



Memorandum D6-2-3

Ottawa, September 10, 2018

Refund of Duties

In Brief

This memorandum was edited to reflect changes to the time period for which an application for refund may be made under the Canada-Chile Free Trade Agreement (CCFTA) preferential tariff treatment. These changes to the refund time period are a result of the Agreement to Amend the Free Trade Agreement Between the Government of Canada and the Government of the Republic of Chile, which came into force September 30, 2013.

This memorandum provides the legislation and explains the policy and procedures for the refund of duties. Instructions on the coding and processing of Form [B2, Canada Customs – Adjustment Request](#), can be found in [Memoranda D17-2-1, Coding of Adjustment Request Forms](#).

Legislation

[Customs Act](#)

[Refund of Duties Regulations](#)

Guidelines and General Information

1. GST is excluded from all refunds made under customs legislation. Any reference to duties in the following guidelines should be read to exclude the GST.
2. The [Customs Act](#) (the Act) allows for the separation of the adjustment and refund process from the true dispute (i.e., appeal) process. This memorandum deals with self-adjustments filed under section 74 of the Act that result in a refund. While corrections to declarations under section 32.2 are obligatory, refunds under section 74 of the Act are voluntary. Section 74 of the Act provides for a four year time period for the submission of refund claims with the exception of goods claimed under certain free trade agreements. For additional information concerning refund claims under a free trade agreement, please refer to the section below entitled [Goods Eligible for Preferential Tariff Treatment under a Free Trade Agreement Where No Claim for Preferential Tariff Treatment Was Made at the Time of Accounting](#).
3. An application for a refund of duties must be filed on Form [B2, Canada Customs – Adjustment Request](#) and submitted to a CBSA office. The day the refund application is received in the CBSA office is the date of filing. It should be noted that where the requirement for filing a written notice or the requirement for filing an application for refund ends on a weekend or legal holiday, the next working day will become the final day for presentation of the documents.

Goods That Have Suffered Damage, Deterioration, or Destruction

4. In cases where the damage, deterioration, or destruction has been discovered prior to the release of the goods, the written notice requirement in section 3 of the [Refund of Duties Regulations](#) (Regulations) is satisfied if at, or prior to the time of release, the importer/owner submits Form [K11, Certificate of Damaged Goods](#), for the examining CBSA officer's signature.

5. Form [K11](#) is divided into two sections. The first section is to be filled out by the importer/owner before presentation to the CBSA. The second section, “Officer’s Certificate,” will be filled out by the examining CBSA officer or an officer in the regional Trade Operations Division office after the filing of a refund claim by the importer/owner of the goods.

6. In cases where the damage, deterioration, or destruction is discovered after release of the goods, notice of a claim is to be written or typed in a clear, concise manner and must refer to the transaction number of the accounting document on which release of the goods was effected.

7. Immediately upon receipt, the notice will be date-stamped by the CBSA and filed with the relative accounting document, which will indicate that the provisions of section 3 of the [Regulations](#) have been met. To ensure that written notices are not being submitted on the presumption that there may be a discrepancy, such notices must include sufficient detail with respect to the damage deterioration or destruction of the good so as to satisfy the CBSA that the intention to file a refund claim is valid.

8. Written notices pertaining to goods that have suffered damage, deterioration, or destruction may be presented to any CBSA office within the prescribed time limits, i.e., three days for perishable goods, four years in all other instances. For the purposes of the [Regulations](#), “perishable goods” are goods that are subject to speedy decay and spoilage (e.g., live animals, fresh meat, fish, poultry, fruit and vegetables, flowers, human plasma, etc.). The receiving CBSA office will date-stamp the notice and forward it to the appropriate CBSA office.

9. Where the damage, deterioration, or destruction is discovered after the goods are released, notwithstanding the provisions of section 6 of the [Regulations](#), the goods may be subject to examination by the CBSA to permit verification of the alleged damage, deterioration, or destruction in order to establish the proper rate, or amount of reduction, and to confirm that the goods in question are those named on the invoice and accounting document. Therefore, should the goods be disposed of by the importer/owner prior to approval of the refund claim by the CBSA, the importer would be responsible for establishing its eligibility for a refund.

