effects of Article 2.5 of the Canada-United States-Mexico-Agreement (CUSMA) on the Duty Drawback and Duties Relief programs.

## Plain language summary

**Target audience:** Importers of commercial goods.

**Key content:** CUSMA restrictions on refunds of duties; goods affected (and not affected) by these restrictions; goods considered “same condition”; satisfactory evidence to determine how much customs duty may be claimed through drawback, or deferred under the Duties Relief Program; interest and penalties under CUSMA.

**Keywords:** CUSMA, CARM, Duty Drawback Program, Duties Relief Program, imports, exports, trade chain partners, customs duties.

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## Updates made to this D-memo

- The revisions made in this memorandum do not affect or change any of the existing policies, but reflect the implementation of the Canada-United States-Mexico-Agreement (CUSMA) to replace the North American Free Trade Agreement (NAFTA)
- The revisions made in this memorandum do not affect or change any of the existing policies, but reflect changes to the Canada Border Services Agency's organizational structure
- This memorandum has been revised to include processes related to the implementation of the CBSA Assessment and Revenue Management (CARM) system

The CUSMA affects most non-originating goods used as materials in the manufacture of products exported to a CUSMA 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.

It is recommended that all Trade Chain Partners (TCPs) who participate in the Duty Drawback Program and/or the Duties Relief Program (DRP), including Same Condition Ruling applications, conduct communications and activities through the [CARM Client Portal \(CCP\)](#).

The CARM system has been developed to provide registered Trade Chain Partners (TCPs) the ability to submit requests for a drawback refund, apply to the Duties Relief Program, request a Same Condition Ruling and declare DRP diversions via the CCP. CARM facilitates and expedites these processes by introducing information technology which streamlines the submission, receipt and processing of electronically submitted requests via the CCP.

For questions related to registration in CARM or access to the CPP, please refer to [CARM: Assess and pay duties and taxes on imported commercial goods](#). If further assistance is required, contact the CARM Client Support Help Desk (CCSH) by completing the Web form or contacting the Border Information Service (BIS). Both the link to the web form and BIS line information can be found in the Contact Us section of this memorandum.

# Guidelines and general information

## CUSMA restrictions

1. Article 2.5 of the CUSMA 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 CUSMA country to another. Article 2.5 of the CUSMA does not affect Goods and Services Tax (GST) relief, GST deferral, or GST Input Tax Credit refund processes.

## Goods affected by the CUSMA limitations

2. Only certain goods are affected by the limitations on the Duty Drawback and Duties Relief programs. The CUSMA changes affect imported non-CUSMA originating goods (or goods substituted with identical or similar goods) that are used in the production of another good that is exported to a CUSMA country.

### Limitations on customs duties

3. 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 CUSMA 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 CUSMA country.

**Note:** The duties paid on the goods entering the other CUSMA 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: CUSMA drawback and duties relief calculations](#).

### Limitations on SIMA duties

5. The CUSMA may have an effect on the amount of *Special Import Measures Act* (SIMA) duties subject to drawback or deferral.

6. For goods subject to the CUSMA 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 CUSMA limitations**

7. Not all goods exported to a CUSMA 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 CUSMA country;

**Note:** The CUSMA limitations for drawback and duties relief do not apply to CUSMA originating goods. Originating for the purposes of CUSMA 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 the CUSMA.

(c) goods exported to non-CUSMA 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 CUSMA 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 (United States tariff 5811.00.20, Canadian tariff 5811.00.10),

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

(iii) furniture moving pads (United States 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. CUSMA 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. A Same Condition Ruling provides a decision as to whether or not specific goods may be considered as "same condition" for the purposes of Article 2.5 of the CUSMA. To facilitate processing by the CBSA, companies with a Canada Revenue Agency (CRA) issued business number must submit their request for a Same Condition Ruling directly into the CCP. Companies without a CRA-issued business number may submit their request by mail to the following address:

Manager, Trade Incentives Unit  
Commercial and Trade Branch

Canada Border Services Agency  
300 Laurier Avenue West, 21st floor  
Ottawa, Ontario, Canada K1A 0L8

The CBSA strongly discourages the submission of requests for Same Condition Rulings by mail as it may take longer to process.

