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Evaluation of the Duties Relief and Duty Drawback Programs: External environmental influences [redacted]

[← Previous page](#)[Table of contents](#)[Next page →](#)

In this section

- [3.1 End of the U.S. Canada trade dispute](#)
- [3.2 Culpability framework](#)
- [3.3 Litigation from DRP verifications of SMG importers](#)
- [3.4 COVID-19 Pandemic](#)

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. [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-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 to 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 to 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 to 2021).

Footnotes:

- 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 to 21).
- 4 2017 OAG audit on Customs Duties.
- 5 Refers to SMG DRP verifications completed from FY 2018 to 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.
- 9 Refers to those filed in FY 2016 to 2017 and 2017 to 2018.
- 10 Refers to those filed in FY 2018 to 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-whenever-and-whenever-possible.html>
- 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>

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