10. For the purpose of determining the amount of refund payable with respect to section 5(a) of the [Regulations](#), refunds for perishable or brittle goods will be equal to 85% of the duties paid on the loss in value of the goods.

11. In the case of sugar or any saccharine products that have suffered damage or deterioration from salt water, a test will be conducted by an officer of the Science and Engineering Directorate of the CBSA in Ottawa. For information concerning goods damaged prior to release from the CBSA, which are subsequently exported from or destroyed in Canada under CBSA supervision, refer to paragraphs 43 to 54 of this memorandum.

Goods Deficient in Quantity

12. Goods deficient in quantity for purposes of section 7 of the [Regulations](#) may be described as being:

(a) whole packages short, and

(b) a shortage in contents of a package or a container whereby the importer/owner has paid the applicable customs duties on a complete shipment and obtained release of the goods from the CBSA.

13. For purposes of section 8 of the [Regulations](#), all notices of goods being deficient in quantity are to be written or typed in a clear, concise manner and are to refer to the transaction number of the accounting documents on which release of the goods was effected.

14. Immediately upon receipt the notice will be date-stamped by the CBSA and filed with the relative accounting document, which will indicate that the provisions of section 8 of the [Regulations](#) have been met. To ensure that written notices are not being submitted on the presumption that there may be a discrepancy, such notices must include sufficient detail to satisfy the CBSA that the intention to file a refund claim is valid.

15. Section 12 of the [Regulations](#) provides that where a shortage of goods has occurred, the consignment may be handled as goods “entered to arrive.”

16. Since applicable duty and taxes have been paid on the goods “entered to arrive”, the importer/owner may account for the goods short shipped when they do arrive at the CBSA without the payment of additional duties or taxes. The goods short shipped and accounted for as “to arrive” may be released from the CBSA office where the original shipment was accounted for as a “part lot importation.”

17. Should the “short” or “entered to arrive” goods never arrive or should the importer/owner decide to cancel his original purchase order in relation to the short shipped goods, the importer may file a claim for refund to recover the duties paid on the goods short shipped.

18. The “entered to arrive” notation made on the original accounting document at the time of release satisfies the requirements of section 8 of the [Regulations](#) insofar as reporting the shortage to the CBSA within the stipulated four years period.

19. When determining the merits of the claim for refund, the original accounting document will be examined to ensure that the “entered to arrive” notation is still open and has not been used to allow a “part lot importation.” If the refund claim is valid, the “entered to arrive” notation on the accounting document will be cancelled by a reference to the refund claim number.

20. Shortages in the contents of packages may be handled either as “value included” transactions or as claims for refund. The procedures for obtaining release of goods short shipped as “value included” importations are set out in [Memorandum D17-1-5, Registration, Accounting and Payment for Commercial Goods](#).

21. The notation placed on the CBSA office copies of invoices or accounting documents, in combination with the information given by the exporter in the credit memorandum supporting the claim for refund, should contain sufficient details to clearly indicate the value for duty of the short goods. For example, normal shortage claims will involve goods with individual unit prices and descriptions clearly indicated on the relevant customs invoice and accounting document.

Goods of Inferior Quality

22. For purposes of section 14 of the [Regulations](#), all notices of alleged inferiority in quality are to be typed or written in a clear, concise manner and are to refer to the transaction number of the accounting document on which release of the goods was effected.

23. Immediately upon receipt, the notice will be date-stamped by the CBSA and filed with the relative accounting document that will indicate that the provisions of section 14 of the [Regulations](#) have been met. Such notices must include sufficient detail on the nature of the inferior quality so as to satisfy the CBSA that the intention to file a refund claim is valid.

24. Notices of alleged inferiority in quality must be presented to a CBSA office within the prescribed time limits, i.e., three days for perishable goods, four years in all other instances. The receiving CBSA office will date stamp the notice and forward it, as necessary, to the appropriate CBSA office concerned.