13. Requests for rulings should contain the following information:

- (a) company name, address, telephone, and email address;
- (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 ruling requests submitted outside of the CARM must be signed by an executive officer of the company submitting the request<sup>15</sup>. Insufficient details may result in the rejection or return of the applicant's same condition ruling 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 CUSMA country. Certain deemed exports are not affected by the CUSMA 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 CUSMA 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 CUSMA country, the amount of drawback paid or customs duties deferred may be subject to a CUSMA restriction.

17. For goods subject to the CUSMA limitations, exporters must obtain satisfactory evidence and pay any customs duty owing within 60 days of the date of export to the CUSMA 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 CUSMA affected good must obtain satisfactory evidence of the customs duties paid on the exported good entering another CUSMA 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 CUSMA 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 United States 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. This information may be submitted for review and consideration via the CCP.

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

26. Where exports are affected by the CUSMA 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 2.5(1) of the CUSMA, companies must obtain satisfactory evidence of the customs duties paid when the exported goods enter another CUSMA 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 CUSMA 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 2.5 of CUSMA.

32. Goods entering a foreign CUSMA duty deferral program and subsequently re-exported to a non-CUSMA country are not subject to the CUSMA 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-CUSMA country.

### **Form K32A: Certificate of Importation, Sale, or Transfer**

33. The CUSMA restrictions do not apply to CUSMA originating goods. To assist with the identification of CUSMA originating goods, companies may wish to identify or "break

out" duty related to CUSMA originating goods when completing the [Form K32A: Certificate of Importation, Sale or Transfer](#). Purchasers may request that vendors identify originating goods separately on a certificate to allow them to take full advantage of potential drawback. All waivers may be submitted via the CCP.

### **Form K32B: Drawback Certificate of Sale for Exportation**

34. Exports to other CUSMA parties that are listed on [Form K32B: Drawback Certification of Sale for Exportation](#) and are subject to the CUSMA restrictions must be supported by satisfactory evidence information as described in the section, "Satisfactory Evidence." All waivers may be submitted via the CCP.

### **Administrative Monetary Penalties**

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 or in cases of non-compliance.

# Appendix A: CUSMA drawback and duties relief calculations

Notes for CUSMA "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 CUSMA 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 United States 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 CUSMA restriction as well as imported material that is an exception.

### Background

Duties paid on materials imported into Canada:

Material A (CUSMA originating): CAD \$3.00

Material B (Non-originating): CAD \$6.00

Total: CAD \$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): CAD \$9.00

### **Drawback**

Full drawback allowed on Material A (CUSMA originating): CAD \$3.00  
Material B (Non-originating) (CAD \$6.00) is compared to the Canadian equivalent  
United States duties paid (CAD \$9.00)  
The lesser of the two amounts is: CAD \$6.00  
Drawback of duties allowed is \$3.00 (CUSMA originating) plus \$6.00 ("lesser of the two  
duties") for a total of: CAD \$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 (CUSMA originating)  
(The \$3.00 is completely deferred as the materials are originating goods and therefore  
not subject to the CUSMA restriction.): CAD \$3.00  
Material B (Non-originating) (CAD \$6.00) is compared to the Canadian equivalent  
United States duty-paid (CAD \$9.00).  
The lesser of the two amounts is: CAD \$6.00  
Amount eligible for deferral: CAD \$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 the CUSMA**

## **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 CUSMA 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

Please consult the following resources.

### Applicable legislation

- [Customs Act](#)
- [Customs Tariff](#)
- [Special Import Measures Act](#)

### Superseded Memorandum D

D7-4-3 dated May 27, 2015

### Contact us

For more information:

[Contact CBSA border information services](#)

For questions about the CBSA Assessment Revenue Management (CARM) system:

[CARM client support online form](#)

### Related links

- [CARM: Assess and pay duties and taxes on imported commercial goods](#)
- [CARM Client Portal](#)
- [Canada-United States-Mexico-Agreement](#)
  - [Read the agreement and related texts](#)
  - [Chapter 2: National Treatment and Market Access for Goods](#)
- [The Administrative Monetary Penalty System](#)