

source (DAR 6-103.5). This applies only to supply and services contracts; for the regulations governing construction contracts see Section 6.2.2.

U.S. contractors who are uninformed or who are reluctant to procure supplies of Canadian origin can be referred either to the Defense Acquisition Regulation or to the Buy American clause in their contracts to confirm that Canadian components are considered to be domestic. If necessary, a U.S. prime contractor may obtain from the Service Contracting Officer a ruling in writing concerning the proposed use of Canadian or foreign supplies.

#### **6.2.1.3 Research and Development**

The Buy American Act relates only to physical materials and is not concerned with contracts in which the supplier delivers findings resulting from a research and development contract. If such a supplier also delivers prototypes or other hardware, the above regulations regarding Canadian supplies are applicable.

#### **6.2.2 Construction Contracts**

U.S. military contracts for construction, including construction materials bought as part of construction contracts to be performed in the United States, its possessions or Puerto Rico, are not eligible for Buy American Act exemption or duty-free entry. Canadian materials included as part of a prime construction contract are classified as foreign materials and are therefore considered on the same basis as those offered by suppliers from other countries. In addition to Buy American Act penalties and the necessity of paying duty, bids proposing use of foreign construction materials including items of Canadian origin are subject to Secretary of Defense approval prior to the award of contract.

In view of these restrictions, Canadian firms wishing to bid on such contracts should obtain full details of applicable regulations and directives from both the general contractor concerned and the responsible U.S. Military Agency well before contracts are awarded.

### **6.3 U.S. Tariffs and Duty-Free Entry**

#### **6.3.1 General**

The Department of Defense of the United States has special statutory authorization to arrange duty-free entry for acquisition of goods (including spare parts) from other countries. This arrangement also extends to the importation of Canadian defence supplies by American companies carrying out defence contracts. The "Defence Export Shippers' Guide" provides necessary guidance on the subject.

#### **6.3.2 Restriction of Duty-Free Entry**

DAR 6-602 does however provide that if a U.S. contractor has been awarded a fixed price type contract, based on providing a domestic end product or component, he cannot subsequently furnish a foreign end product or component (including a participating

country end product or component) and receive a duty free entry certificate without an appropriate reduction in contract price.

### **6.4 Drawback on Goods Manufactured or Produced in Canada and Exported**

Canadian Customs regulations permit the payment of Drawback of duty when Canadian duty has been levied on imported goods that are used in the manufacture of goods subsequently exported from Canada in a new and unused condition. Upon export, the importer may apply for recovery of a portion of the duty and taxes paid on the imported goods incorporated into the exported article.

Although most instances of Canadian firms importing material and/or parts from the U.S. for defence production sharing work will be eligible for duty remission under Department of National Revenue Memorandum D53-11, cases exist where payment of Canadian duty is required before the goods may be imported. These cases include:

- a) Imports needed to carry out Canadian Government defence contracts, which are not covered by that remission, and
- b) Importations of small amounts of dutiable material and/or parts, where the DNR decide the administrative costs of monitoring the duty-free entry do not warrant remission of the duty.

In the event of (b) the Canadian firm is entitled to claim Drawback of duty on the imported materials and/or parts when the finished product is exported. Procedural details can be obtained from any Canadian Customs office.

#### **6.4.1 Remission of Duty on Goods Imported for Processing and Subsequent Export**

The provisions of Order-in-Council P.C. 1979-615 (DNR Memorandum D17-30), entitled an Order Respecting The Remission of Customs Duty on Goods Imported for Processing and Subsequent Export provides for the remission of duty on imported goods used in the manufacture of goods for export. A manufacturer that has an established pattern of export sales or a bona fide contract or sales agreement may be authorized, upon approval of an application to the Minister of National Revenue, to import under this Order.