25. The goods may be subject to examination by the CBSA to confirm the alleged inferiority in quality in order to establish the proper rate, or amount of reduction, and to permit identification of the goods in question as matching those named in the invoice and accounting document in question. Where the goods are disposed of by the importer or owner, prior to approval of the refund claim by the CBSA, the importer or owner will be responsible for establishing their eligibility for the refund.

Goods Eligible for Preferential Tariff Treatment under a Free Trade Agreement Where No Claim for Preferential Tariff Treatment Was Made at the Time of Accounting

26. An application for a refund of duties paid on North American Free Trade Agreement (NAFTA) eligible goods must be made within one year of the date the goods were accounted for under subsection 32(1), (3), or (5) of [the Act](#).

27. For Canada-Chile Free Trade Agreement (CCFTA) eligible goods imported prior to March 1, 2014, the refund request must be made within one year of the date the goods were accounted for under subsection 32(1), (3), or (5) of [the Act](#).

28. For CCFTA eligible goods imported on or after March 1, 2014, and all other free trade agreement eligible goods (other than NAFTA), the refund request must be made within four years of the date the goods were accounted for under subsection 32(1), (3), or (5) of [the Act](#).

29. For NAFTA and CCFTA eligible goods, the importer may file a request for a refund on [Form B2](#) quoting paragraph 74(1)(c.1) of [the Act](#). For all other free trade agreement eligible goods, the importer may file a request

for a refund on [Form B2](#) quoting paragraph 74(1)(c.11) of [the Act](#). All refund requests must include the relevant Certificate of Origin. For commercial goods valued at less than CAN \$2,500 for NAFTA, or less than CAN \$1,600 for all other free trade agreements, a Certificate of Origin is not required. Instead, a statement of origin, completed by the exporter certifying the origin of the goods, must be provided to support the request for a refund. Information concerning proof of origin requirements is available in [Memorandum D11-4-2, Proof of Origin of Imported Goods](#).

Clerical, Typographical, or Similar Error

30. Paragraph 74(1)(d) of [the Act](#) provides for the request for refunds where excess duties were paid based on a clerical, typographical, or similar error. Previously, these types of errors were handled under the general provision for duties overpaid or paid in error.

31. The refund application must identify what error occurred (e.g., an extension error on a customs invoice, a transposition error, a mathematical error, or other error) that caused the duties to be paid or overpaid. If the error is not obvious, documentation may be required to substantiate that the error is of a clerical or typographical nature.

32. Paragraph 74(1)(d) is the means to refund duties where a duplicate payment situation arises. In that case, the accounting document on which the goods were actually received will stand as the accounting document upon which the goods are properly accounted for. The refund claim is to be filed against the second accounting document. A copy of the accounting document that properly accounts for the goods should accompany the refund claim as supporting documentation.

33. Where a duplicate payment involves a shipment with an identical invoice and cargo control number but where the tariff classification of the goods was different, the claim will be reviewed to establish the correct tariff classification in order to determine if the duplicate payment constitutes a valid request for re-determination under [the Act](#).

34. Reasons for which applications for refund may be submitted on Form [B2](#) for duties overpaid or paid in error include:

- (a) clerical error on a CBSA accounting document;
- (b) an apparent clerical error on an invoice, for example, the quantity and unit price on the invoice were incorrectly extended;
- (c) error in the rate of exchange;
- (d) duplicate payment on two CBSA accounting documents;
- (e) prohibited goods.

Duties Paid or Overpaid due to an Error in Determination

35. Paragraph 74(1)(e) provides for a refund of duties paid or overpaid as a result of an error in the determination of origin, tariff classification, or value for duty. Please note that the determination of origin under 74(1)(e) does not include a determination of origin made under a free trade agreement. For refund of duties under a free trade agreement, please refer to the section above entitled [Goods Eligible for Preferential Tariff Treatment under a Free Trade Agreement Where No Claim for Preferential Tariff Treatment Was Made at the Time of Accounting](#).

