



Ottawa, October 21, 2009

MEMORANDUM D7-2-3

In Brief

OBSOLETE OR SURPLUS GOODS

1. This memorandum has been revised in accordance with the Government of Canada's Paper Burden Reduction Initiative. This memorandum supersedes and replaces Memorandum D7-2-3 dated May 31, 1999.
2. In accordance with the above, the following changes were made:
 - (a) revisions to include the new Canada Border Services Agency (CBSA) title, and updates to policy and procedures.
 - (b) Paragraph 8, the K32-1, Drawback Claim, has been deleted from the listing of official forms and the requirement to file a K32, Drawback Claim, in duplicate has been removed.
 - (c) Paragraph 10(b), the requirement to provide Form K32A, Certificate of Importation, Sale or Transfer, in duplicate has been removed.
 - (d) Appendix A, *Refund of Duties on Obsolete or Surplus Goods Regulations*, has been replaced by paragraph 30.
 - (e) Appendix B, K32, *Drawback Claim Form*, has been replaced by paragraph 31.
 - (f) Appendix C, List of offices, has been replaced by regional CBSA, Trade Compliance Division (TCD) offices in paragraph 32.



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This memorandum outlines and explains the conditions under which a refund of duties, other than the goods and services tax (GST), may be paid on obsolete or surplus goods destroyed in Canada.

GUIDELINES AND GENERAL INFORMATION

1. The obsolete or surplus goods program allows for a refund of duties paid when imported goods, which have not been used in Canada and are either obsolete or surplus, are destroyed under the direction of a border services officer. There is no provision for the relief of GST under this program.

2. The purpose of this program is to assist the Canadian industry to compete by reducing costs on goods which will not enter the domestic market. By allowing the destruction of obsolete or surplus goods, the necessity of exporting imported goods to qualify for an export drawback is removed. As such, this program is similar to the duty drawback program. Refer to Memorandum D7-4-2, *Duty Drawback Program*.

3. A refund of the duties paid is provided for the following scenarios when imported goods are:

- (a) found to be obsolete or surplus to requirements by their importer or owner;
- (b) used in processing of goods in Canada that have been found to be obsolete or surplus to requirements by their processor or owner; or
- (c) other than fuel or plant equipment, directly consumed in the processing in Canada of goods that have been found to be obsolete or surplus to requirements by their processor or owner.

Note: In all cases, the goods cannot be used in Canada or damaged prior to their destruction.

4. Used clothing imported in bulk, in bales, sacks, or similar packing not entering the Canadian economy by way of resale, fibre recovery, or used in the manufacture of wipers or rags, and determined to be unsaleable may be considered to be obsolete or surplus goods.

5. Goods imported under the duties relief program for subsequent exportation, may qualify for this program. The destruction of goods should be adequately documented to

show that the goods did qualify, and supporting documents should be held at the claimant's premises for subsequent verification.

6. Where a border services officer is not present at time of destruction, sufficient documentation must be supplied to enable the border services officer to determine that the obsolete or surplus goods have been destroyed.

7. The method of destruction will depend on the nature of the goods being destroyed. Any questions regarding how to destroy the goods should be addressed to the local Trade Compliance Division (TCD) office prior to their destruction.

How to Apply

8. The claimant must complete, a Form K32, *Drawback Claim*, and file it, together with supporting documentation to the nearest Canada Border Services Agency (CBSA) office. The claim should be legible, either typed or in ink. Completion instructions are on the back of the form. A sample claim form can be found on our website at www.cbsa.gc.ca. The goods must be destroyed prior to filing a claim.

9. A copy of Form K32 will be returned to the claimant where a claim has been rejected for lack of supporting documentation. CBSA will indicate what documentation is missing. The claimant must present a new claim form with the necessary information. The date of original filing does not protect the statutory time limits. Therefore, the new claim must be received by CBSA within the prescribed time limits.

Supporting Documentation

10. The following documents must accompany the claim:

- (a) a certified copy of Form E15, *Certificate of Destruction/Exportation*;
- (b) the original of any Form K32A, *Certificate of Importation, Sale or Transfer*, where the claimant is not the importer.

