

Speak Up NOW: Canada Announces Consultations of Trade Remedy System

By Cyndee Todgham Cherniak, LexSage Professional Corporation

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LISTEN UP – THIS IS AN IMPORTANT ANNOUNCEMENT. In the [2016 Budget](#), the Government of Canada announced that it would be commencing consultations regarding Canada’s trade remedies system (that means, Canada’s laws relating to antidumping and countervailing duties). On April 29, 2016, the Department of Finance launched a consultation on potential changes to Canada’s trade remedy system. When the Government says “potential changes”, they really mean that changes will be coming after the consultation process and should be expected.

The Government of Canada is interested in hearing from a wide range of affected parties – so importers, exporters and foreign producers should speak up so that the only voice heard is not the Canadian Steel Producers.

The consultations address three key areas:

- **A. Calculation of normal values:** consideration of changes to better account for situations where prices or **costs** in the exporter’s home market may not be reliable for the calculation of normal values or where profit rates cannot be established on the basis of an exporter’s sales of the like good in the exporting market.
- **B. Enforcement:** consideration of new proceedings to address circumvention or seek clarification of what goods are **subject** to a measure, as well as possible changes to the granting of product exclusions.
- **C. Evidentiary standards:** consideration of changes to certain evidentiary standards to ensure that trade remedy **proceedings** are conducted where warranted, and that interested parties have sufficient opportunity to defend their interests.

All parties with an interest in these consultations are invited to make a submission in writing by **June 29, 2016**. Canada has provided [an explanation for the areas of consideration](#). Canada seeks comments responding to the following questions:

Questions

Particular Market Situation

(1) Should SIMA be amended to provide for the finding of a particular market situation that has rendered the exporter’s domestic sales unusable for the calculation of normal values?

(2) What factors should be adopted for determining the presence of a particular market situation? For example,

- (a) government influence and distortion of the price of inputs;
- (b) the presence of government-owned enterprises in the market; or
- (c) other conditions in the market that render sales in that market not suitable for use in price calculations.

(3) What alternative approaches or benchmarks should be used to calculate normal values where a particular market situation has been found in respect of the product under investigation? For example,

- (a) domestic sales of other sellers or producers in the exporter's home market;
- (b) export sales to third-country markets; or
- (c) the constructed price based on the cost of producing and selling the good in the exporter's home market, plus a reasonable amount for profits.

(4) Where a particular market situation is found to exist for an input good, what alternative approaches or benchmarks should be used to determine a fair market price for that input? For example,

- (a) the price of the input supplied by a non-government-owned enterprise in the country of export to the exporter, to other exporters in that country, or to an appropriate third country;
- (b) the price of goods that are like the input, manufactured and sold in Canada or in a surrogate country; or
- (c) the price of the input based on international price lists or markets?

Affiliated Party Transactions

(5) Should SIMA be amended to provide for the use of alternative methodologies when determining the price of inputs sourced from affiliated party suppliers?

(6) What alternative approaches or benchmarks would be appropriate? For example,

- (a) the selling price between the exporter and unaffiliated suppliers of that input;
- (b) the selling price between the affiliated supplier of that input and unaffiliated producers; or
- (c) adjustments to the selling price from the affiliated supplier to the exporter, to account for any element of cost not sufficiently reflected.

(7) How should affiliation be determined?

(8) Are different procedures warranted for major inputs? If so, what should constitute a major input?

Profit Rates

(9) Do the existing methodologies for establishing profit rates under paragraph 11(1)(b) of the SIMR provide the CBSA with sufficient flexibility to determine a reasonable rate of profit for use in establishing normal values?

(10) Should greater preference be given to establishing a rate of profit on the basis of sales of the like good, whether sold by other producers in the exporting market, exported to third-country markets, or produced and sold in third-country markets?

Anti-Circumvention

(11) What is the extent of the problem of circumvention of anti-dumping or countervailing duties in Canada?

(12) Should SIMA be amended to include anti-circumvention proceedings? If so, what forms of circumvention should be covered?

(13) If SIMA were amended to include anti-circumvention proceedings, how should they be conducted?

- (a) Who should be able to request the initiation of an anticircumvention proceeding?
- (b) What sort of evidence should be required?
- (c) To what extent should interested parties (importers, exporters, foreign governments, etc.) be able to participate?
- (d) What should be the requirements with respect to causation and injury when examining trade practices alleged to constitute circumvention? For example,
 - — Should there be a requirement to prove that the trade practices in question were principally caused by the imposition of anti-dumping and countervailing duties?
 - —Should there be a requirement to prove that the trade practices in question diminish the remedial effect of the duties?

Scope Proceedings

(14) Should SIMA be amended to introduce proceedings for scope rulings?

(15) What procedural elements should be incorporated? Should all interested parties have participatory rights?

(16) What parties should be able to request a scope ruling? What information should be required to accompany a request to initiate a scope proceeding?

(17) What should the relationship be between potential scope proceedings and the existing determination/re-determination process? What bearing should scope rulings have on future determinations or re-determinations? Should there be retroactive application?

(17) What appeal / judicial review rights should be granted?

Product Exclusions

(18) Should SIMA be amended to place limitations on the Tribunal's discretion to grant exclusions based on the end-use of the product or geographic location of the end-user?

Evidentiary Standards

(19) Is the current evidentiary standard for the preliminary injury determination sufficiently clear and appropriate?

(20) Is it desirable to amend the evidentiary standard applied to the preliminary determination of injury to ensure that cases are not unduly terminated prior to the consideration of all relevant evidence?

Expiry Reviews (Canada's Sunset Review)

(21) Is the current standard for initiating an expiry review under section 76.03 of SIMA sufficiently clear and appropriate?

(22) Should the standard for initiating an expiry review be clarified or changed to ensure that expiry reviews are conducted where there is a risk of continued or resumed dumping and/or subsidizing that is likely to cause injury or retardation?

Conclusion

It is expected that the Department of Finance will make changes to Canada's antidumping and countervailing duty laws as a result of this consultation process. The rules changes will affect the activities of the Canada Border Services Agency and could make it more difficult for an exporter/foreign producer to obtain reasonable normal values. The changes may also affect how the Canadian International Trade Tribunal conducts inquiries at the investigation stage and the expiry review stages. If Canada makes changes to its trade remedies rules, the changes could have significant effect on importers, exporters and foreign producers. This is why it is so important to participate in the consultation process.

The relevant documents are:

- [The Special Import Measures Act](#)
- [The Special Import Measures Regulations](#)
- [The Backgrounder](#)
- [The Canada Gazette Notice](#)
- [Frequently Asked Questions](#)

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Cyndee Todgham Cherniak
cyndee@lexsage.com
Mobile: (416) 389-8999

The Gooderham "Flatiron" Building
49 Wellington Street East, Suite 501
Toronto, Ontario M5E 1C9

Phone: 416-307-4168/416-760-8999
Main Office: 647-290-4249
Fax: 416-760-899

www.lexsage.com

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