36. This paragraph only applies in respect of goods that have **not** been subject to a re-determination under sections 59 to 61.

Goods Sold or Otherwise Disposed of or Used, Before any Other use is Made of the Goods in Canada

37. Paragraph 74(1)(f) of [the Act](#) is a “further refund” provision that authorizes the CBSA to grant a refund of the customs duties paid on imported goods where the goods are accounted for under a tariff item and subsequently diverted to a use or user specified in another tariff item, subject to the following conditions:

- (a) no use was made of the imported goods in Canada, except that they may be incorporated into other goods;
- (b) the goods must be excluded from consideration under the refund provisions of paragraph 74(1)(e) because there is no error in the original declaration of tariff classification; and

(c) the goods must have been sold or otherwise disposed of to a person, or used in accordance with a condition or regulations imposed under a tariff item in the List of Tariff Provisions set out in the schedule to the [Customs Tariff](#).

38. Requests for refund under paragraph 74(1)(f) of the Act must be supported by:

- (a) documentary evidence in the form of proof of actual use required by the actual user of the goods; and
- (b) a copy of the sales invoice, contract agreement, or other document to verify the sale or disposition of the goods after the time of accounting under subsections 32(1), (3), or (5) of [the Act](#).

39. To qualify, the goods must not be used for any purpose other than to be incorporated into other goods and must have been sold or otherwise disposed of to a qualified person (end-user), or been diverted to a qualifying end-use or end-user.

Duties Overpaid or Paid in Error for Other Reasons

40. Paragraph 74(1)(g) of [the Act](#) is the authority to grant a refund where the duties have been reduced or removed by a retroactive order made under section 82 or 138 of the [Customs Tariff](#). It is also the authority to refund the duty when the goods are prohibited for use or sale by a provincial law.

41. Therefore, when duties are refundable because of an order under section 82 or 138, a Form [B2](#) should be filed to recover any duty paid or overpaid, as stipulated in the order. It will be up to the person claiming the refund to substantiate that the goods claimed are eligible for the retroactive order.

42. Where a claim is filed for goods that are prohibited for use or sale by a provincial law, the goods must either be exported or destroyed under CBSA supervision. Where the goods are exported, satisfactory proof of exportation must be supplied with the claim. Examples of satisfactory proof of exportation would include a signed bill of lading from the transportation company and a foreign customs entry document. Where goods are destroyed under CBSA supervision, a certified copy of Form [E15, Certificate of Destruction/Exportation](#), should accompany the claim.

Goods That are Defective, are of Inferior Quality, or are not the Goods Ordered, and That Have Been Disposed of or Exported

43. Subsection 76(1) authorizes the granting of a refund where the imported goods are found, by their importer or owner to be defective, of an inferior quality to that in respect of which duties were paid, or are not the goods ordered, and that are either exported or disposed of.

44. For purposes of this part, “defective goods” may be defined as goods that, through an error on the part of the manufacturer, exporter, or vendor do not meet their design specifications. Some examples are listed below:

- (a) an imported article that fails to function properly;
- (b) a computer is imported under contract on the understanding it will process 100,000 transactions per second. However, because of a defective circuit board it will only process 50,000 transactions per second. The entire computer or the circuit board may be replaced;
- (c) an imported motor vehicle that is not modified to meet Canadian safety standards as required by the Registrar of Imported Vehicles and cannot be licensed for use in Canada.

45. Refund of duties will be authorized in either case providing the requirements of section 37 of the [Regulations](#) are met. It should be noted that it is not always possible for the defect to be established at the time of release of the goods. The defective nature of the goods often comes to light only when the goods are put into actual use by the importer/owner or, alternatively, through a recall program authorized by the foreign supplier to deal with design or manufacturing defects.

46. Inferior quality goods are goods that are other than quality goods of acceptable or expected quality. The goods are normally of a lesser quality or strength to that which the importer/owner ordered.