11. Computer printouts or other suitable computer medium can be utilized where the claim is lengthy.

12. The documents shall contain a complete description of the goods detailed in the transaction.

13. Additional information or documents may be required in order to establish the validity of the claim and must be provided upon request.

14. When a supporting document is not available, a claim may be accompanied by a document containing information equivalent to that on the missing document.

Certificates and Waivers

15. A waiver is required from all other eligible claimants waiving their rights to claim a drawback, and must be filed with the claim. Claims will be rejected where a waiver is required and is not provided.

16. It should be noted there is no legal obligation to sign a waiver. To claim goods from a certificate or waiver that was submitted with a prior claim, the claimant only needs to identify, on the new claim, the claim number to which the original waiver was attached.

17. To assist claimants, the Agency has created a waiver certificate, Form K32A, *Certificate of Importation, Sale or Transfer*, which is used to waive the duties to someone other than the importer.

Filing Time Limits

18. A claim for refund must be filed within five years of the date the goods received customs release.

19. Claims filed at any CBSA office will be date-stamped immediately on receipt and forwarded to the appropriate TCD office of CBSA.

20. The date-stamp or the date of registration, if sent by registered mail, will be the date used for calculating time limits for submission of a claim.

21. In instances where the claim is forwarded to the TCD office by regular mail or courier, the date that the claim is received in the TCD office will be the date of filing.

22. The Agency will process the claim in a timely manner. We may authorize an interim payment of up to 100% of the amount filed, pending final verification by the Agency.

Scrap or Waste

23. Normally a claim would include any scrap or waste resulting from a processing operation or the destruction of goods, provided the scrap or waste is not subject to duties, when imported as scrap or waste, and does not have a merchantable (sales) value.

24. When the scrap or waste has a sales value and would be subject to duties, if it were imported as such, a drawback claim may only be filed if the scrap or waste is exported or destroyed. Otherwise, the claim must be reduced by the amount of duty that would be applicable to the sales value of the scrap or waste.

Interest

25. Any person who receives a refund of duties, other than duties levied under the *Special Import Measures Act*, shall receive, in addition to the drawback, interest at the prescribed rate starting on the ninety-first day after the application for the drawback is received by CBSA, and ending on the day the drawback is granted.

26. Any person granted a refund of duties levied under the *Special Import Measures Act* will be granted interest at the prescribed rate for each month or fraction of a month beginning on the ninety-first day after an application is received by CBSA, and ending on the day the drawback is granted.

Non-compliance

27. For the purposes of this program, where a refund is paid on goods thought to be destroyed which are not destroyed, the amount of the drawback must be repaid.

28. Any money which is overpaid by the Agency, including interest overpaid, will be recovered. Interest will be charged on the overpayment from the time the drawback was paid until the full amount is repaid.

29. Detailed information regarding refunds may be obtained at a CBSA office.

Additional Information

30. To view the *Refund of Duties on Obsolete or Surplus Goods Regulations* please visit the following Department of Justice Canada web site at <http://laws.justice.gc.ca>.

31. To access the Form K32, *Drawback Claim* please visit the CBSA web site at www.cbsa.gc.ca or contact your Regional CBSA office.

32. For a listing of your regional CBSA, Trade Compliance Division (TCD) offices, please visit the CBSA web site at www.cbsa.gc.ca.

33. For more information regarding CBSA programs, contact Border Information Service at **1-800-461-9999** for service in English or **1-800-959-2036** for service in French.

REFERENCES

<p>ISSUING OFFICE – Duty Deferral Unit Tariff Policy Division Trade Programs Directorate Admissibility Branch</p>	<p>HEADQUARTERS FILE – 6550-0</p>
<p>LEGISLATIVE REFERENCES – <i>Customs Tariff</i>, sections 109 to 112 P.C. 1997-2028 <i>Refund of Duties on Obsolete or Surplus Goods Regulations</i> (SOR/98-56)</p>	<p>OTHER REFERENCES – D7-4-1, D7-4-2, D6-2-3</p>
<p>SUPERSEDED MEMORANDA “D” – D7-2-3, May 31, 1999</p>	

Services provided by the Canada Border Services Agency are available in both official languages.