47. Goods that are “not according to order” are those goods that are not of the class or description ordered (e.g., the specifications, size, colour, or quantity of the imported goods differ from those ordered).

48. Claims for refund must be accompanied by a written statement from the foreign supplier, exporter, or vendor that clearly indicates the defect, why the goods are of inferior quality or are not the goods ordered. In addition, the claim must be accompanied by a document (credit memo, invoice, or other statement) from the foreign supplier that clearly indicates the amount of refund or credit given.

49. Where the goods subject to a refund under this part have been exported, sufficient proof of exportation must be filed with the application.

50. Where it is the wish of the importer/owner that the goods be destroyed in Canada, destruction shall take place at the importer's/owner's expense under CBSA supervision.

51. It will be the responsibility of the claimant to describe the goods on the Form [E15, Certificate of Destruction/Exportation](#), in such a manner that they can be related to a specific CBSA accounting document and the relative refund claim together with supporting documentation.

52. Where the foreign supplier does not give full credit to the importer/owner for the purchase price of the defective goods, the amount of refund of customs duties allowed will be based on the percentage of credit actually given.

53. Where a full credit is given by the supplier of the defective goods but a "re-stocking," "re-shelving," or "shipping" charge is deducted from the credit, a refund of the applicable customs duties will be calculated on the total amount of the credit.

54. The amount of credit granted by the foreign supplier will naturally relate only to the selling price of the goods and not to the value for duty. Whether the value for duty is higher or lower than the selling price of the goods, the percentage amount of refunds (as determined from the percentage relation of the credit to the selling price) will be calculated against the customs duties paid on the value for duty of the defective goods.

Reduction of Amount of Refund

55. This part stipulates when a deduction to a refund claim is necessary, and how to calculate the amount of that reduction. Such a deduction would be required when, as a result of the imported goods being destroyed (under CBSA supervision) or disposed of, the resultant scrap or waste would be merchantable and would be subject to duty if it were imported. In these situations, the amount of duty that would be applicable would be based on the value of the scrap sold in an arm's-length transaction and this amount would be deducted from the amount of the refund.

56. Where a deduction is required, the person filing for the refund should supply the CBSA with sufficient information and documentation to verify the amount of the deduction. This should include a description of the type and amount of scrap or waste derived from the disposal or destruction of the imported goods, and any sales value associated with it.

Interest

57. Under subsection 80(1) of [the Act](#), interest on duties refunded (other than SIMA assessments) will be granted at the prescribed rate beginning on the 91st day after the day the refund application is received and ending on the day the refund is granted.

58. Under section 80.1 of [the Act](#), any person granted a refund of duties on imported goods under subsection 74(1)(g) will be granted interest at the prescribed rate beginning the day after the duties were paid.

59. Interest is only payable with respect to applications made pursuant to section 74 or 79 of [the Act](#). Refund of customs duties paid involving issues other than those outlined in this memorandum are not subject to the interest provisions contained in section 80 of the Act.

Penalties

60. Refunds may not be claimed in respect of customs penalties imposed on imported goods.

Repayment of Refunds

61. Subsection 80.2(1) of [the Act](#), requires that a person who receives a refund or abatement to which it is not entitled, the person must repay the amount and any interest they were granted on that amount.

62. Subsection 80.2(2) of [the Act](#), also requires the person who was granted a refund under paragraph 74(1)(f) where the goods fail to comply with a condition imposed under a tariff item, to repay the amount of the refund and any interest that was granted.

Additional Information

63. For certainty regarding the tariff classification of a product, importers may request an advance ruling on tariff classification. Details on how to make such a request are found in CBSA [Memorandum D11-11-3, Advance Rulings for Tariff Classification](#).

64. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237**.

References	
Issuing Office	Trade Policy Division
Headquarters File	
Legislative References	Customs Act Refund of Duties Regulations Customs Tariff .
Other References	D11-4-2 , D11-11-3 , D17-1-5 , D17-2-1 Forms B2 , E15 , K11 ,
Superseded Memorandum D	D6-2-3 dated January 6, 2016